Supreme Court of the United States

OCTOBER TERM, 1935

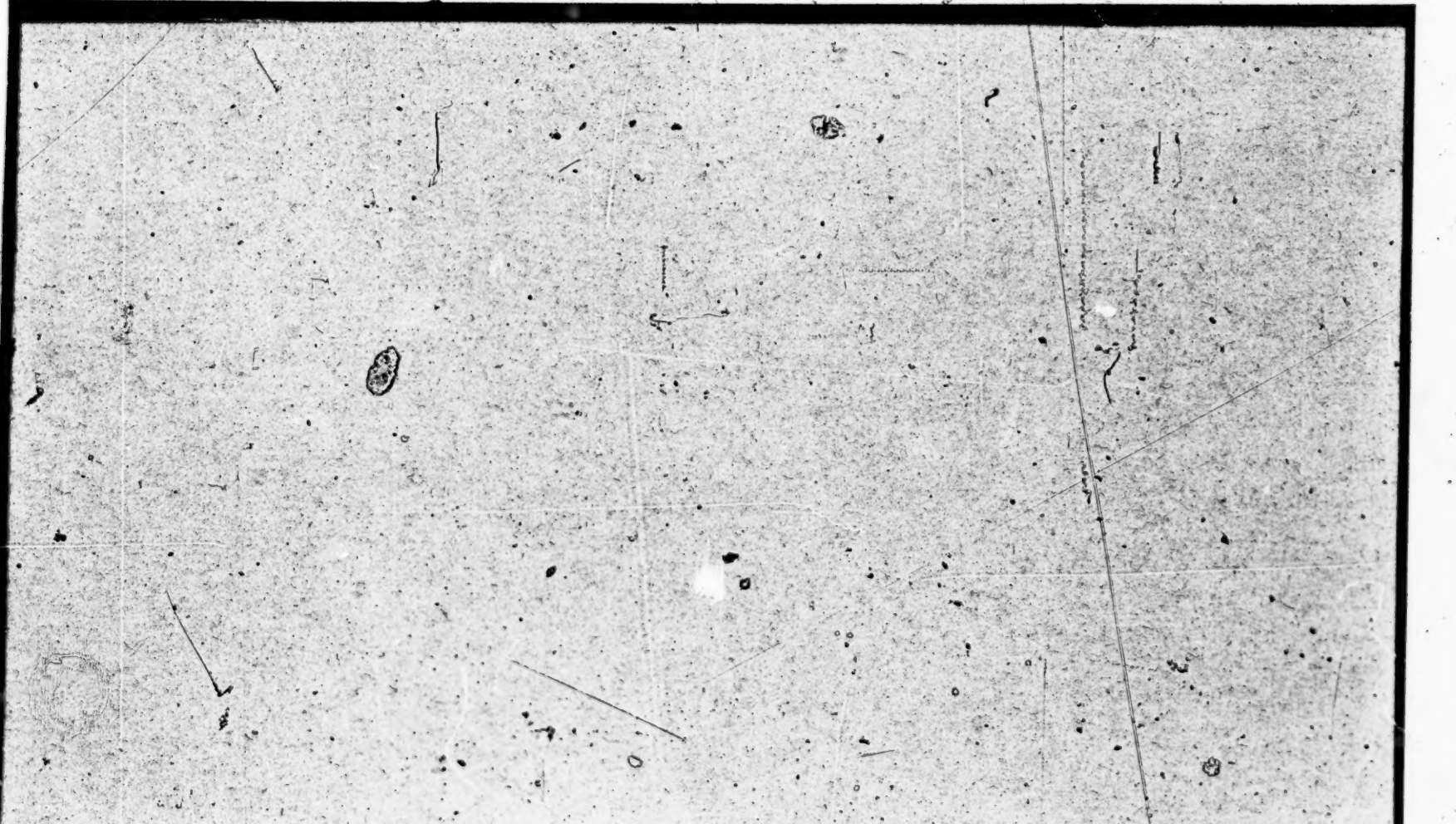
No. 342

STATE OF FLORIDA, EUGENE S. MATTHEWS, MAMIE EATON GREENE, AND W. E. DOUGLASS, ETC., ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, GEORGIA PUBLIC SERVICE COMMISSION, AND ATLANTIC COAST LINE RAILROAD COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA



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IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

In Equity. No. 690

STATE OF FLORIDA AND EUGENE S. MATTHEWS, MAMIE EATON-GREENE, and Tucker Savage, as and Constituting Florida Railroad Commission, Petitioners,

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, Defendants

BILL OF COMPLAINT

To the Honorable Judges of the District Court of the United States in and for the Northern District of Georgia:

The State of Florida, by Cary D. Landis, its Attorney General, and Eugene S. Matthews, Mamie Eaton-Greene and Tucker Savage, as and constituting Florida Railroad Commission, by T. T. Turnbull, Special Counsel for said Florida Railroad Commission, bring this their bill of complaint against the United States of America and Interstate Commerce Commission, and thereupon respectfully show as follows:

1

That the petitioners, Eugene S. Matthews, Mamie Eaton-Greene and Tucker Savage are the duly elected, qualified and acting Railroad Commissioners of the State of Florida; that as and constituting such Florida Railroad [fol. 5] Commission they are, under the constitution and laws of the State of Florida, charged with the duty and authority of supervising, regulating and enforcing rates and charges for transportation service performed by railroads as common carriers in intrastate commerce in the State of Florida, and are authorized and empowered to bring and maintain this proceeding.

2

That the United States of America is made defendant herein by virtue of those certain acts of Congress known as the Commerce Court Act (36 Stat. L. 539), and the District Court Jurisdiction Act (38 Stat. L. 219). The defendant Interstate Commerce Commission is an administrative tribunal created by Act of Congress, February 4, 1887, and whose duties and powers are defined in such act and amendments thereto and supplements thereof.

3

That the Georgia Public Service Commission is an administrative tribunal created and existing by authority of law under the constitution and statutes of the State of Georgia, having its official residence in the City of Atlanta in the northern District of Georgia, and so within the jurisdiction of this Court.

4

That the Atlantic Coast Line Railroad Company at all times herein mentioned has owned and operated various lines of railway in the States of Georgia and Florida. That for the transportation of logs, over six feet in length and other than walnut, cherry and cedar logs, within the State of Florida the Atlantic Coast Line Railroad Company [fol. 6] voluntarily established in the year A. D. 1914, and thereafter voluntarily continued in effect and now charges a certain mileage scale of rates known as the "Cummer Scale", which, for varying distances up to 170 miles, provided varying rates "per car of 50,000 pounds, excess in proportion, to be loaded and unloaded by owner and not to be unloaded on the Railroad's right of way."

That under the laws of Florida said Cummer Scale became and was and still is the legal and lawful rate for the transportation of such logs in intrastate commerce within the State of Florida, and that no change ever could or now can be made in said rate without a hearing duly had after notice duly given to all interested parties by said Florida Railroad Commission and the consent of said Florida Railroad Commission duly given after such hearing in the manner prescribed by the laws of the State of Florida.

That over such lines of railway the Atlantic Coast Line Railroad for many years prior to February 8, 1928, transported for shipment wholly within the State of Florida under said Cummer Scale of rates vast numbers of carloads of logs.

5

That for many years prior to February 8, 1928, said Atlantic Coast Line Railroad Company had also published and filed with the Interstate Commerce Commission and continued in effect certain rates which would be applicable to any movement of such logs, viz, logs over six feet in length and other than walnut, cherry and cedar logs, over its lines from Florida origins to Georgia destinations, which said rates were higher in amount for like distances than the so-called "Cummer Scale" applicable for the like dis-
[fol. 7] tances and under the certain conditions between points in the State of Florida as above described.

That there never was any movement of such logs under said interstate rates, nor was there ever any movement of such logs after February 8, 1928, under the new interstate rates then established for such traffic (in the event there should be any such traffic), by the order of the Interstate Commerce Commission as is hereinafter set forth.

6

On or about to-wit, May 3, 1926, said Georgia Public Service Commission, in its own name, filed with the Interstate Commerce Commission a certain complaint against the Atlantic Coast Line Railroad Company. In such complaint it was alleged that the rates of freight on logs published by the Atlantic Coast Line Railroad as applicable to shipments of such commodity from origins on its line in Florida to destinations on its line in Georgia then were and thereafter would be unjust and unreasonable in violation of the provisions of Section 1 of the Interstate Commerce Act. It was further alleged in such complaint that the contemporaneous publication of such interstate and intrastate rates above described constituted and thereafter would constitute undue prejudice and disadvantage to Georgia Lumber Manufacturers and Georgia communities and unjust discrimination against interstate commerce to the undue preference and advantage of shippers of logs

between points in Florida, in violation of the provisions of Sections 3 and 13 of the interstate commerce act.

7

Thereupon such complaint was served by the Interstate Commerce Commission upon the Atlantic Coast Line Railroad Company, which, thereafter, and in due course, filed with the Interstate Commerce Commission its answer [fol. 8] thereto and in such answer that railroad denied that there was or had been any violation on its part of the interstate commerce act, and demanded that "it be hence dismissed."

8

That the Interstate Commerce Commission in compliance with Section 13 (3) of the Interstate Commerce Act, notified the State of Florida and the Florida Railroad Commission of the pendency of such proceeding before it, and that said Florida Railroad Commission upon the hearing and argument of the cause before said Interstate Commerce Commission appeared in defense of its jurisdiction of intrastate rates and of its power and authority with respect thereto.

9

That certain parties filed interventions, some in support of and some in opposition to the complaint, in said proceeding, said proceeding being known as "Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, Interstate Commerce Commission Docket #18364", and such interventions were received and allowed in behalf of divers of said parties, including among other Brooks-Scanlon Corporation, Cummer Cypress Company and Wilson Cypress Company. That said last named interveners, with others, all of whom were shippers of logs in Florida, filed their interventions aforesaid in opposition to so much of said complaint of said Georgia Public Service Commission as alleged any violation of Sections 3 and 13 of the interstate Commerce act by the respondent Atlantic Coast Line Railroad Company. But each and every order permitting such intervention expressly provided that the permission to intervene therein granted should not be construed to allow the intervener to introduce evidence which would unduly broaden the issues raised in the complaint.

[fol. 9] Thereupon public hearings were had by said Interstate Commerce Commission in said proceeding, at which hearings evidence was introduced by said Georgia Public Service Commission, said Atlantic Coast Line Railroad and divers interveners who had intervened in support of the complaint. At the conclusion of such evidence the interveners, including those above named, who had intervened in opposition to the complaint submitted and filed a motion to dismiss the proceeding in entirety on the ground that there was a total insufficiency of evidence in any way or remotely tending to sustain any allegation in the complaint or sufficient to constitute a cause of action within the power of the Interstate Commerce Commission. Said motion was taken under advisement and the hearings proceeded. Thereupon the petitioners here, the above named interveners, and the other intervening shipper defendants referred to, without waiving their motion to dismiss, submitted a substantial amount of evidence, which was received and allowed and made a part of the record in said proceedings.

That in the course of said proceeding the complainant, Georgia Public Service Commission, averred that the end sought to be achieved under the complaint was the extension of the then effective intrastate Florida log rates (Cummer Scale) interstate into Georgia and took the position of record that the proceeding was "not a revenue case." In the production of its evidence the defendant Atlantic Coast Line Railroad disclaimed any contention that the then effective intrastate Florida log rates (Cummer Scale) were not compensatory, and stated as its position of record that it had not made and was not making any proposal to revise those intrastate rates.

[fol. 10] That thereafter said Interstate Commerce Commerce in its report and order hereinafter mentioned denied the aforesaid motion to dismiss said proceeding.

11

That thereafter on, to-wit, August 2, 1928, Division 4 of said Interstate Commerce Commission rendered its report and order in said proceeding.

That in and by such report and order it was found and concluded by said Division 4 of said Interstate Commerce Commission that the interstate rates on logs published by the Atlantic Coast Line Railroad Company to Georgia des-

tinations on its lines from Florida origins on its lines north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs for distances not exceeding 170 miles were, and would be, unjust and unreasonable to the extent that they exceeded, or might exceed, a distance scale of rates therein prescribed, which rates said Division 4 found were and would be reasonable, and which rates said Atlantic Coast Line Railroad Company was required to establish on or before October 10, 1928.

That in and by such report the Florida intrastate rates (Cummer Scale) were found to result "in undue preference and advantage of shippers of intrastate traffic within the State of Florida, in undue prejudice to shippers of interstate traffic from points in the State of Florida to points in the State of Georgia, and in unjust discrimination against interstate commerce", and in and by said order said Atlantic Coast Line Railroad Company was required to establish carload rates for logs (except walnut, cherry and cedar) in intrastate commerce "within the State of Florida" which should be the same as the rates prescribed by the Interstate Commerce Commission as reasonable for trans- [fol. 11] portation in interstate commerce from points in the northern portion of Florida to destinations in Georgia.

12

That after the rendition of said report and order the effective date thereof was by subsequent orders of said Division 4 of said Interstate Commerce Commission extended to February 8, 1929, and said order was on February 5, 1929, amended so as that it should not be applicable to logs of the tariff description involved less than six feet in length.

13

That on, to-wit, the 27th day of November, 1928, your petitioners filed in this Honorable Court their bill of complaint against the defendants, United States of America and Interstate Commerce Commission, wherein and whereby your petitioners sought to annul, set aside and enjoin that portion of the aforesaid order of the Interstate Commerce Commission wherein and whereby said Interstate Commerce Commission attempted to require said Atlantic Coast Line Railroad Company to establish, put in force and

maintain rates for the transportation of logs in intrastate commerce within the State of Florida which should be the same as those prescribed by said Interstate Commerce Commission as reasonable for transportation in interstate commerce, for distances not exceeding 170 miles, from points in the State of Florida, north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs, to destinations in the State of Georgia. That answers were filed by the defendants to said bill of complaint, and Georgia Public Service Commission was permitted to intervene and file its answer thereto.

That at the same time your petitioners filed their afore-[fol. 12] mentioned bill of complaint; two other bills of complaint seeking similar relief were filed in this Honorable Court against the same defendants, one by the Wilson Lumber Company of Florida and the other by Brooks-Scanlon Corporation, the Wilson Cypress Company and the Cummer Cypress Company.

14

That said three suits were consolidated and heard before a court of three judges as required by the applicable statute.

That this Court in its opinion, construed the order of the Interstate Commerce Commission in so far as it was applicable to intrastate rates in Florida as being limited to points of origin on the Atlantic Coast Line Railroad in the northern part of Florida, as the Interstate Commerce Commission had confined its order to those points of origin in fixing interstate rates, and this Court, in the course of its opinion, stated that a construction that the order complained of fixed intrastate rates for the whole of Florida "would probably nullify the order". That thereupon this Court sustained said order upon this narrower construction and decrees were entered on, to-wit, January 17, 1929, in said three suits dismissing the bills.

15

That thereafter on, to-wit, February 7th, 1929, effective February 8th, 1929, said Interstate Commerce Commission, without notice to your petitioners and without any investigation or proceeding whatsoever, amended its order with respect to intrastate rates, "for the purpose of clarification" by substituting for the phrase "within the State of

Florida" the words, "within and throughout the entire State of Florida, without exception".

[fol. 13] 16

That petitions for rehearing and for leave to file supplemental bills in said three suits were then presented to this Court and were granted, and said supplemental bills were filed.

That answers were filed by the United States of America to said supplemental bills of complaint and Atlantic Coast Line Railroad Company was permitted to intervene and file its answers to said supplemental bills.

That on the 17th day of April, 1929, after the rehearing, orders were entered dismissing both the original and supplemental bills of complaint and denying the relief prayed in each of said three suits.

That this Court upheld the amended order of the Interstate Commerce Commission solely upon the ground that the order was aimed at a discrimination "against general interstate commerce", caused by intrastate rates which were so low as to throw an undue burden upon the interstate revenues of the carrier.

That the aforesaid suit brought by your petitioners as aforesaid, including the pleadings, evidence, orders and decrees therein, appears of record in this Court and reference thereto is hereby prayed and the same is in its entirety made a part hereof by reference as though the same were set forth herein in haec verbae.

17

That thereafter said three cases were duly appealed to the Supreme Court of the United States and an opinion rendered therein by said Supreme Court of the United States on, to-wit, the 5th day of January, A. D. 1931, wherein said Supreme Court decided that the portion of the order of the Interstate Commerce Commission with [fol. 14] respect to intrastate rates (being the portion of said order under review in said three suits) was not supported by the findings of the Interstate Commerce Commission, and that that part of the order must be set aside. That the decrees of this Court were accordingly reversed.

18

That thereafter the mandates of the Supreme Court of the United States reversing the decrees of this Court having been produced in each of said cases, this Honorable Court on, to-wit, March 7th, 1931, entered in each of said three suits its order adjudging that all parts of the said order of the Interstate Commerce Commission which prescribed or attempted to prescribe rates for the transportation of logs in intrastate commerce in the State of Florida on the lines of the Atlantic Coast Line Railroad Company were invalid and unlawful, and such parts of said order of the Interstate Commerce Commission were thereby enjoined, set aside and annulled.

19

That at or about the time of the last mentioned order of this Court, said Georgia Public Service Commission and said Atlantic Coast Line Railroad Company filed with said Interstate Commerce Commission simultaneously motions to reopen said proceeding, viz, the proceeding described as "Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, Interstate Commerce Commission Docket #18364".

That the motion of the Georgia Public Service Commission recited the filing of its original complaint, the issuance of the order of the Interstate Commerce Commission, the attack upon that order in the courts, and the reversal of the judgment of this Court by the Supreme Court. The Motion quotes that portion of the opinion of the Supreme [fol. 15] Court which declares the basic or essential findings required to support the order of the Interstate Commerce Commission to be lacking and which declares that if the facts as to intrastate transportation of logs in Florida are such as to justify an order as to intrastate rates, the Interstate Commerce Commission is still at liberty to make such determinations as the situation may require. The motion then requests the Interstate Commerce Commission to reopen the proceedings and to make the determinations required by the situation and to issue such report and to make such findings and orders, "as will result in removing the discriminations set out in the original petition". The motion prays that the Commission make such

findings and issue such orders as it may deem requisite or necessary "to fully accomplish the purposes of the original petition and of this motion", and that the Interstate Commerce Commission prescribe just, reasonable, non-discriminatory and non-prejudicial interstate rates from all points in Florida to all destinations in Georgia and that the measure of such rates be no higher than the rates concurrently in effect for the same kind of property moving in intrastate commerce in the State of Florida.

That the motion of the Atlantic Coast Line Railroad Company recited the filing of the original complaint by Georgia Public Service Commission before the Interstate Commerce Commission, the order entered by the Interstate Commerce Commission, and the decisions of this Court and of the Supreme Court upon the attack upon the order of the Interstate Commerce Commission, and quoted the same portion of the opinion of the Supreme Court which had been quoted in the motion of the Georgia Public Service Commission to reopen the proceedings. This motion likewise averred that the Florida Railroad Commission was undertaking to enforce the Cummer Scale, and that petitions had been filed in this Court in the three suits pending in this Court above mentioned asking for an order directing restitution to be made by said Atlantic Coast Line Railroad Company to the lumber companies and shippers in the State of Florida on account of shipments of logs made after February 8, 1929, such restitution to be based upon the difference between the Cummer Scale of rates and the scale of rates prescribed by the Interstate Commerce Commission. And said motion averred that the sums whereof restitution was requested as aforesaid were in excess of $200,000.00. Said motion prayed the following relief:

[fol. 16]

"(a) * * * that this Commission proceed to make such further findings and issue such further reports and orders in this cause as it may deem to be requisite or necessary;

"(b) That this Commission prescribe such intrastate rates in Florida for the transportation of logs over the lines of this movant, for distances up to 170 miles and for distances beyond said 170 miles, as may be lawful.

"(c) That this Commission issue such other and further reports, findings and orders as this Commission may deem proper."

That neither of said motions asserted in issuable form, or indeed asserted at all, that the level of the Florida intrastate rates were so low as to constitute a revenue burden either upon interstate commerce or upon the general revenues of the carrier.

20

That your petitioners filed with said Interstate Commerce Commission a reply to said motions requesting that said motions be denied, and averring the readiness and willingness of the Florida Railroad Commission at any proper time upon the application of the Atlantic Coast Line [fol. 17] Railroad Company or anyone interested to consider and hear and to determine after notice and hearing as prescribed by Florida Law the level of the Florida intrastate rate. Said reply likewise averred that the Supreme Court had found that the authority to determine the reasonableness per se of said intrastate rate lay with the State authorities and not with the Interstate Commerce Commission and that until such State authority had been invoked with respect to the level of that rate, Federal authority ought not to be exercised even if there were power to exercise it, which power was expressly denied.

That on, to-wit, April 6, 1931, said Interstate Commerce Commission made an order reopening said proceeding for further hearing and assigning said proceeding for further hearing at Jacksonville, Florida.

21

That further hearing was had in the reopened proceeding at Jacksonville, Florida, on, to-wit, June 10th to 12th, 1931 and an additional further hearing was had in said proceeding at Washington, D. C. on, to-wit, July 20th and 21st, 1931. That at the very outset of these hearings and before any witnesses were called and sworn, the State of Florida asserted of record; that the Interstate Commerce Commission had no jurisdiction in that proceeding to prescribe intrastate rates on logs in Florida; that the authority to determine the reasonableness of those rates lay with the Florida Railroad Commission; that those rates had been

voluntarily initiated more than fifteen years theretofore and when established had become the lawful State rates; that the laws of Florida prohibited any change or increase of those rates without consent and approval of the Florida Railroad Commission after due notice to the interested par- [fol. 18] ties and a hearing; that no complaint had ever been made to the Florida Railroad Commission about the level of that rate, although its doors all that time had been open to anyone dissatisfied with that rate; that the result of the proceedings before the Interstate Commerce Commission had been to injure and destroy intrastate commerce within the State of Florida, and to injure and destroy industries and whole communities in Florida without benefiting anyone in Georgia or in Florida; and that the Florida Railroad Commission considered that the Interstate Commerce Commission was without power to invade the domain of the State in this matter, but if it had such power it should not exercise it until the railroad company had applied to the State of Florida for such relief as it might deem itself entitled to have. That your petitioners have ever since maintained and still maintain the position so asserted.

That evidence was taken and received at said hearings and said hearings concluded by said Interstate Commerce Commission, acting through the Examiner assigned by it to conduct said hearings.

22

That the complainant Georgia Public Service Commission offered no evidence whatever to prove any revenue burden on interstate commerce caused by the application of the Florida intrastate scale of rates (Cummer Scale), and thereupon, the Examiner having ruled that the issue of undue burden upon interstate commerce was involved in the proceeding, a motion was made by the interveners to dismiss that portion of the complaint which under such ruling was construed as alleging that said Florida intra- [fol. 19] state scale of rates unduly burdened interstate commerce. That the Examiner ruled that he had no authority to dismiss the complaint and thereupon the defendant was permitted to introduce evidence designed to prove affirmatively this allegation of the complaint made against the defendant. That said motion to dismiss was insisted

upon before the Interstate Commerce Commission and denied by it in its report and order of July 5th, 1932 hereinafter referred to.

23

That on, to-wit, May 14th, 1931, and prior to the first hearing in said reopened proceeding, your petitioners and the intervening shipper defendants therein made written demand upon the Atlantic Coast Line Railroad Company that it produce at said first hearing a statement of the number of cars, total tonnage and charges applicable thereto covering the transportation of logs of the tariff description involved in said proceeding, moving in intrastate commerce in Florida during the following periods:

February 1, 1926 to January 31, 1927;
February 1, 1927 to January 31, 1928;
February 1, 1928 to January 31, 1929;
February 1, 1929 to January 31, 1930;
February 1, 1930 to January 31, 1931.

That a similar statement as to such logs moving in interstate commerce from Florida to Georgia during the same periods was included within the same demand. That said written demand likewise requested a statement showing the gross earnings of the Atlantic Coast Line Railroad Company for the transportation of logs of the tariff description involved in said proceeding, interstate as well as intrastate, over all or any parts of its railroad lines wherever [fol. 20] situate during the years ending respectively January 31, 1927, January 31, 1928, January 31, 1929, January 31, 1930, January 31, 1931. That likewise in said written demand it was stated that if it was not practicable to furnish the data last mentioned except by calendar years, that then that data be furnished for the calender years 1926, 1927, 1928, 1929, and 1930. That copy of said written demand was furnished to the Interstate Commerce Commission and the Georgia Public Service Commission.

That the information so demanded was never furnished nor was any part of it ever furnished, save and except that said Atlantic Coast Line Railroad Company furnished a statement showing the number of cars, total tonnage and charges applicable to the transportation of such logs within the State of Florida for the period beginning February 9,

1929 and ending January 31, 1931, viz, the period of the effectiveness of the order of the Interstate Commerce Commission, without said statement being divided in any way into any other periods of time, and save and except that upon said demand being insisted upon in the course of the proceedings the Atlantic Coast Line Railroad Company admitted of record that there had been no interstate movement of such logs from Florida to Georgia "except possibly an occasional car load".

[fol. 21] That the Atlantic Coast Line Railroad Company refused to furnish the information so demanded and your petitioners and said intervening shipper defendants in due course moved said Interstate Commerce Commission to require said Atlantic Coast Line Railroad Company to produce the data so demanded as aforesaid for use in said proceeding. That said Interstate Commerce Commission refused to require said Atlantic Coast Line Railroad Company to furnish said information or any of it. That in the course of said proceeding formal motion was made that said Interstate Commerce Commission require said Atlantic Coast Line Railroad Company to furnish information showing the number of cars of logs transported by it intrastate in Florida during the years 1926, 1927 and 1928, and the revenue received by it for such transportation. That said Interstate Commerce Commission by its order made on, to-wit, July 7th, 1931, denied said motion.

That all of said information so demanded and sought [fol. 22] to be required, save and except to the limited extent hereinabove stated, has never been furnished or produced in said proceeding and the data and information so demanded and sought is not in evidence in said proceeding.

That there is no evidence in said proceeding anywhere showing the amount of revenue which had been derived by the Atlantic Coast Line Railroad Company from the Florida intrastate traffic in logs of the tariff description involved in said proceeding under the Florida intrastate rates (Cummer Scale).

24

That after said hearings and on or about December 12th, 1931, certain Examiners of the Interstate Commerce Commission to whom said proceeding had been assigned did

file, submit and serve upon all interested parties a report in which it was proposed that the Interstate Commerce Commission should find: that the interstate rates previously prescribed and then in effect were not unreasonable; that the Florida intrastate rates were not shown to be unduly prejudicial to Georgia shippers and localities engaged in interstate commerce in the State of Georgia; but that the Florida intrastate rates (Cummer scale) were and for the future would be unjustly discriminatory against interstate commerce, and that such discrimination should be removed by the establishment of a special rate from Hines, Florida, to Palatka, Florida, of not less than 5.5¢ per hundred pounds, minimum 50,000 pounds, and by the establishment of intrastate rates between all other points on the Atlantic Coast Line Railroad in Florida which should be the same as the intrastate rates previously prescribed in the report and order of August 2nd, 1928, of the Interstate Commerce Commission.

[fol. 23] That said report quoted from the opinion of the Supreme Court the following language which was used in striking down the former order of the Interstate Commerce Commission:

"The Commission made no findings as to the revenue which had been derived by the carrier from the traffic in question, or which could reasonably be expected under the increased rates, or that the alteration of the intrastate rates would produce, or was likely to produce, additional income necessary to prevent an undue burden upon the carrier's interstate revenues and to maintain an adequate transportation service."

That said Examiners being apparently unable to make these basic and essential findings, and thereby tacitly admitting that the evidence did not support such findings, averred that the Supreme Court's statement as to the absence of those findings "was made as a suggestion of what might have been appropriate findings to support the conclusion", and averred, "These suggested findings were merely illustrative; there is nothing in the opinion that would warrant the conclusion that such findings, and no other, were essential preliminary findings of fact".

That the proposed report accordingly did not propose that the Interstate Commerce Commission should make

those findings, the absence of which caused the Supreme Court to condemn the former order, and the evidence is not and was never present upon which those findings could be made.

25

That thereafter exceptions were filed to said proposed report by your petitioners and certain of the intervening shipper defendants, and in due course the proceeding came on to be orally argued on, to-wit, February 3rd, 1932, before the entire Interstate Commerce Commission at Washington, D. C. At such argument there appeared counsel [fol. 24] for said Georgia Public Service Commission, for said Atlantic Coast Line Railroad Company, for your petitioners, and for said intervening shipper defendants.

26

That thereafter on July 5, 1932, said Interstate Commerce Commission rendered its certain report and order in said proceeding, a copy of said report and order being hereto attached and marked "Exhibit A" and made by reference a part hereof.

In that report the Interstate Commerce Commission found that the interstate rates from Florida to Georgia prescribed by its former order of August 2, 1928, and thereafter continuously in effect were reasonable. The report recited that in the original hearing it had been shown that there was no actual movement of logs from Florida to Georgia, and that during the period of more than two years from February 8, 1929, to about April 10, 1931, when the interstate rates from Florida to Georgia and the Florida intrastate rates were on a parity there was no movement from Florida to Georgia, except possibly an occasional carload. The report recites that it is impossible to say whether a movement from Florida to Georgia will develop in the future and that, since the Florida intrastate rates are by the new order again being put on a parity with the interstate rates, no finding in reference to undue prejudice against persons and localities in interstate commerce was necessary and the report expressly declines to make any finding in that regard. Your petitioners aver that there has never been any evidence of the movement of even a single carload of logs from Florida

to Georgia, whether the rates were on a parity or not, and no evidence upon which it could be assumed that there will ever be such a movement. Your petitioners further [fol. 25] aver that the interstate rates from Florida to Georgia theretofore prescribed and thereafter and now in effect were only applicable from points in nothern Florida to points in Georgia as has been hereinabove set forth.

That said report of said Interstate Commerce Commission further found that the Florida intrastate rates involved in the proceeding were, and for the future would be unjustly discriminatory against interstate commerce, and that such unjust discrimination could and should be removed by the establishment between all points on the Atlantic Coast Line in Florida for distances of 170 miles or less of rates which should be not less than the same rates previously prescribed by the order of August 2, 1928, for the intrastate transportation of logs in Florida. And your petitioners aver that said finding was made, notwithstanding the fact that said Interstate Commerce Commission failed to make the findings which the Supreme Court had declared to be essential to justify the invasion of the domain of the State of Florida, and in lieu thereof had attempted to substitute for such findings doubtful, ambiguous and indefinite conjectures none of which have been made to clearly appear or to appear at all by the evidence, and notwithstanding the fact that it had not been made to clearly appear or to appear at all by the evidence that the jurisdictional findings prescribed by the Supreme Court could be made, and notwithstanding the fact that the findings which the Commission purported to make were not supported by the evidence.

27

That the order accompanying said report (without any effective date being fixed therefor), directed that the Atlantic Coast Line Railroad Company cease and desist from practicing the discrimination found in the report to exist [fol. 26] in the relation of intrastate and interstate rates and to establish rates on logs in intrastate commerce "within and throughout the State of Florida" for distances of 170 miles or less which should be the same as

those rates theretofore prescribed in the order of August 2, 1928, as aforesaid, for the transportation of logs in intrastate commerce in Florida and in interstate commerce from points in northern Florida to points in Georgia.

28

That thereafter on, to-wit, July 28, 1932, without notice or hearing, said Interstate Commerce Commission made its order amending its report and order of July 5, 1932, and therein ordered that the effective date thereof shall be "on or before September 15, 1932". That a copy of said order of July 28, 1932, is hereto attached and marked "Exhibit B" and made by reference a part hereof.

29

That your petitioners filed on, to-wit, August 24, 1932, with said Interstate Commerce Commission their petition for reargument and reconsideration of said report and order, and said petition was denied on, to-wit, August 25th, 1932. That Brooks-Scanlon Corporation, Wilson Cypress Company, Cummer Cypress Company and Wilson Lumber Company of Florida, being certain of the intervening shipper defendants above referred to, likewise filed with said Interstate Commerce Commission their petition for reargument and reconsideration of said report and order, and said Interstate Commerce Commission has denied said petition. That on or about August 10, 1932, said last named intervening shipper defendants filed with said Interstate [fol. 27] Commerce Commission their motion to postpone the effective date of the final order outstanding in said proceeding and said motion has been denied.

30

Wherefore, having exhausted their administrative remedies, your petitioners herein respectfully institute this proceeding for the purpose of annulling, vacating and setting aside said report and order of July 5, 1932, as amended as aforesaid, of said Interstate Commerce Commission, and to enjoin the enforcement thereof.

31

And your petitioners aver that said report and order, as amended as aforesaid, are arbitrary and unreasonable, be-

yond the power of the Interstate Commerce Commission and wholly invalid and unlawful.

32

That said report and order, as amended as aforesaid, are unlawful for the following several reasons, among others:

(I) Because under the facts of record in said proceeding before the Interstate Commerce Commission there was no constitutional right or warrant for the exercise of or attempt to exercise any federal power in derogation of or superior to the power and authority of the State of Florida in respect to the regulation of intrastate commerce sought to be affected by said order.

(II) Because the findings declared by the Supreme Court of the United States to be essential pre-requisites to the making of a valid order of the character here attempted to be made by the Interstate Commerce Commission have [fol. 28] not been made and cannot be made by the Interstate Commerce Commission upon the evidence that was before it in said proceeding.

(III) Because the basic essential and jurisdictional facts necessary to justify the invasion of the domain of the State of Florida have not been made to clearly appear in the said report or findings of the Interstate Commerce Commission.

(IV) Because the basic essential and jurisdictional facts necessary to justify the invasion of the domain of the State of Florida have not been made to clearly appear in the evidence before said Commission.

(V) Because the findings of fact upon which the Interstate Commerce Commission relied to justify its order prescribing intrastate rates were not warranted and/or made to clearly appear by the evidence before said Commission.

(VI) Because said Interstate Commerce Commission made no finding supported by evidence of the essential facts as to the Florida intrastate traffic in logs and the revenue therefrom, and as to the effect of the intrastate rates both as existing and prescribed, upon the income of the said Atlantic Coast Line Railroad Company, which

would justify the conclusion that said order was needed to avoid an undue burden on the revenues of said carrier and a consequent interference with the maintenance of an adequate transportation service.

(VII) Because the Interstate Commerce Commission made no finding of the amount of revenue which had been derived in the past by the Atlantic Coast Line Railroad Company from the particular traffic in question under the existing intrastate rate (the Cummer Scale).

[fol. 29] (VIII) Because it did not and does not clear- appear that the evidence warranted a finding of the amount of revenue which had been derived in the past by said Atlantic Coast Line Railroad Company from the particular traffic in question under the existing intrastate rate (Cummer Scale).

(IX) Because the Interstate Commerce Commission made no finding of the amount of revenue which can be reasonably expected to be derived from the traffic in question under the increased intrastate rate which the Interstate Commerce Commission has ordered established.

(X) Because it did not and does not clearly appear that the evidence warranted a finding of the amount of revenue which can be reasonably expected to be derived from the traffic in question under the increased intrastate rate which the Interstate Commerce Commission ordered established.

(XI) Because the Interstate Commerce Commission made no finding that the application of the existing intrastate rate (Cummer Scale) resulted in an impairment of the income of the carrier which caused an undue burden upon the carrier's interstate revenues and obstructed the maintenance of an adequate national transportation system.

(XII) Because it did not and does not clearly appear that the evidence warranted a finding that the application of the existing intrastate rate (Cummer Scale) resulted in an impairment of the income of the carrier which caused an undue burden upon the carrier's interstate revenues and obstructed the maintenance of an adequate national transportation system.

[fol. 30] (XIII) Because the Interstate Commerce Commission made no finding that an undue burden upon the

carrier's interstate revenues and obstruction to the maintenance of an adequate national transportation service existed which was of such character and consequence that it was the affirmative duty of the Interstate Commerce Commission as an important step in maintaining an adequate national railway system to remove such burden and obstruction.

(XIV) Because it did not and does not clearly appear that the evidence warranted a finding that any undue burden upon the carrier's revenues and obstruction to the maintenance of an adequate national transportation service existed which was of such character and consequence that it was the affirmative duty of the Interstate Commerce Commission as an important step in maintaining an adequate national railway system to remove such burden and obstruction.

(XV) Because the Interstate Commerce Commission made no finding that the alteration of the intrastate rates would produce, or was likely to produce an additional and greater amount of income, and made no finding that such additional and greater amount of income was necessary to prevent an existing undue burden upon the carrier's interstate revenues and necessary to maintain an adequate transportation service.

(XVI) Because it did not and does not clearly appear that the evidence warranted a finding that the alteration of the intrastate rates would produce, or was likely to produce, an additional and greater amount of income and it did not and does not clearly appear that the evidence warranted a finding that such additional and greater amount of income was necessary to prevent an existing undue burden upon the carrier's interstate revenues and necessary to maintain an adequate transportation service.

[fol. 31] (XVII) Because the Interstate Commerce Commission made no finding of the quantity or extent of any burden upon the interstate revenues of the carrier caused by the application of the existing Florida intrastate rate.

(XVIII) Because it did not and does not clearly appear that the evidence warranted a finding of the quantity or extent of any burden upon the interstate revenues of the

carrier caused by the application of the existing Florida intrastate rate.

(XIX) Because the Interstate Commerce Commission by indirection seeks to determine the reasonableness per se of the Florida intrastate rate (the Cummer Scale), a thing which the Supreme Court of the United States has declared lies with the state authority and not with the Interstate Commerce Commission.

(XX) Because no complaint was made and no evidence offered by the complainant Georgia Public Service Commission, of a revenue burden upon interstate commerce.

(XXI) Because the Interstate Commerce Commission has thereby sought to regulate internal concerns of the State of Florida as if unjust discrimination against interstate commerce in violation of Section 13 existed when there was not submitted to the Interstate Commerce Commission by any party to the proceeding before it any case or controversy of such character, and there was no other pending proceeding or order of investigation of such Commission involving any such subject matter.

(XXII) Because the same are not appropriate to the case and not just to the parties to be affected, they were not made following the forms of law, nor were they adapted to the end sought to be attained in said proceeding before said Interstate Commerce Commission.

[fol. 32] (XXIII) Because in making the same the Interstate Commerce Commission considered and gave effect to rate comparisons.

(XXIV) Because in making the same the Interstate Commerce Commission considered and gave effect to statements of system revenue returns, and to the relation of log traffic and log revenue to total traffic and total revenue.

(XXV) Because in making the same the Interstate Commerce Commission considered and gave effect to system average costs.

(XXVI) Because in making the same the Interstate Commerce Commission considered and gave effect to cost studies and other matters which were incompetent and insufficient to furnish the basis for any such report and order.

(XXVII) Because in making the same the Interstate Commerce Commission considered and gave effect to studies of out-of-pocket costs of transportation wherein there were included charges to operating expenses not authorized by the Classification of Operating Revenues and Operating Expenses of Steam Roads as prescribed by the Interstate Commerce Commission.

(XXVIII) Because in making the same the Interstate Commerce Commission considered and gave effect to its own cost study, Appendix E of said report, which was formulated from matter dehors the record, without submitting the same in evidence and without affording an opportunity to cross examine the author thereof and to offer evidence in rebuttal thereof and thereby deprived the State of Florida and its Railroad Commission of the full and fair hearing to which they are entitled by the Act.

(XXIX) Because your petitioners were not afforded a fair opportunity to be heard respecting the justice of the same.

[fol. 33] (XXX) Because in making the same the Interstate Commerce Commission considered and gave effect to studies of transportation costs which charged to the costs of Florida intrastate log transportation the full statutory return of five and three-quarters per cent while contemporaneously the return actually earned by the carrier was far less.

(XXXI) Because the rates prescribed therein to be applicable to Florida intrastate log transportation are far in excess of all demonstrated costs, taxes, and the full statutory return of five and three-quarters per cent, and are extortionate.

(XXXII) Because said Interstate Commerce Commission failed to require the Atlantic Coast Line Railroad to first apply to the Florida Railroad Commission for alteration of the Florida intrastate rates.

(XXXIII) Because said order fails to duly designate a lawful date upon which the same shall become effective.

(XXXIV) Because said Interstate Commerce Commission has attempted to prescribe intrastate rates in Florida applicable to territory for which no interstate rates have

been prescribed and in which no general investigation of rate levels whether on interstate or on intrastate traffic has been made.

(XXXV) Because the intrastate rates prescribed in said proceedings before the Interstate Commerce Commission are broader in their scope than the interstate rates prescribed in said proceeding, and are beyond the scope of the issues raised in said proceeding.

(XXXVI) Because it did not and does not clearly appear in said proceeding before the Interstate Commerce Commission that there was or is any unjust discrimination against interstate commerce in violation of Section 13 of the interstate commerce act.

[fol. 34] (XXXVII) Because in said proceeding the Interstate Commerce Commission did not find any facts sufficient to constitute an unjust discrimination against interstate commerce in violation of Section 13 of the interstate commerce act.

(XXXVIII) Because said action of said Interstate Commerce Commission constitutes an unlawful invasion of the sovereign rights of the State of Florida reserved to it by the Constitution of the United States and of the citizens of said State of Florida, and is without any warrant or authority of or under the Constitution of the United States; and further that the said Interstate Commerce Commission was and is without jurisdiction to enter its said order.

(XXXIX) Because said action of said Interstate Commerce Commission constitutes an unlawful exercise of power by the Interstate Commerce Commission and is without warrant or authority of or under the Constitution of the United States.

33

That at all times herein mentioned there were and have been situate in proximity to the railroad lines of said Atlantic Coast Line Railroad Company in the State of Florida many millions of feet of standing and uncut timber, the capital value of which aggregated and now aggregates many millions of dollars.

That at the time of the filing of said complaint by said Georgia Public Service Commission, viz., May 3, 1926,

many persons and corporations were engaged in cutting said timber and transporting the logs so produced over the aforesaid lines of the Atlantic Coast Line Railroad Company a distance of 170 miles or less to lumber mills located in the State of Florida. That more than 5,000 men were then employed in said logging and lumbering operations.

[fol. 35] That the effect of the former order of the Interstate Commerce Commission was to very considerably increase the intrastate transportation charges for the transportation of such logs and to render it highly unprofitable to said shippers of logs to continue to use said transportation service. That by reason of said order and its being sustained by this Court large and valuable mill properties were dismantled and abandoned and operations discontinued, involving a loss of many millions of dollars to the owners thereof and a large number of citizens of the State of Florida were thrown out of employment and existing industries and communities located in the State of Florida and forming a substantial part of the taxable value thereof were destroyed. That for the same reason the great volume of then existing intrastate commerce in logs in the State of Florida on said Atlantic Coast Line Railroad Company was largely destroyed.

That if said order of July 5, 1932 of said Interstate Commerce Commission becomes effective similar, though not so momentous effects will result, (the number and consequence of the lumber mills to be affected having been vastly diminished by the effectiveness of the former order as aforesaid), and mill properties will be abandoned by reason thereof and unemployment will be increased and the taxable value of property will be diminished or destroyed in the State of Florida. That the damage which will be so occasioned will be irreparable and cannot be compensated for or adequately redressed by any suit or suits at law and your petitioners have no plain, adequate and complete remedy at law available to them in the premises.

[fol. 36] 34

And your petitioners allege that the authority of the State of Florida acting in its sovereign capacity over its own intrastate rates was at all times and is paramount

and superior to Federal authority with respect to said rates until and unless said State authority actually conflicts with the Federal authority to regulate interstate commerce, and that the Interstate Commerce Commission is without the statutory power to invade the domain of the State of Florida in derogation of said State authority until and unless it shall be made to clearly appear from lawful evidence that the jurisdictional facts exist which warrant the Interstate Commerce Commission in invading said domain of the State of Florida; that whether or not such jurisdictional facts exist and have been made to clearly appear from lawful evidence is a judicial question which this Court under the Constitution of the United States (and in particular under Section 1 of Article III thereof, and the Tenth Amendment thereof, of which your petitioners claim the benefit and protection), is bound to determine for itself in this cause according to the established forms of law, anything in the Interstate Commerce Act as amended to the contrary notwithstanding. That your petitioners are entitled to a trial de novo upon such jurisdictional facts by this Court and hereby make demand for such trial.

Wherefore, your petitioners respectfully pray as follows:

A. That process may issue against the defendants, United States of America, and Interstate Commerce Commission, an administrative tribunal of the United States, with service thereof and of this bill of complaint in the manner prescribed by statute in such cases made and provided.

[fol. 37] B. That this Court order, adjudge and decree that the said report and order of said Interstate Commerce Commission of July 5, 1932, as amended, are beyond the authority of said Interstate Commerce Commission and are without warrant in law and are null and void and that said report and order, as amended, be set aside and annulled.

B1. That this Court will allow a temporary stay or suspension of the operation of the said order of the Interstate Commerce Commission pending the application for the injunctions herein sought.

C. That this Court will grant to your petitioners herein an interlocutory order, setting aside and enjoining the en-

forcement of said order of July 5, 1932, as amended, of said Interstate Commerce Commission, and that such interlocutory order continue in force until further order of this Court.

D. That upon final hearing this Court will make and enter a decree and order herein annulling, setting aside and enjoining the said order, as amended, of said Interstate Commerce Commission, and permanently enjoining the enforcement thereof.

E. That your petitioners may have such other and further relief in the premises as to this Court shall seem meet and just and as equity may require.

And your petitioners will ever pray, etc.

The State of Florida, by Doyle E. Carlton, Governor. Eugene S. Matthews, Mamie Eaton Greene, Tucker Savage, as and Constituting the Railroad Commissioners of the State of Florida. Cary D. Landis, Attorney General of the State of Florida; Theo. T. Turnbull, Special Counsel for Florida Railroad Commission, Solicitors for Petitioners.

[fol. 38] *Duly sworn to by Eugene S. Matthews. Jurat omitted in printing.*

[fol. 39] EXHIBIT "A" TO BILL OF COMPLAINT

Interstate Commerce Commission

No. 18364

GEORGIA PUBLIC SERVICE COMMISSION

v.

ATLANTIC COAST LINE RAILROAD COMPANY

Submitted February 3, 1932. Decided July 5, 1932

On Further Hearing, Following Florida v. United States, 282 U. S. 194

1. Finding in original report, 146 I. C. C. 717, that rates on logs over six feet in length, except walnut, cherry,

and cedar, in carloads, from points in northern Florida to destinations in Georgia for distances of 170 miles and less were unreasonable, affirmed. Present rates found reasonable.

2. Rates on logs over six feet in length, except walnut, cherry and cedar, in carloads, applying on shipments between points on the Atlantic Coast Line Railroad Company in Florida for distances of 170 miles and less found unjustly discriminatory against interstate commerce. Nondiscriminatory basis of rates prescribed.

E. M. Price for complainant.

Frank W. Gwathmey, Carl H. Davis, Robert C. Alston and E. W. Moise for defendant.

Cary D. Landis, Attorney General for the State of Florida, and T. T. Turnbull for Florida Railroad Commission.

H. P. Adair, C. G. Ashby, C. E. Cotterill and August G. Gutheim for Brooks-Scanlon Corporation, Wilson Cypress Company, and Cummer Cypress Company; J. V. Norman for Wilson Lumber Company; T. M. True for Southern Cypress Manufacturers Association; Thomas D. Guthrie and Russell W. Bennett for various crate manufacturers and E. C. Green for Jacksonville Traffic Bureau, Interveners.

Report of the Commission on Further Hearing

MEYER, Commissioner:

In the original report herein, 146 I. C. C. 717, division 4 found that the interstate rates on logs, except walnut, cherry and cedar, in carloads, from points on defendant's lines in Florida north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs, hereinafter called northern Florida, to destinations on its lines in Georgia for distances not exceeding 170 miles would be unreasonable for the future to the extent that they might exceed a certain scale of distance rates prescribed therein. The divi- [fol. 40] sion further found that the Florida intrastate rates on similar logs for similar hauls, generally referred to as the Cummer scale, resulted, and would result, in undue preference and advantage of shippers of intrastate traffic within Florida, in undue prejudice to shippers of

interstate traffic from points in Florida to points in Georgia, and in unjust discrimination against interstate commerce, and that said undue preference and advantage, undue prejudice, and unjust discrimination should be removed by establishing rates for intrastate application within Florida which would correspond with the rates found reasonable for interstate application from northern Florida to Georgia. An order carrying these findings into effect was entered on August 2, 1928.

The State of Florida, the members of the Florida Railroad Commission, and certain manufacturers of lumber in Florida, interveners in this proceeding, brought suits in the United States District Court to enjoin that part of the order which dealt with the Florida intrastate rates. The court construed the order with respect to the Florida intrastate rates, which read "within the State of Florida," as being limited to points in northern Florida, and as so construed sustained the order. 30 Fed. (2d) 116. Thereafter, division 4 amended its order by inserting an additional exception of logs six feet or less in length, and, with respect to the intrastate rates, by substituting for the phrase "within the State of Florida" the words "within and throughout the entire State of Florida, without exception," such substitution being "for the purpose of clarification." On February 8, 1929, the order, amended as indicated, was complied with by the Atlantic Coast Line. Amended bills were filed in the District Court and the case there reheard. The Atlantic Coast Line was allowed to intervene in support of the order. The court upheld the amended order, but only [fol. 41] on the ground that it aimed at a discrimination against general interstate commerce caused by intrastate rates which were so low as to throw an undue burden upon the interstate revenues of the carrier. 31 Fed. (2d) 580. On appeal, the Supreme Court, dealing particularly with the ground upon which the order was sustained by the lower court, reversed the decree of that court, holding with respect to the Florida intrastate rates that the order was not supported by appropriate findings. Florida v. United States, 282 U. S. 194. The Supreme Court, among other things, said:

The Commission made no findings as to the revenue which had been derived by the carrier from the traffic in

question, or which could reasonably be expected under the increased rates, or that the alteration of the intrastate rates would produce, or was likely to produce, additional income necessary to prevent an undue burden upon the carrier's interstate revenues and to maintain an adequate transportation service.

* * * * * * *

If the facts as to the intrastate transportation of logs in Florida are such as to justify an order as to intrastate rates in order to end an unjust discrimination as against interstate commerce, either as between persons or localities, or because of an undue burden upon the revenues of the carrier, the Interstate Commerce Commission is still at liberty, acting in accordance with the authority conferred by the statute, to make such determinations as the situation may require.

Thereafter, upon petitions filed by complainant and defendant, we reopened the proceeding and assigned it for further hearing, which has been held. A proposed report of the examiners was served upon the parties, to which defendant and interveners filed exceptions, and the case has been orally argued. Our conclusions differ in part from those of the examiners.

Upon rehearing the Atlantic Coast Line through nominally the defendant was in the position of a petitioner under section 13 (3) and (4) of the Act seeking relief from what it contends are unduly low State rates.

[fol. 42] At the further hearing the Florida interveners moved that the complaint should be dismissed as to the issue whether the Florida intrastate rates cause unjust discrimination against interstate commerce, if the complaint raises such an issue, which they still question, because of the absence of any legal interest in that issue by complainant and its failure to introduce evidence in support thereof. But, as stated in the report of division 4, the complaint in this proceeding alleges, among other things, that defendant's Florida intrastate rates are unjustly discriminatory against interstate commerce, in violation of section 13 of the Act. Evidence pertinent of that issue was introduced. Similar objections made by the Florida interveners before the Supreme Court with respect to the scope

of the proceeding were overruled, on the ground that "as the Florida Railroad Commission appeared in defense of the intrastate rates, and the Railroad Company, the rates of which were in question, and other parties in interest, both shippers and carriers, were heard, the question now presented relates to the substance of the determination of the Commission and its support in the evidence rather than to mere matters of pleading and procedure"; and the court further said:

> In making its order, the Commission could exercise all the authority conferred by the interstate commerce act for the purpose of removing such discrimination as was found to exist. If the Commission had made adequate findings supported by evidence upon the point under consideration, we should not be disposed to conclude that the order must be upset because of the manner in which the proceeding was initiated or of the generality of the allegations of the complaint.

By section 13 (2) the duty is placed upon us to "investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory at the request of such commissioner or commission," and the same paragraph provides that "no complaint shall at any time be dismissed because of the absence of direct [fol. 43] damage to the complainant." See Interstate Commerce Commission v. Baird, 194 U. S. 25, 39. Interveners' motion to dismiss is denied.

The effective date of the order entered by division 4 on August 2, 1928, was October 10, 1928. This date was postponed until February 8, 1929, when the rates prescribed were made effective on interstate traffic from northern Florida to Georgia and on intrastate traffic in Florida. The interstate rates have since remained continuously in force. No further evidence was introduced with respect to their reasonableness and they are apparently satisfactory to all interested parties. The interstate and intrastate rates prescribed applied for distances only up to and including 170 miles. There was no occasion to prescribe either interstate or intrastate rates for greater distances, for the reason that the intrastate (Cummer scale) rates, which were alleged to cause the undue prejudice against shippers and localities in interstate commerce and unjust discrimination against in-

terstate commerce, applied for distances of only 170 miles and less, beyond which the Florida intrastate rates were much higher, distance considered, and were only slightly less than the then prevailing interstate log rates for the same distances.

Following the decision of the Supreme Court, rendered January 5, 1931, which set aside the order in so far as it applied to the Florida intrastate rates, the Cummer scale was restored, effective April 10, 1931, and is now in force. During the period from February 8, 1929, the effective date of the order, to April 10, 1931, the higher rates prescribed by the order were in effect.

The principal issue upon rehearing was whether the Cummer scale causes unjust discrimination against interstate commerce and that issue will now be considered.

[fol. 44] The history of the Cummer scale was related in considerable detail in the original report. Briefly summarized, it originated in a contract made in 1903 between the Jacksonville & Southwestern Railroad Company and the Cummer Lumber Company, both then controlled by the same interests; defendant acquired the properties of the former company in 1904, and assumed its obligations under the contract; during the pendency of the contract defendant entered into a similar agreement with the predecessor of intervener Brooks-Scanlon Corporation in connection with the transportation of approximately one billion feet of pine from Lafayette and Perry Counties, Fla., to its plant at Eastport, near Jacksonville, Fla., in trainloads; the Florida Railroad Commission refused to permit the establishment of the agreed rates in trainloads, and required that such rates as were established should apply on carloads and be available to all shippers on defendant's lines (see Appendix A); said rates became effective on carload shipments over all of defendant's Florida lines October 30, 1914, and, as modified by subsequent general rates changes (and extended from 150 to 170 miles), have since been in effect, except during the period from February 8, 1929, to April 10, 1931. The Cummer scale never has applied over other railroads nor elsewhere than in Florida on defendant's lines for distances of 170 miles and less.

The rates under the Cummer scale are published in amounts per car of 50,000 pounds, excess in proportion. Certain other rates referred to herein are published in a

similar manner. All will be stated in cents per 100 pounds.

Appendix B shows the various scales applying on logs on the most important railroads in southern territory. Column 1 shows the Florida intrastate rates applicable over defendant's lines on the kinds of logs here involved. The [fol. 45] rates shown in that column for distances up to and including 170 miles are the Cummer scale rates, beginning with a rate of 1.71 cents for 5 miles and ending with a rate of 3.7 cents for 170 miles. The rates shown in the same column for distances greater than 170 miles are class "P" rates prescribed by the Florida commission for application on the same kinds of logs. It will be noted that while the Cummer scale rate for 170 miles is 3.7 cents, the Florida commission class "P" rate for 171 miles is 8.33 cents, or more than twice as high. The Florida commission class "P" rates were prescribed as maxima for all distances, but the defendant has applied the Cummer scale rates for distances of 170 miles and less, which are substantially lower than the class "P" rates for those distances, and has maintained the full class "P" rates for distances over 170 miles.

The rates under the Cummer scale for 5 miles, 110 miles, and 170 miles are 5.03 per cent, 3.54 per cent, and 3.85 per cent, respectively, of the first-class rates for the same distances prescribed by us in Southern Class Rate Investigation, 113 I. C. C. 200, 207, 128 I. C. C. 567, for general interstate application throughout the South except to and from that portion of Florida south of the line of the Seaboard Air Line extending from Jacksonville to River Junction, in which transportation conditions were found to warrant a basis of class rates substantially 15 per cent higher.

The scale prescribed in the original report herein is shown in column 5 of Appendix B. That scale had its origin in Pierpont Mfg. Co. v. Sou. Ry. Co., 50 I. C. C. 81, wherein division 3 found it to be reasonable and prescribed it for application on the Southern Railway from certain points in South Carolina to Savannah, Ga. In three subsequent cases the scale was reviewed and, as subjected to the general rate [fol. 46] changes, was either prescribed or approved for application on logs between various points in the South. Southern Veneer Asso. v. A. C. L. R. R. Co., 62 I. C. C. 669, Southern Cotton Oil Co. v. A. C. L. R. R. Co., 120 I. C. C. 190, Sawmill Logs from North Carolina, 136 I. C. C. 370.

Meanwhile, the Alabama commission adopted the same scale and it is now in effect intrastate on defendant's lines in Alabama. The Georgia commission likewise adopted it for intrastate application in that State, but suspended its application because of the existence of the Cummer scale in Florida. The Corporation Commission of Virginia approved the scale for application on defendant's lines in Virginia and it is now in effect in that State. The scale, extended to cover distances up to 450 miles, was proposed by defendant for adoption in this case at the original hearings and defendant expressed willingness to establish it for interstate application over its entire system except south Florida. Although the former order prescribed the scale only from northern Florida to Georgia for distances of 170 miles and less, the defendant later voluntarily established it for uniform application on interstate traffic for all distances over its entire system except from points on its line south of the line of the Seaboard Air Line from Jacksonville to River Junction, from which it established rates 15 per cent higher than from points north of that line. In nearly all instances these rates were reductions from those previously in force.

Columns 3 and 4 of this appendix show the rates applying on logs intrastate in Florida on the Seaboard Air Line and the Georgia Southern and Florida, respectively. It will be noted that the scales applying on these lines are approximately twice as high as the Cummer scale.

Column 2 shows the Florida intrastate rates of defendant and the Seaboard Air Line on logs not over six feet in [fol. 47] length. These rates were established to permit the movement of short logs which would otherwise go to waste, but which could be used by manufacturers of crates. This scale is somewhat lower than the scale prescribed in the original report herein but is substantially higher than the Cummer scale. (On intrastate traffic in other States and on interstate traffic generally no rate distinction is made as between long and short logs.)

Some southern lines, particularly those operating in the Mississippi Valley, have two scales of log rates, one for ordinary local application, and the other, a scale of net transit or reshipping rates, applying when a certain proportion of the lumber or other manufactured product is shipped over the lines of the carrier delivering the logs.

The net transit or reshipping rates are usually lower than the local rates. The interstate net transit scale of the Illinois Central and Mobile & Ohio is typical of such scales. It is shown in column 7 of appendix B, and is considerably lower than the interstate local scales applying on those lines, which are shown in columns 8 and 9. This net transit scale, except for distances under 20 miles, is more than twice as high as the Cummer scale and compares favorably with the scale prescribed in the original report herein, (column 5). The latter scale, hereinafter referred to as defendant's interstate scale, now applies interstate generally between points not only on defendant's lines but also on the Seaboard Air Line, and the Southern, and as net transit rates on the Louisville & Nashville. It will thus be seen that this scale or one that compares favorably with it, applies interstate over the lines of the most important carriers in the South. In Farris Hardwood Lumber Co. v. Louisville & N. R. Co., 178 I. C. C. 671, division 4 prescribed gross (local) rates on logs from numerous origins in the South to destinations in Tennessee, which rates are con- [fol. 48] siderably higher than defendant's interstate scale. The single-line scale prescribed in that case is shown in column 6 of appendix B.

In appendix C the Cummer scale is compared with defendant's intrastate log rates in other southern States. It will be noted that the rates applicable in Virginia and Alabama, which were approved by the regulatory bodies of those States, are the same as defendant's interstate scale; that in Georgia the local rates are somewhat higher and the transit rates somewhat lower than defendant's interstate scale; and that the North Carolina and South Carolina rates are somewhat lower than defendant's interstate scale but average considerably higher than the Cummer scale. Applications are pending before the proper authorities to permit the establishment of defendant's interstate scale uniformly on intrastate traffic throughout those States, approval of which, it is testified, has been withheld because of the low intrastate rates in Florida.

Transportation conditions in Florida are not such as warrant a lower basis of rates on logs in that State than elsewhere on defendant's system. Transportation conditions on defendant's lines in Florida are not more favorable but on the contrary are less favorable than on de-

fendant's system outside of Florida. The cost of the service in Florida is higher than on the remainder of the system, as shown by cost evidence referred to in detail hereinafter. Density of traffic in Florida is much lighter than on defendant's lines elsewhere. The following table shows the traffic density on defendant's system as a whole, on its lines in Florida, and on its system excluding Florida:

[fol. 49]

Revenue Ton-Miles per Mile of Road

Year	System	Florida	System excluding Florida
1921	514,955	341,152	618,635
1922	624,700	409,026	754,341
1923	764,228	512,505	915,990
1924	774,029	570,583	897,150
1925	907,958	740,633	1,009,225
1926	963,569	869,411	1,021,610
1927	747,717	570,932	861,713
1928	647,542	442,245	781,682
1929	637,039	400,002	794,395
1930	556,771	369,979	648,395

The Florida mileage increased from 37.4 per cent of the system mileage in 1921 to 40.0 per cent in 1930. It appears that the increase in traffic density on the system during 1925 and 1926 followed closely the increase in traffic density in Florida during those years.

In the Florida peninsula the traffic density is even lighter than in the northern part of Florida, that is, north of the Jacksonville-River Junction line of the Seaboard Air Line. In 1927 there were 894.54 miles of railroad in Florida north of that line that were operated for freight traffic, and 4,183.01 miles in Florida south of that line. The traffic density of the lines in Florida north of that line was 615,318 revenue ton-miles per mile of railroad as compared with 557,286 revenue ton-miles per mile of railroad south of that line. The less favorable operating conditions in Florida south of that line have given rise to the general practice of permitting the addition of arbitraries to the rates on interstate traffic to and from points in that territory. See Southern Class Rate Investigation, 100 I. C. C. 513, 585, 626, 646; 128 I. C. C. 567, 594, 602.

The risk in transporting logs is small in so far as loss or damage to the logs is concerned but there is a much greater risk arising from the probability of a train wreck in the event the logs break loose.

[fol. 50] The Cummer scale is much lower than the basis of rates prescribed for application throughout central

territory in Public Service Commission of Indiana v. Ann Arbor R. R. Co. et al., 85 I. C. C. 533. Rates equal to 65 per cent of the sixth-class rates contemporaneously in effect between the same points were there found to be reasonable rates. The order there entered resulted in rates on logs ranging from 5.20 cents for 5 miles to 20.80 cents for 560 miles, the rate for 170 miles being 12.35 cents, whereas the Cummer scale rates for 5 miles and 170 miles are 1.71 cents and 3.70 cents, respectively. The report in that case referred to "the lower operating costs and the greater traffic density" in central territory than in southern territory.

So far as the record in this case shows there is no other scale of rates on logs as low as the Cummer scale.

Defendant's interstate scale and the Cummer scale are compared with the rates on other important low-grade commodities in appendix D. The freight charges per car under the rates shown are also compared. The rates shown on these other low-grade commodities are the rates applicable between Georgia and Florida, but substantially the same level of rates applies intrastate in northern Florida. Approximately 40 per cent of the total tonnage transported by defendant consists of these low-grade commodities, and a substantial portion of defendant's total freight revenues is derived from their transportation, as is indicated by the following results of a traffic test for the month of May, 1926:

[fol. 51]

Commodity	Per cent of all tonnage	Per cent of all freight revenue	Value per ton
Logs	7.26	2.05	$2.80
Brick, artificial stone	3.30	2.32	
Sand and gravel	26.49	9.16	$.35 to $1.35
Lime, plaster	0.46	0.39	
Cement	2.29	2.05	7.48

The above evidence warrants the conclusion that the Cummer scale rates are abnormally low. Upon similar evidence submitted at the original hearing division 4 found that they are "less than reasonably compensatory." We affirm that finding. In its report division 4 said:

It is manifest, we believe, that the intrastate rates assailed, which on the average are less than half of the proposed interstate rates, are less than reasonably compensatory. The rate for 160 miles yields but 4.25 mills a ton-

mile, and, based on a lading of 60,200 pounds, 12.8 cents a car-mile. They are approximately one-half of the rates prescribed in Rates on Chert, Clay, Sand, and Gravel, 122 I. C. C. 133, on sand and gravel in the Southeast and less than one-half of the rates prescribed in the supplemental report in that case, 140 I. C. C., 85, to points in Florida south of the Jacksonville-River Junction line of the Seaboard Air Line. As stated in the original report in that case, sand and gravel are of unusual low value, it being doubtful whether any traffic moves which is worth less at point of production, load very heavily, and normally move in considerable volume without unusual switching operations at either end and without anything in the nature of special services.

In considering the question of the relation of the Cummer scale rates to the defendant's income, we may notice what the defendant's income is. The evidence here shows the investment in defendant's properties as stated in its property investment accounts and its rate of return upon that amount. In 1926 its rate of return on investment in road and equipment, not including materials and supplies and cash, was 6.50 per cent. In the subsequent years up to the time of the rehearing its rate of return was as follows: 1927, 3.70 per cent; 1928, 3.52 per cent; 1929, 4.55 per [fol. 52] cent; 1930, 2.54 per cent. The following tabulation shows the supporting figures for the years 1926, 1929, and 1930:

	1926	1929	1930
Investment in road and equipment	$270,564,508	$282,948,571	$285,343,512
Materials and supplies	8,699,718	6,386,742	6,704,666
Cash	8,494,003	17,133,937	13,932,421
Total property investment at end of year	287,758,229	306,439,250	305,977,599
Net railway operating income	17,585,807	12,874,207	7,241,304
Rate of return:			
On investment in road and equipment	6.50%	4.55%	2.54%
On investment in road and equipment including materials and supplies	6.30%	4.45%	2.48%
On investment in road and equipment including materials and supplies and cash	6.11%	4.20%	2.37%

The defendant's Florida log traffic is an important one and the revenue from that traffic has a substantial influence

upon the defendant's total revenues. During the five-year period, 1926-1930, system log traffic averaged 7 per cent of the total system traffic. Nearly 50 per cent of the system log traffic was in Florida. For instance, in 1928, the defendant transported a total of 51,801 cars of logs on its system, of which 27,119 cars were in Florida.

The following table contains a brief analysis of the log traffic of the system as a whole and on its lines in Florida for the years 1928-1930:

[fol. 53]

	1928	1929	1930
System:			
Total traffic (tons)	20,402,922	18,951,802	16,784,331
Log traffic (tons)	1,422,874	949,840	667,612
Per cent of log traffic to total traffic	7.0	5.0	4.0
Total revenue	$52,019,283	$53,188,639	$46,428,030
Log revenue	997,139	794,334	615,393
Per cent of log revenue to total revenue	1.9	1.5	1.3
Florida:			
Total Florida traffic (tons)	8,622,556	8,547,924	7,660,058
Florida log traffic (tons)	814,777	366,426	272,150
Per cent of Florida log traffic to total Florida traffic	9.4	4.3	3.6

The above figures reflect the small revenue burden borne by the log traffic. In 1928, for instance, the system log tonnage constituted 7 per cent of the total system tonnage, whereas the revenue from the log tonnage was only 1.9 per cent of the total revenue.

The above analysis further shows that the revenue from the system log traffic did not decline proportionately with the volume of that traffic. In 1930 the log traffic of the system was 667,612 tons as compared with 1,422,874 tons in 1928, whereas the revenue from the 1930 log traffic was $615,393 as compared with $997,139 in 1928. Stated in percentages, in 1930 as compared with 1928 the log traffic of the system declined more than 50 per cent but the system log revenue declined only 38 per cent. The smaller decline in the revenue was no doubt due to the fact that in 1928 the Cummer scale was in effect whereas throughout 1930 the increased rates prescribed by the former order herein were collected.

Of much assistance in the determination of the effect of increased intrastate log rates in Florida on the revenues of defendant is the fact that the increased rates prescribed by the former order were actually in effect for a substantial

[fol. 54] period and were applied on the traffic moving during that period. Defendant submitted in evidence at the hearing in June, 1931, a statement showing all shipments of the kinds of logs here in question which moved over its lines intrastate in Florida during the period from February 8, 1929, to January 31, 1931. This statement shows a total movement of 18,602 carloads in that period on which gross freight revenues of $571,508.94 were collected. If the Cummer scale had applied, this movement would have produced gross freight revenues of only $281,225.75, or $290,283.19 less than those actually collected.*

Averring that there is no condition at any point on its lines that would justify higher rates on logs than those applicable within the State of Florida, defendant submitted testimony to the following effect, showing that the existence of low log rates in one State has an influence upon the log rates in other States: The record in the present case shows the influence upon the Georgia rates of the intrastate rates in Florida. In South Carolina the State commission at first approved defendant's present interstate rates for intrastate application but later reduced them because the rates in North Carolina were lower. In the case that is now before the North Carolina commission the existence of rates between points in Virginia on a line other than defendant's is one of the principal obstacles to securing the application of defendant's uniform scale in North Carolina. In every case involving defendant's interstate rates on logs the existence of lower levels of rates within some of the States served by defendant has been urged as a justification for lower interstate rates on logs.

[fol. 55] Defendant submitted the following evidence to show the total losses it would have sustained had the Cummer scale been in effect during the years 1929 and 1930 uniformly on interstate and intrastate traffic throughout its system: The movement of logs on its system, including the long but not the short length logs in Florida, consisted of

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*Restitution suits for the recovery of all amounts paid in excess of the Cummer scale rates on shipments during the period from February 8, 1929, to April 10, 1931, when the higher intrastate rates prescribed by the annulled order of division 4 prevailed, were instituted and are pending.

3,450,765,300 pounds,* of which the interstate movement consisted of 456,134,800 pounds and the intrastate 2,994,630,500 pounds. The revenues from all of these logs amounted to $1,483,42487,* of which the revenue on interstate movements amounted to $266,654.12, and on intrastate to $1,216,770.75. If the Cummer scale had been applicable on all its log movements the reduction in revenues would have been approximately as follows:

Intrastate:	
Virginia	$2,926.20
North Carolina	95,804.17
South Carolina	99,793.77
Georgia	29,068.53
Florida	290,283.19
Alabama	13,245.47
Interstate	144,259.88
Total	$675,381.21

These figures represent approximate losses, as they are not based upon an actual re-rating of the tonnage, except upon the long length logs in Florida, the losses on the interstate movement and on the intrastate movements other than in Florida having been arrived at on basis of the percentage that the Cummer scale is of the actual scales applied.

If defendant's present interstate scale had applied uniformly on intrastate traffic on its system in 1929 and 1930 that scale would have had the following effect upon the defendant's revenues if the traffic had been the same: There [fol. 56] would have been an increase in revenues in North Carolina of $65,427.27, in South Carolina $7,154.14, in Georgia $14,567.52, a total increase of $87,229.90. There would, of course, have been no change in Florida, in Virginia, or in Alabama, because the present interstate scale was then in effect in those States. Nor would there have been any change on interstate traffic because the defendant's present interstate scale was then in effect.

* These figures do not exactly correspond with those given in the table set out above, but the variance is so slight that it is negligible.

The Florida interveners contend that the increase in the Florida intrastate rates has had the effect of reducing the volume of the Florida log traffic and that as a consequence there has been a decrease in the defendant's revenue from that traffic. It is true that since the original hearings in this proceeding (October, 1926, and January, 1927) there has been a decrease in the volume of the Florida intrastate log movement. The extent of this decrease is indicated in the following table showing the number of cars and the tonnage transported therein during the five years 1926-1930:

Year	Number of cars	Number of tons
1926	36,799	1,214,361
1927	35,415	1,052,927
1928	27,119	814,777
1929	13,207	366,426
1930	9,376	272,150

The figures for 1926 and 1927 must be discounted somewhat for the reason that they include posts, poles, and cord wood as well as logs. The statistics for those years grouped the four commodities and information as to the exact number of cars and tons of logs that moved is not available.

Parts of the decline in the Florida log traffic has been due to the fact that two lumber companies which operated mills near Jacksonville at the time of the original hearings, the Brooks-Scanlon Corporation at Eastport and the Putnam Lumber Company at Milldale and Ortega, have since moved their plants to locations adjacent to their timber [fol. 57] holdings and no longer ship their logs over defendant's lines. At the time of the original hearings these companies drew their logs, usually in trainlo-d lots, from points on defendant's Perry branch, about 166 miles west of Jacksonville. There was evidence to the effect that it was uneconomical for mills to be located so far from the timber and that even the Cummer scale rate for that distance, 3.7 cents, was higher than these mills could afford to pay. The Putnam Lumber Company then indicated its intention to abandon those mills and to develop a plant in the timber. In 1926 it acquired a mill at Bond's Mill, about 85 miles south of Jacksonville, and in 1927 and 1928 it completed the construction of two mills at Cross City, on defendant's Perry branch. Shortly after the intrastate rates were increased in February, 1929, the Brooks-Scanlon

Corporation began the construction of a mill at Foley, about 5½ miles southwest of Perry. Upon the completion of that mill the one at Eastport was abandoned. During the six-year period from 1923 to 1928 the defendant's gross revenues from the movement to Eastport averaged $309,882.60 a year. Defendant's gross revenues from the movements to the Putnam mills averaged slightly more than $200,000 a year. This movement would have been discontinued even though the Cummer scale had remained in force, since the company had decided to move its mills to the timber prior to the rate increase.

The defendant asserts that the change in location of these mills from the vicinity of Jacksonville to Foley and Cross City has had a favorable effect upon its revenues in two respects; first, it has rendered unnecessary the transportation of the logs at the inadequate remuneration yielded by the Cummer scale; second, the present location of the mills in the interior has resulted in producing ton-[fol. 58] nage of lumber rather than of logs, and the transportation of lumber from the standpoint of net revenue is vastly better than the transportation of logs under the Cummer scale. The average weight of 983 cars of logs handled under the Cummer scale for the Brooks-Scanlon Corporation and the Putnam Lumber Company was 60,200 pounds per car, the average haul was 158 miles, and the revenue was $20.47 per car, or 12.9 cents per car-mile. In 1930, 90 per cent of the lumber movement from Foley and 70 per cent of the lumber movement from Cross City to destinations on defendant's lines went to Jacksonville. The rate on lumber from Foley to Jacksonville is 9.14 cents and based on the average per car weight of all lumber in the southern region of 52,000 pounds, the revenue per car from Foley to Jacksonville, 169 miles, is $47.53, which equals 28.1 cents per car-mile. The rate on lumber from Cross City to Jacksonville, 118 miles, is 8⅓ cents, producing revenue of $43.33 per car or 36.7 cents per car-mile.

Another large movement at the time of the original hearings was from Otto Creek, a point on defendant's Perry branch, to the mill of the Cummer Cypress Company at Lacoochee. This movement, which was in trainload lots, began in January, 1925, and ended on May 5, 1928, which was after the original hearings but prior to the decision of division 4 herein, August 2, 1928. This movement ended

not because of the rate increase but because of the exhaustion of the company's timber near Otter Creek. Defendant's gross revenues from this movement aggregated $120,261.40. In January, 1929, the Cummer Company began to ship logs from Homosassa over defendant's line to Otter Creek, where it operated a small, secondary plant, and it continued this movement after the increased intrastate [fol. 59] rates became effective on February 8, 1929. In April, 1929, it began to ship cypress logs from Homosassa to its mill at Lacoochee, over defendant's line. In February, 1930, the movement from Homosassa to both Otter Creek and Lacoochee ended, and since then the Cummer Cypress Company has shipped no logs over the defendant's lines. Defendant's gross revenues from the Homosassa-Otter Creek movement were $13,507.09 and those from the Homosassa-Lacoochee movement was $77,609.89. These movements were stopped in February, 1930, not because of the rate increase, for the movements continued for a year after the increase became effective, but because the timber at Homosassa was practically cut out, although some additional logs of inferior grade would probably have been cut and shipped had the Cummer scale remained in force. Its present supply of logs from timber on the Withlacoochee River is hauled over its own logging road to the Seaboard Air Line and thence over that line under trackage rights for a short distance to its mill at Lacoochee.

Representatives of these three interveners, the Putnam Lumber Company, the Brooks-Scanlon Corporation and the Cummer Cypress Company, testified at the further hearings that they would not resume the shipment of their logs over defendant's lines even if the Cummer scale remained in effect.

The fact that the total movement during the period of nearly two years from February 8, 1929, to January 31, 1931, consisted of 18,602 carloads was verified by an investigation conducted by interveners; and their evidence, after eliminating 7,353 cars which moved in trainload lots from Hines to Palatka, showed that of the remaining volume (11,169 cars) 7,965 cars moved in the period from February 8, 1929, to January 31, 1930, and 3,204 cars in the succeeding 12 months. (They were unable to develop when 81 cars moved.)

[fol. 60] Interveners' data also showed the following with respect to these 11,169 carloads:

	Pine		Cypress		Hardwood	
	Cars	Revenue	Cars	Revenue	Cars	Revenue
First period	1,282	$31,052.33	2,890	$73,866.90	3,793	$96,971.97
Second period	296	5,288.84	1,566	36,387.01	1,342	28,658.90

From what has been said above it is clear that the decline in the Florida log movement can not be ascribed wholly to the rate advance. Part of the decline has no doubt been due to that cause but a large part has been due to the change from mill locations uneconomical because too far from the timber and cessation of movements because of exhaustion of the timber. The generally depressed conditions throughout the country, in Florida, in the lumber industry generally and in the Florida log industry have also had a marked influence upon the volume of the log movement in Florida. The table below shows the decline in the total system traffic and in the system log traffic during the five-year period 1926-1930:

	Total traffic		Log traffic	
Year	Cars	Tons	Cars	Tons
1926	944,101	27,025,422	79,114*	2,196,971*
1927	839,049	23,134,496	78,532*	2,056,593*
1928	752,778	20,402,922	54,801	1,422,874
1929	718,549	18,951,802	37,206	949,840
1930	621,232	16,784,331	25,738	667,612

* Includes posts, poles and cord wood.

Likewise there has been a decline in the lumber traffic throughout the United States, in the Southern District, and on the defendant's system, as shown by the following table which also shows the gross revenues received by defendant for the lumber tonnage transported over its lines:

[fol. 61]

	United States	Southern District	Atlantic Coast Line	
Year	Tons	Tons	Tons	Gross revenue
1920	48,617,871	17,708,828	2,665,512	$5,503,389.44
1925	49,015,498	20,311,619	3,751,016	8,092,819.86
1928	42,508,620	17,872,965	3,093,168	6,641,449.38
1929	40,565,975	17,403,907	3,109,401	6,750,434.28
1930	27,584,148	11,395,877	2,211,258	4,711,383.72

Thus, while there has been a substantial decline in the Florida log traffic, there have also been declines in other traffic, and the same forces that operated to cause a decline in other traffic were also no doubt responsible for much of the decline in the Florida log traffic.

Coming now to consideration of the probable future volume of the Florida log traffic, it is relevant to inquire into the total amount of standing timber now in Florida and how much of the total is reasonably tributary to the defendant's lines.

The record indicates that, unlike most of the other southern States, vast stands of virgin timber remain in Florida. An official bulletin of the United States Department of Agriculture (Circular No. 124, October, 1930, entitled "Rate of Growth of Second-Growth Southern Pines in Full Stands") indicates that in 1927 there remained in the eleven chief pine-producing States of the South 12,650,000 acres of virgin pine, of which 5,450,000 acres, or 43 per cent, were in Florida. That bulletin also states that in addition to this area of virgin pine, there is an area of 12,550,000 acres of cut-over pine lands in Florida, of which 3,150,000 acres have been fully or partially restocked to saw timber, and 4,300,000 acres fully or partially restocked to saplings and cord wood.

The figures published in the Department's bulletin were based chiefly on a survey of standing pine timber made in the main producing regions from Virginia to Texas in 1924. The Department's bulletin states that this survey, which was conducted by the Southern Pine Association, "is [fol. 62] believed to be the most accurate survey of timber resources yet made in any important lumber-producing region of the United States. The data were obtained in the form of board feet, but have been converted into acreages for the purpose of this bulletin. The computed figures have been checked against the local knowledge of State and Federal forest officers and other authorities." A compendium published by the Southern Pine Association, entitled "Economic Conditions in Southern Pine Industry", presented by the Association to the United States Timber Conservation Board, dated July 1, 1931, shows the number of board feet in the acreages published in the Department's bulletin. The 1924 survey showed that in Florida the pine timber stand was 21,382,000,000 feet of longleaf and 2,966,000,000 feet of shortleaf, or a total of 24,348,000,000 feet of pine. The production in Florida during the six years 1925-1930, totaled 4,564,000,000 feet, the regrowth in those six years being 2,129,000,000 feet, or a net depletion of 2,435,000,000 feet, leaving the then present (July, 1931) pine timber stand in Florida, 21,913,000,000 feet.

The above figures include pine only. That species of wood is of primary importance in the Florida lumber industry. Cypress is second in importance, and hardwoods such as ash, gum, hickory, cedar, and oak, are third.* The record contains no figures as to the stands of cypress and hardwoods in Florida, but there is testimony as to the production, indicating that the annual production of cypress [fol. 63] in Florida is around 200,000,000 feet, and that hardwood constitutes probably 5 to 10 per cent of the total business.

The record affords no accurate basis of determining how much of the standing timber in Florida is tributary to the Atlantic Coast Line. By reference to the map of that railroad in Florida, however, it will be seen that its main and branch lines form a network which virtually covers the State, except the extreme southeastern part. This fact, in connection with the practice of constructing logging roads, seems to indicate that a large percentage of the standing timber in Florida is tributary to defendant's lines. The defendant's freight traffic manager testified:

"Not less than one-half of the timber in Florida that is now reasonably adjacent to railroads is reasonably adjacent to the Atlantic Coast Line. Pine timber along the south Atlantic seaboard has been characterized by the United States Forestry Department as one of the fastest reproducing kinds of trees in the world, and the total amount of timber in Florida will be large as a result of regrowth. However, if the Atlantic Coast Line can be assumed to transport 40% of the logs to be produced in Florida from timber now standing, it will handle approximately nine billion feet, or approximately 128,570 cars of

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* The Cummer scale applies on all species of logs except cedar. The interstate rates found unreasonable in the original report herein applied on all species of logs except walnut, cherry and cedar. For this reason, the former order in prescribing interstate and intrastate rates on logs excepted those three species. The exception is unimportant in so far as walnut and cherry are concerned, for there appears to be no movement of those species of logs in Florida. The term "hardwood" as used hereinafter will be used to mean hardwoods other than those three.

logs. If the average length of haul should be 81 miles, as was the case in 1929-30, which average haul may be expected to be increased as the timber becomes more scarce, our revenues under the Cummer scale, at an average revenue of $16.10 per car, would be equivalent to gross revenue of $2,169,977.00. If the same transportation should be performed at the rates prescribed by the Interstate Commerce Commission, which for the average haul of 81 miles is 5.5 cents per 100 pounds, or $38.50 per car, the gross revenue would be $4,949,945.00. The difference in the gross revenue under the two scales of rates would be $2,779,968.00."

A large movement of logs which was going on at the time of the original hearings, and which still continues, is the movement of cypress logs from Hines, a point on defendant's Perry branch, to the lumber manufacturing [fol. 64] plant of the Wilson Cypress Company at Palatka. This Hines-Palatka movement, which is in trainload lots, began in January, 1926. The company has its own logging road in the timber, connecting with the defendant's line at Hines, from which the haul to Palatka is 119 miles. Although this intervener, as well as others, testified at the original hearing that it would be impossible to continue the movement of logs over defendant's lines if the Cummer scale were increased, it actually has done so. It appears that under normal conditions it will continue to ship these logs over the defendant's line until the timber adjacent to the Perry branch is cut out. Under the normal rate of cutting, it appears this would occur in about one and one-half to two years after the time of the further hearing. During the four-year period, 1926-1929, the defendant's gross revenue from the Hines-Palatka movement averaged nearly $90,000 a year. During that four-year period 16,658 carloads were shipped, averaging 4,164 carloads a year. During 1930, when the increased rates were in effect, 5,142 carloads were shipped, on which the defendant's gross revenue was $205,096.20, averaging $39.88 per car at the increased rate of 6.5 cents for the 119-mile haul. During the first five months of 1931, 1,916 cars moved on which the freight charges (gross revenue of defendant) amounted to $50,366.17. Palatka is served by the Southern Railway System (Georgia, Southern & Florida

Ry.) and by the Florida East Coast Railway, as well as by defendant's line. There is a small movement of logs into the Wilson Cypress Company's mill at Palatka over the Southern and the Florida East Coast. Besides the movement over defendant's line from Hines there is a small movement over defendant's lines from various other points in Florida.

[fol. 65] There is also at present a small movement over defendant's lines from various Florida points to the mill of the Putnam Lumber Company at Bonds Mill and a larger movement to the mill of that company at Cross City. During the period from February 8, 1929, to January 31, 1931, the movement to Cross City consisted of 1,260 carloads of pine and cypress logs from seven different points of origin. During the succeeding five months the movement to Cross City was 102 carloads from three points of origin.

Although the Cummer Cypress Company no longer ships its logs over defendant's lines, it does purchase and receive logs shipped over defendant's lines to its mill at Lacoochee from points within distances of 10 to 18 miles. During the five-month period above mentioned this movement totalled 93 cars.

In addition to the above-mentioned movements to Palataka, Bonds Mill, Cross City, and Lacoochee, there were movements during said five-month period to Apopka, Buffalo Bluff, Gainesville, Jacksonville, Kissimmee, Lake City, Loughman, Leesburg, Nocatee, Perry, St. Petersburg, Sanford, and Tampa, from numerous points of origin.

At the time of the former hearings there was and at present there is a substantial movement of hardwood logs in Florida. There are several mills in the State that are engaged exclusively in the production of hardwood lumber, including that of the intervener Wilson Lumber Company at Perry. Hardwood trees are usually found in tracts consisting predominately of pine and cypress and are usually logged as an incident to, or by-product of, the pine or cypress operations. The hardwood lumber business is relatively new in Florida. Formerly the hardwood trees were left standing but now it is the practice of the pine [fol. 66] or cypress operators to cut the hardwood and sell the logs to the hardwood mills. In some instances the

hardwood operators own their own tracts of timber. The Wilson Lumber Company built its hardwood mill at Perry in 1927. At that time it made contracts with several of the large pine and cypress operators in Florida for the purchase of the hardwood logs cut incidentally to their operations. There have been fairly large movements of ash, black gum and other hardwood logs from Hines, Cross City, Foley, Homosassa, Otter Creek and other points to Perry. There have also been some movements of hardwood as well as cypress to Jacksonville. As shown by the table set out above, 5,135 carloads of hardwood logs moved over defendant's lines in Florida during the period February 8, 1929, to January 31, 1931.

Another type of log movement that frequently takes place in Florida is the movement from the log shipping point of one lumber manufacturer to the mill of another lumber manufacturer. Such movements occur where the lumber company that cuts the logs is engaged in the manufacture and sale of a particular kind of lumber, e. g., pine, and sells its cypress logs to a cypress lumber manufacturer. Conversely, the pine manufacturer often buys pine logs cut by a cypress manufacturer.

The 18,602 cars which moved during the period from February 8, 1929, to January 31, 1931, were shipped from 113 different origins to 20 different destinations in all parts of the State, and the hauls ranged from 6 to 169 miles. At the hearing in July, 1931, defendant submitted a supplemental statement showing that the volume of the log movement over its lines in Florida during the succeeding five months, that is, from February 1 to June 30, 1931, which were the five months immediately preceding [fol. 67] the hearing, was 2,765 cars. (The Cummer scale was restored during that period, April 10, 1931.) These cars were shipped from 52 different stations to 17 different destinations.

The record as a whole warrants the conclusion that there will be a large Florida intrastate movement of logs over defendant's lines in the future. The movement at present is at a low ebb, but in view of depressed conditions the present movement can not be taken as the criterion for the future. In view of the vast quantity of timber in Florida tributary to defendant's lines, the large number of mills located on defendant's lines at widely scattered points in

Florida, and the probability of the establishment of new mills, large and small, we entertain no doubt that the log traffic will increase well above the present volume when economic conditions change for the better.

In the Florida log transportation some competition from trucks is met but only to a very slight degree. It is not shown that logs can or will be transported by trucks except for very short distances, nor that truck competition was or will be increased under advanced rates.

The defendant urges that the revenues produced by the Cummer scale are insufficient to cover the cost of the service performed; that no traffic is of value from a revenue standpoint unless it yields more revenue than the cost of its handling; that its study of the result of the operation under the Cummer scale is conclusive to it that such operation yields it no profit, but, on the contrary, results in an actual loss on the log traffic as a whole. It is manifest that if the Cummer scale produces less revenue than the cost [fol. 68] of the service, declines in the traffic have the favorable effect of reducing defendant's losses and that an increase in the traffic would only serve to augment those losses. In support of its contention that the Cummer scale results in losses, defendant submitted voluminous evidence bearing upon the cost of transporting logs in Florida. It is necessary to consider this evidence with a view to determining whether it shows that the Cummer scale rates do result in revenue losses.

The defendant's cost evidence started with figures showing that during the fiscal year ended June 30, 1929, the following road train expenses were incurred in transporting its system freight traffic:

[fol. 69]

Acct. No.		
401	Trainmen	$2,048,715
392	Train enginemen	1,571,324
394	Fuel for train locomotives	2,281,332
397	Water for train locomotives	96,575
398	Lubricants for train locomotives	42,283
399	Other supplies for train locomotives	29,281
400	Engine-house expenses—train	450,414
402	Train supplies and expenses	400,760
	Total	$6,920,684

These expenses are denominated in the testimony and exhibits of record as "out-of-pocket" expenses and that term will be used herein, although it should be understood that it has reference only to the particular expenses charged to the above enumerated accounts.

An analysis was then made of the accounts of the third division which could be definitely assigned to the freight service without question to develop the out-of-pocket costs for that division. The third division is wholly in Florida, and includes all mileage south of Jacksonville. The carrier's total mileage in Florida is 2,061.38 miles, all of which, except 126.34 miles north and west of Jacksonville, is in the third division. Hence, the out-of-pocket expenses on the third division were taken as fairly representative of the out-of-pocket expenses in Florida. Taking into consideration the total tonnage carried and the distance of the carriage, and including the empty-car mileage, the out-of-pocket cost per gross ton-mile was determined. For the third division that figure was ascertained to be .0882888 cent. The items which made up the total out-of-pocket expenses for the third division were:

Acct. No.		
401	Trainmen	$637,337.05
392	Train enginemen	497,364.58
394	Fuel for train locomotives	606,920.94
397	Water for train locomotives	28,406.12
398	Lubricants for train locomotives	15,379.52
399	Other supplies for train locomotives	9,575.70
400	Engine-house expenses—train	126,854.35
402	Train supplies and expenses	137,772.40
	Total	$2,059,610.66

[fol. 70] The gross ton-miles in Florida during the fiscal year were 2,332,812,000, which, divided into the total out-of-pocket expenses during that year, $2,059,610.66, resulted in the figure .0882888 cent per gross ton-mile. The out-of-pocket expense on the other two divisions combined, similarly reduced to the unit of gross ton-miles, was .053263 cent. An analysis was also made of the out-of-pocket costs on the car-mile basis, which gave final cost figures not materially different from those developed on the gross ton-mile basis hereinafter stated.

The total freight operating expenses of the system during the year 1929 were $36,308,813,* over five times the system out-of-pocket expenses of $6,920,684. The exact ratio of the latter to the former is 19.069.** If this ratio is used as a basis of expanding or projecting the out-of-pocket expenses to determine the total freight operating expenses in Florida, the latter is found to be .462996 cent per gross ton-mile.

The weighted average distance of the 18,602 carloads of logs transported by defendant in Florida during the period from February 8, 1929, to January 31, 1931, was 81.36 miles, the average weight of the lading was 56,754 pounds, and the tare weight of the cars was 33,000 pounds, resulting in a gross weight of the loaded movement of 89,754 pounds. The testimony is to the effect that the log cars were returned empty almost without exception. Using 100 per cent as the proper figure for return empty movement, [fol. 71] the gross weight of the loaded and empty movement was 122,754 pounds or 61.377 tons. The latter figure multiplied by 81.36 miles gives the gross ton-miles as 4,994. The unit cost of .462996 cent per gross ton-mile applied to 4,994 gross ton-miles results in a cost of $23.12 per car. This figure includes nothing for taxes or interest on investment. When $3.56 per car, as the proportion of taxes paid by defendant to the State of Florida, and $7.62 per car as the proportion of interest on investment of 5¾ per cent, are added, the cost becomes $34.30 per car.

The defendant did not present the figure $34.30 per car as representing the actual cost of the service, but stated that it was greater than the cost because it included certain expenses which were not attributable to the handling of logs.

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*The primary segregation of total operating expenses as between freight and passenger was made in accordance with the formula which we have prescribed. See order of Dec. 1, 1919, effective Jan. 1, 1920, providing rules for the separation of operating expenses between freight and passenger service on large steam roads. The total operating expenses were $53,431,589. The proportion assigned to freight under that formula, $36,308,813, was 67.95% of the total.

**Exhibits of record erroneously show this ratio as 23.549. Defendant agreed that the correct ratio is 19.069.

Defendant also presented another figure, $25.23 per car, based on the ratio of system out-of-pocket expenses to total system freight operating expenses after many deductions were made from the latter. There were deducted, first, all freight yard accounts, 42 in all, the total of which aggregated $4,550,039. Then all amounts in 15 other accounts, aggregating $4,665,936, were completely eliminated. Many of these were obviously not directly attributable to the handling of logs, such as wharves and docks, paving, assessments for public improvements, floating equipment, outside agencies, advertising, traffic associations, industrial and immigration bureaus. Some of the others were clearly attributable, at least in part, to the handling of logs but were entirely omitted because of the difficulty of ascertaining the proper proportion that should be allocated to that traffic. For example, station employees in the transportation block of expenses, account 373, shows charges to freight of $3,281,352.20. There would seem to be no doubt but that a [fol. 72] portion of the charges to this account is properly attributable to the handling of logs. To this account are charged agents, clerks, and attendants, telegraph and telephone operators, station agents, etc., who handle the billing of log shipments and perform other services. But that account was entirely eliminated. Finally there was eliminated 4.4897 per cent of general expenses, amounting to $413,769. The grand total thus eliminated aggregated $9,629,744.

This aggregate was deducted from the total freight operating expenses of $36,308,813, leaving the sum of $26,679,069 denominated the "total haulage expenses." The ratio of the total system out-of-pocket expenses, $6,920,684, to the total haulage expenses, $26,679,069, is 25.9405.*

Use of this ratio results in a unit figure of .340351 cent per gross ton-mile (.0882888 cent divided by 25.9405 multiplied by 100). This results in a haulage cost of $17.00 per car. When a proportionate amount is added for Florida property taxes, $2.62 per car, the haulage cost plus taxes becomes $19.62 per car. A proportionate amount added to that figure as representing interest on investment at 5¾

* This ratio is erroneously shown in exhibits of record as 35.027. As a result of the error the cost figures were shown to be lower than they would have been if the correct ratio had been used.

per cent, $5.61 per car, results in a final figure of $25.23 per car.

The defendant's general auditor testified that the actual cost lies somewhere between $18.75** and $34.30 per car; that in determining the lower figure he eliminated over $9,000,000 of expenses embracing all yard items and certain other items, some of which expenses are properly attrib- [fol. 73] utable to the handling of logs, and that this figure understates the cost of handling logs; but from his experience in studying accounts he does not believe it would be proper to include all of the expenses included in the higher figure, and that therefore the cost lies somewhere between the two. Based on his survey of the application of the Cummer scale rates, and from his experience as an accountant, he expressed the opinion that the Cummer scale does not afford a revenue which is equal to the cost of doing the business covered thereby; that as shown by the exhibits filed, in practically every case the cost, including a reasonable return on investment, exceeds the revenue derived, and in some instances the operating expenses exceed the revenue, without including any taxes or return on investment.

The average revenue under the Cummer scale on the 18,602 cars above referred to was $15.12 per car. The rates prescribed by the order previously entered in this proceeding were in force during the period in which all of these 18,602 cars moved, and the defendant's actual aggregate gross revenue on them was $571,508.94. Had the Cummer scale been in effect, the aggregate gross revenue would have been $281,225.75. The latter sum divided by 18,602 gives the above-stated average revenue per car under the Cummer scale—$15.12 per car. It will be noted that this revenue is substantially below either of the two cost figures mentioned above, $25.23 per car and $34.30 per car. It is $1.88 per car less than the haulage cost stated above, $17.00 per car.

The unit cost as given above, .340351 cent per gross ton-mile as the purely haulage cost, and .462996 cent per gross ton-mile as the total operating cost, as applied to specific movements, results in the following figures, with which

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** This figure is based on the erroneous ratio of 35.027. When recalculated on basis of the correct ratio of 25.9405 it becomes $25.23.

are included for comparative purposes the figures for the [fol. 74] averages of the total movement of 18,602 cars referred to above:

Movement	Miles	Per car: Revenue on Cummer scale	Purely haulage expense[1]	Purely haulage expense plus taxes and return	Total operating expense[2]	Total operating expense plus taxes and return
Average of 18,602 cars during period from Feb. 8, 1929, to Jan. 31, 1931	81.36	$15.12	$17.00	$25.23	$23.12	$34.30
Homosassa to Lacoochee	68.	12.44	13.58	20.15	18.47	27.40
Homosassa to Otter Creek	52.	12.02	10.80	16.06	14.69	21.79
Perry to Eastport	169.	22.10	36.16	53.65	49.19	72.98
Carbur to Eastport	152.	20.30	32.52	48.25	44.23	65.63
Homosassa to Perry	130.	20.62	28.80	42.73	39.18	58.13
Astor to Groveland	99.	13.78	19.54	28.99	26.58	39.43

[1] Based on unit cost of .340351 cent per gross ton-mile.
[2] Based on unit cost of .462996 cent per gross ton-mile.

Defendant also submitted evidence showing the actual out-of-pocket expenses for the movement of logs from Hines to Palatka during the month of November, 1930, agreed to be typical of the year 1930. This evidence discloses the results of a special examination of the expenses incurred in connection with that particular movement. The Wilson Cypress Company operates a private logging railroad from its tract of timber to a point of connection with defendant's line at Hines. The cars used in this service are ordinary flat cars owned by defendant but specially assigned to the Wilson Cypress Company, which has equipped them with special devices for log transportation. This special equipment, owned and maintained by the lumber company, consists of four stanchions on each side of the car, which fit [fol. 75] into pockets of a design which permits release of the stanchions to facilitate quick unloading. Chains fastened to the stanchions hold the logs in place, and permit the car to be loaded more heavily than a car staked in the ordinary way. The cars are loaded in the timber and the trains are hauled by the lumber company over its logging road to Hines. The defendant transports the trains to Palatka, 119 miles, and makes delivery at the lumber company's plant. A trainload of 40 to 45 cars moves from Hines to Palatka every other day. The actual time consumed in the trip from Hines to Palatka is about 8 hours.

During the month in question this log movement amounted to 3,734,936 gross ton-miles, whereas the movement between Hines and Palatka other than logs was only 128,515 gross ton-miles. Inasmuch as the latter is only 3.3 per cent of the total movement, the out-of-pocket expenses for the movement of the trains, reduced to the gross ton-mile basis, may be taken as fairly reflecting the out-of-pocket expenses attributable to logs.

The out-of-pocket expense for the total traffic, 3,863,451 gross ton-miles, was $2,398.55, made up as follows:

Account		
392	Train Enginemen	$506.19
394	Fuel for Train Locomotives	1,138.49
397	Water for Train Locomotives	39.50
398	Lubricants for Train Locomotives	8.27
399	Other Supplies for Train Locomotives	8.82
400	Enginehouse Expenses—Train	19.05
401	Trainmen	562.86
402	Train Supplies and Expenses	115.37
	Total	$2,398.55

[fol. 76] This resulted in an out-of-pocket expense for this movement of .0620831 cent per gross ton-mile. The average loading of the log cars from Hines to Palatka during November, 1930, was 64,000 pounds and the tare weight of the cars was 33,000 pounds, resulting in a gross weight on the loaded movement of 97,000 pounds, and, since the return empty movement of these cars is 100 per cent, there should be added the tare weight of the car for the empty movement, making the gross weight of the loaded and empty movement 130,000 pounds, or 65 tons. Thus, 65 tons were transported 119 miles, equivalent to 7,735 gross ton-miles for each car. If the out-of-pocket expenses on this movement, .0620831 cent per gross ton-mile, were 25.9405 per cent of the total haulage expenses, as they were on the system as a whole, then the total haulage expenses on this movement were $18.51 per car. When 6 cents per car for Federal income taxes, and $2.85 per car for Florida taxes are added, the haulage cost plus taxes is $21.42, and if $6.10 as representing a proportionate share of interest on investment at 5¾ per cent is added to the latter figure, the haulage cost plus taxes and return becomes $27.52 per car.

During the month in question the rates prescribed by the former order were in effect. The rate prescribed for the distance from Hines to Palatka, 119 miles, was 6.5 cents. This rate applied to the average weight of the Hines-Palatka shipments, 64,000 pounds, resulted in a revenue of $41.60 per car. The rate under the Cummer scale for 119 miles is 3.2 cents, yielding a revenue under the weight of 64,000 pounds of logs of $20.48 per car. This revenue is but $1.97 per car greater than the purely haulage cost of $18.51 per car. It is 94 cents less than the haulage cost plus taxes, $21.42, and is $7.04 less than the haulage cost plus taxes and interest, $27.52.

[fol. 77] The costs in connection with the trainload movement from Hines to Palatka are undoubtedly less than they are in connection with movements in single carload lots. The Cummer scale rates are not trainload rates but apply on single carloads; and all present log movements in Florida other than the Hines to Palatka movement are carload rather than trainload movements. Practically the only service performed in the Hines-Palatka movement is the road haul, except that two switches a day are made at the Palatka plant. No other terminal services, such as are necessary in single carlot movements, are performed.

The Florida interveners presented no affirmative evidence tending to show the cost of transporting logs in Florida but criticized defendant's cost evidence, their principal criticisms being that the defendant's cost figures are based on the average out-of-pocket expense of handling all traffic on the third division and that the methods employed in assigning maintenance and other expenses, taxes, and return or interest on investment to this traffic were erroneous. The unit cost figure of .0882888 cent per gross ton-mile was admitted by defendant to represent merely the average out-of-pocket expense of handling all traffic on the third division. It can not, therefore, be accepted as indicating the average out-of-pocket cost to defendant of transporting logs in Florida. Nor. Pacific Ry. v. Dept. Public Works, 268 U. S. 39; Calif. Growers' & Shippers' Protective League v. S. P. Co., 129 I. C. C. 25, 52. It appears that nearly 25 per cent of the traffic moving in Florida consists of fruits and vegetables which require special and costly service. The cost of such service enters into the average out-of-pocket cost of the third division and would apparently tend

to make it higher than the actual out-of-pocket cost of the log traffic. The conclusion seems to follow that the aver-
[fol. 78] age cost figure of .0882888 cent per gross-ton mile is higher than the actual out-of-pocket cost of the Florida log traffic.

On the other hand it appears that the unit out-of-pocket cost figure developed in connection with the Hines to Palatka movement .0620831 cent per gross-ton mile, is below the average out-of-pocket cost of the Florida log transportation. That movement, it must be remembered, was a regular one in trainload lots of 40 to 45 cars, and the cost of handling such solid trainloads direct between two given points without any intermediate train breakup in classification yards and without any switching en route, is undoubtedly less than on single carload movements which are handled in ordinary pick-up service.

There appears to be no doubt that the operating costs per unit are generally higher in Florida than the average for the defendant's system as a whole either including or excluding Florida. This is clearly indicated by various things. Using the year 1929 as illustrative, freight traffic density in Florida, expressed in terms of revenue ton-miles per mile of road operated, was 62.8 per cent of that for the system including Florida, and 50.4 per cent of that for the system excluding Florida. Using a 5-year average, 1926 to 1930, inclusive, which included the boom period, freight traffic density in Florida was 72.8 per cent of that for the system including Florida, and 63.9 per cent of that for the system excluding Florida. Also using the year 1929 as
[fol. 79] illustrative freight service train-miles in Florida were 30.63 per cent of those for the system including Florida, and freight service locomotive-miles in Florida were 30.92 per cent of those for the system including Florida, while loaded freight car-miles in Florida were 21.25 per cent of those for the system including Florida; loaded and empty freight car-miles in Florida were 22.43 per cent of those for the system including Florida, and revenue ton-miles in Florida were 25.05 per cent of those for the system including Florida. In 1929 the trains operated in freight service hauled an average of 18.16 loaded cars or 31.69 loaded and empty cars per train in Florida, as compared with 26.17 loaded cars or 43.28 loaded and empty cars per train on the system including Florida.

In determining the out-of-pocket expenses in Florida, the allocation of revenues and expenses to Florida was made by defendant on the following basis: Intrastate revenues were directly assigned and interstate revenues were apportioned to that State on the basis of a mileag prorate, the operating expenses being allocated on the basis of the operating ratio applied to the revenues. As all interstate traffic handled in Florida originates or terminates in that State, the apportionment of the revenues therefrom on the basis of a straight mileage prorate, without regard to the origin or destination terminal services involved, tends to understate the revenues from that class of traffic. Further, the Florida commission refers to the higher rates on class traffic moving to and from points in Florida south of the Jacksonville-River Junction line of the Seaboard Air Line, than on class traffic moving to and from other sections of the South, which were prescribed by this Commission in Southern Class Rate Investigation, 128 I. C. C. 567, and points out that Florida was not given proper credit on this account in apportioning the interstate rev- [fol. 80] enues on the basis of a mileage prorate. Defendant admits that the interstate revenues apportioned to Florida were understated to some extent on account of these things, but calls attention to the fact that the operating expenses were also understated, because the allocation was based upon the revenues. Defendant also refers to the service performed by the balance of its system in getting coal and supplies to Florida. Coal is charged to the operations in Florida at the average system cost, notwithstanding a substantial haul from the Alabama, Virginia, or West Virginia fields to that State is involved. The portion of the road in Florida, it is claimed, performs no like service for other parts of the system.

From the foregoing it is apparent that the operating expenses allocated by defendant to Florida are not actual but constructive expenses, and that they are understated to an unknown extent. In view of this fact, system figures including Florida, which are not in question, may be utilized as the basis for approximating the cost of transporting logs in that State. Ordinarily it would be unsound to use a system unit cost to determine the cost in a particular State, but since it is indisputable that unit costs are higher in Florida than elsewhere on the system, it

seems clear that system unit costs may be used to find a cost that may be said to be less than the cost in Florida.

Appendix E is a computation to approximate the cost of transporting logs on the basis of system average costs per unit, applied to the average carload, tare weight, empty haul, and average distance that class of traffic is hauled in Florida. In this computation attempt has been made to meet as far as possible the criticisms of the defendant's cost evidence. For instance, deduction from the freight service operating expenses has been made for wharves and docks, maintenance and operation of floating equipment, and certain traffic expenses, which the defendant concedes [fol. 81] are not involved in handling logs. The deductions for these items include their proportion of the expenses for superintendence, as well as their proportion of the general expenses. The total freight service operating expenses amounted to $36,308,813 in 1929, and these deductions aggregate $1,281,069, leaving $35,027,744 as the remainder. This amount has been apportioned 70.3539 per cent to road or haulage expenses and 29.6461 per cent to yard or non-haulage expenses; these percentages being based upon the road and yard proportions of certain of the maintenance of way and structures and transportation expenses which are segregated in the accounts between these services in accordance with our rules. These are the proportions used by the witness for the Florida commission in his apportionment of the operating expenses between road or haulage and yard or non-haulage expenses. Applied to the net amount of the freight service operating expenses above, namely $35,027,744, these percentages result in road or haulage expenses of $24,643,384, and yard or non-haulage expenses of $10,384,360.

Giving consideration to the criticism that the traffic here involved is carload traffic, and that deduction should be made for the excess terminal expense attributable to handling less-than-carload freight over that attributable to carload traffic, the amount of $2,555,778 has been deducted from the non-haulage expenses, making the net amount of the non-haulage expenses $7,828,582 applicable to carload traffic. This deduction of $2,555,778 for platform and excess clerical expenses that are involved for l. c. l. freight, but not for carload freight, is an estimate based upon 75 per cent of the aggregate amount of the expenses for

Account 373, Station employees, and Account 376, Station supplies and expenses. As a substantial part of the expenses for station employees and station supplies and ex- [fol. 82] penses is obviously attributable to carload freight, the amount that should be deducted on account of l. c. l. freight was therefore estimated at 75 per cent of these expenses.

Dividing the total haulage expenses, $24,643,384, by the total number of gross ton-miles, 11,600,829,000, comprising both revenue and non-revenue or company freight, produced an average haulage expense of .21243 cent per gross ton-mile, revenue and non-revenue.

The statistics kept by defendant made no segregation of the loaded car-miles and the gross ton-miles between revenue and non-revenue freight, and the record does not show the number of tons and ton-miles of non-revenue freight. Dut to this fact it is not practicable to segregate the cost of transporting revenue freight on the basis of including therein the cost of transporting non-revenue or company freight, so that the costs hereinafter developed are understated on this account.

Based on total loaded car-miles (revenue and non-revenue), 209,835,784, and total revenue ton-miles, 3,281,770,000, there was an average of 15.6397 tons of revenue freight carried per loaded car-mile (revenue and non-revenue). Using this figure as the divisor, and the total tons of revenue freight carried, 18,951,802, as the dividend, there was approximately a total of 1,211,775 loaded cars of revenue and non-revenue freight carried. Based on total non-haulage expenses of $7,828,582, applicable to carload traffic, the average non-haulage expense was $6.46 per loaded car.

In 1929, U. S. Government taxes (corporation income) amounted to $570,076, and other than U. S. Government taxes (state taxes) to $5,669,924, or a total of $6,240,000 for the road as a whole. Based on these figures and total operating expenses of $53,431,589, freight and passenger, [fol. 83] taxes amounted to $0.11678 per dollar of operating expenses.

Property investment in 1929 amounted to $306,439,250, and 5¾ per cent interest thereon to $17,602,257. Based on total operating expenses of $53,431,589, freight and pas-

senger, interest on investment amounted to $0.32977 per dollar of operating expenses.

Based upon the foregoing the following is a summary of the computation of the cost of transporting the average car of logs in Florida the average distance of 81.36 miles:

Operating Expenses:		
Haulage Expenses: 4,994 gross ton-miles x .21243 cent per gross ton-mile	$10.61	
Non-Haulage Expenses: Average per loaded car	6.46	
Total operating expenses		$17.07
Taxes:		
$17.07 (Oper. Exp.) x $0.11678 (Taxes per dollar of operating expense)		1.99
Interest on Investment at 5¾ Per Cent:		
$17.07 (Oper. Exp.) x $0.32977 (Interest per dollar of oper. exp.)		5.63
Total cost per car		$24.69
Cost per 100 pounds		4.35 cents
Average revenue (Cummer scale) per car of logs for average haul 81.36 miles		$15.12

The above figures undoubtedly understate the cost of transporting logs in Florida for several reasons. One of these is that costs per unit in Florida are higher than the average for the entire road or system including Florida. Another reason why the computation on the basis of average costs per unit for the system understates the cost of transporting logs in Florida, is that these average costs per unit do not include anything for joint facility and equipment rents. As heretofore indicated the cost is also understated because it does not include the cost of transporting non-revenue or company freight.

[fol. 84] It is of course well known, as defendant concedes, that it is impossible on a system like the defendant's, engaged in the general transportation of all kinds of

freight and of passengers, to determine accurately the exact cost of transporting any one commodity. From the evidence submitted in this case, however, we are convinced that the defendant's revenue under the Cummer scale of $15.12 per car for transporting a car of logs weighing 56,754 pounds a distance of 81 miles, and transporting the empty car back, is insufficient under all the circumstances and conditions to cover the full cost of the service.

Conclusions and Findings

In determining whether the Cummer scale results in unjust discrimination against interstate commerce the fundamental question, in the language of the Supreme Court in Wisconsin R. R. Comm. v. C., B. & Q. R. R. Co., 257 U. S. 563, 568, and in Florida v. United States, 282 U. S. 194, 211, is whether the traffic moving on that scale pays "a fair proportionate share" of the cost of maintaining defendant, or whether it causes an undue revenue burden upon the interstate traffic of defendant. The record shows the low earnings of defendant; the low earnings on its log traffic as compared with its earnings on other low-grade commodities; the much lower earnings on its Florida log traffic than on its interstate log traffic; and the much lower level of the Cummer scale than of other scales applicable interstate and intrastate throughout the South. These facts and the cost evidence clearly warrant the conclusion that the traffic moving under the Cummer scale does not pay its "fair proportionate share" of operation and maintenance alone.

In condemning the previous order in this case the Supreme Court did so because the ultimate finding of unjust discrimination was not properly supported by appropriate [fol. 85] subordinate findings, that is, there were no findings (1) as to the revenue which had been derived by the carrier from the traffic in question, (2) as to the revenues which could be reasonably expected under the increased rates, or (3) that the alteration of the intrastate rates would produce, or was likely to produce, additional income necessary to prevent an undue burden upon the carrier's interstate revenues and to maintain an adequate transportation service.

While the record shows that defendant's Florida log traffic declined considerably after the increase of rates on

February 8, 1929, the record further shows that there was no substantial increase in the movement after the Cummer scale was restored on April 10, 1931. The depressed condition of the lumber industry has materially affected this log traffic since the latter part of 1930, and this depressed condition, in our opinion, has been and will be of far greater importance than the level of the Florida log rates in determining the extent of the movement in the immediate future at least. The record shows that during the period of approximately two years following the increase in the rates the total movement amounted to 18,602 cars. This total included 3,740 cars transported to Eastport, Lacoochee and Otter Creek in trainload movements that have ceased and will not be resumed. Under normal economic conditions it seems probable that the annual volume of the Florida log movement under rates the same as those previously prescribed will not be less than the average of this two-year period minus the number of cars included in the discontinued trainload movements. This average is 7,431 cars. That the movement will not be less than this under normal conditions is confirmed by the fact during the five months immediately preceding the last hearing in this case, February to June, 1931, when conditions were [fol. 86] abnormal, there were shipped over defendant's lines in Florida a total of 2,765 cars of logs. This movement was at the rate of 6,636 cars a year. We believe that the movement of logs intrastate in Florida over defendant's lines will not be materially curtailed under the rates which we here prescribe, which are the same or substantially the same as the rates generally in effect and under which logs freely move throughout the South.

The freight charges collected on the 18,602 cars above referred to aggregated $571,508.94, and if the Cummer scale had applied the charges would have been $281,225.75. The freight charges collected on the 3,740 cars referred to were $100,439.06, and if the Cummer scale had applied they would have been $48,286.75. On the 14,862 cars remaining after deducting the 3,740 cars from the total movement of 18,602, the freight charges collected were $471,069.88 ($571,508.94 minus $100,439.06) and if the Cummer scale had been applicable they would have been $232,939.00

($281,225.75 minus $48,286.75), or $238,130.88 less than those actually collected. Accordingly, on the basis of an average of 7,431 cars a year under normal economic conditions, which basis we believe conservative, the gross revenues under the rates prescribed by the previous order herein would be more than $100,000 a year greater than under the Cummer scale, now in effect. The application of the Cummer scale, therefore, places a substantial burden upon defendant's interstate revenues. If the revenues yielded by the Cummer scale are not sufficient to cover the cost of the service, as the cost evidence indicates, it would follow that part of the above-stated amount would constitute a dead loss in net revenue.

We find that the circumstances and conditions surrounding the transportation of these logs intrastate in Florida [fol. 87] are not on the whole as favorable as the circumstances and conditions surrounding the interstate movement of logs over defendant's lines.

We affirm the finding of division 4 that the interstate rates previously in force on logs over six feet in length, except walnut, cherry and cedar, in carloads, from points in northern Florida to destinations in Georgia were unreasonable to the extent that they exceeded those prescribed in the report of division 4, and we find that the rates therein prescribed, which are now in effect, are reasonable.

We further find that the intrastate rates on logs over six feet in length, except walnut, cherry and cedar, applicable between points on the Atlantic Coast Line in Florida for distances of 170 miles and less are, and for the future will be, unjustly discriminatory against interstate commerce, and that such unjust discrimination can be and should be removed by the establishment between all points on the Atlantic Coast Line in Florida for distances of 170 miles or less of rates not less than the rates shown for such distances in appendix F thereto, which are the rates found reasonable for interstate application from northern Florida to Georgia.

In the former report herein division 4 found that the Cummer scale resulted and would result in undue preference and advantage of shippers of intrastate traffic within the State of Florida and in undue prejudice to shippers of interstate traffic from points in the State of Florida to points in the State of Georgia, as well as in unjust dis-

crimination against interstate commerce. The evidence introduced at the original hearing did not show any actual movement of logs from Florida to Georgia. The then existing interstate rates were more than twice as high as the Cummer scale. The evidence was conflicting as to whether [fol. 88] there were logs available in northern Florida that could be economically purchased and transported over defendant's lines to Georgia, but was not convincing that logs could not or would not so move if the interstate and intrastate rates were on the same level. As a result of the former order entered herein the rates from northern Florida to Georgia were reduced and the rates within Florida were increased and both were on the same level from February 8, 1929, to about April 10, 1931. Notwithstanding this parity of rates, it appears from the evidence introduced at the further hearing that there was no movement of logs from Florida to Georgia during that period, except possibly an occasional carload. Whether an interstate movement from Georgia to Florida will develop after the interstate and intrastate rates are again put on a parity and the rate situation finally settled, it is impossible to say at the present time. Inasmuch as we find that the Cummer scale rates cause unjust descrimination against interstate commerce from a revenue standpoint and our order herein removes that discrimination by increasing those rates on defendant's lines throughout the State of Florida to the level of the interstate rates previously prescribed and now in effect, no finding in reference to undue prejudice against persons and localities in interstate commerce is necessary and we make no finding in that regard. Any such undue prejudice as now exists because of the disparity in the intrastate and interstate rates will be removed by compliance with the order which we here enter for the purpose of removing the unjust discrimination against interstate commerce.

An appropriate order will be entered.

[fol. 89] APPENDIX A

Docket No. 18364

Letters from the Florida Railroad Commission Having Reference to the Establishment of the Cummer Scale—File #3685

Tallahassee, Oct. 9, 1914.

Railroad Commission, State of Florida

Subject: Logs—Rates to Milldale, Fla.

Mr. Jas. Menzies, F. T. M., Atlantic Coast Line R. R., Wilmington, N. C.

DEAR SIR: This office is in receipt of your Freight Tariff No. 3339, effective October 3, 1914, carrying rates on logs, C. L. between stations on the Atlantic Coast Line R. R. up to a distance of 150 miles, which tariff cancels your No. 3282, which carried rates on logs in trainloads of 28 cars.

I am directed by the Commissioners to call your attention to the paragraph in this paragraph which reads:

"When two or more cars are shipped from one station in one day by one shipper for delivery to one consignee at one destination these rates will be charged for an average carload weight of 50,000 pounds per car; excess of the average weight of 50,000 pounds per car will be charged for pro rata."

The Commissioners wish to say that they will not approve this tariff with the above paragraph incorporated therein, and will expect that you immediately re-publish the tariff with this paragraph eliminated.

When this is done, Freight Tariff No. 3339 will comply with the ideas of the Commissioners, in that the rates are stated per carload, and that they apply between all stations up to the given distance of 150 miles. The Commissioners wish it distinctly understood that this approval extends only to the method of stating the rates in this tariff and not to the rates themselves, and that in their opinion they are too low.

The rates carried in this tariff are such as might be deemed confiscatory, and there is little doubt in the minds of the Commissioners if they were to order such a scale of

rates that your company would contend that they amounted to confiscation and the taking of your property without the due process of law.

[fol. 90] To make such a scale of rates for the movement of logs in this State reduces the power of the Atlantic Coast Line R. R. Company to make other just and reasonable rates to be charged on all classes of freights that the public may be interested in. It also reduces the power of this Commission upon complaint and hearing hereafter to prescribe what might be just and reasonable rates to be charged for other freights when the entire revenues of the Atlantic Coast Line Railroad Company are to be taken into consideration. They amount practically to a discrimination against other classes of freight and all other people engaged in different lines of business.

You will recall that at the conference in Tallahassee on the 14th of July when the matter of withdrawing your log rates to Milldale, Fla., was under discussion the Commissioners advised you that they thought you should supplant the Milldale rates with your present rates on logs as they are being applied to other points in this State, which advice was based on the conviction that your log rates to Milldale were entirely too low.

The Commissioners regret that you have seen fit to publish these extremely low rates. There is no question but that the time will come when these barely remunerative rates will be used as the basis for opposition to the reduction of other rates, where perhaps a reduction might not only be justifiable but necessary, and therefore the Commissioners wish to impress upon you the fact that the low rates carried in your Freight Tariff #3339 were not only not ordered into effect or suggested by them, but were published by you in direct opposition to their advice and suggestions.

Yours very truly, (S.) J. H. Tench, Rate Expert.

[fol. 91] Railroad Commission, State of Florida

Tallahassee, Fla.,
August 18, 1915.

Mr. E. C. McLeod, Kendrick, Fla.

DEAR SIR: Replying to your letter of August 17th, with reference to the present rate on logs, carload, applicable

between stations on the Atlantic Coast Line R. R., for a distance of 150 miles and under.

Beg to advise that the Commissioners thoroughly agree with you that this rate is too low. It was not made by the Commission, nor was it put into effect with our approval. On the contrary, it was made effective contrary to the advice and wishes of the Commission. However, in order that you may become familiar with the situation, it will be necessary for me to go into the history of this rate at some length.

In April 1914, it came to the attention—of the Commission that the Atlantic Coast Line was operating a special rate on logs in trainload lots from stations on the Newberry district to Milldale, Fla., that were not only much lower than the Commission Class P rates, which were applicable on logs, but they were much lower than any other rates that the Atlantic Coast Line had in effect on logs between points in this state.

To be perfectly frank, in the opinion of the Commissioners, this was a preferential rate, made in the interest of the Cummer Lumber Company, because the timber holdings of the Cummer Lumber Co., largely lay on the Newberry District of the Atlantic Coast Line, and because of the further fact that there was no mill at Milldale except that of the Cummer Lumber Company.

The Commissioners advised the Atlantic Coast Line R. R. Co. that they would have to cancel this tariff or make it applicable between all stations on its line in Florida, and that in any event they would have to cancel the application of the rate to logs in trainload lots, as the Commissioners would not recognize anything above the carload as a rate making unit.

Much to the surprise of the Commissioners, the Atlantic Coast Line corrected the tariff so as to make it applicable between all stations, and open to every one who had as much as one car of logs to ship. As soon as this was done, we advised the Atlantic Coast Line that we did not approve of these rates, and we also asked counsel for an opinion as to whether we had authority under the law to order the cancellation of a rate on the ground that in our opinion it was too low. We could get no encouragement from counsel that the Commissioners possessed such authority under the law. [fol. 92] As further information I enclose herewith a copy

of a communication that was addressed to Mr. Jas. Menzies, Freight Traffic Manager of the Atlantic Coast Line R. R., just after their decision to publish these rates as open rates on a mileage basis.

Should the railroad at any time make application to the Commissioners to be allowed to cancel this scale of rates, we would unquestionably allow them to be canceled, but as the matter now stands the move to cancel must be made by the carrier, as the Commission is without authority to order cancellation of a rate because it is too low.

So long as the present conditions prevail it would be to your advantage to locate your mill in Ocala, for the reasons set forth in your letter. The Commissioners regret this condition exists, and I feel sure that after you read the letter to Mr. Menzies, which is attached hereto, you will be convinced that these rates are in effect, not because of any action of the Commissioners, but in spite of their expressed objection.

The present Class P rates in this state, which apply on lumber, logs and wood, were put into effect by the Commissioners after an extended investigation, not only of the lumber industry in this state and adjoining territory, but also of the financial condition of the carriers, and we are convinced that these rates are just and reasonable as applicable to this traffic. If you will compare the rates on lumber in this state with the rates on lumber in Georgia, Alabama, South Carolina, North Carolina, Virginia and Tennessee, you will find that our rates are lower than in any of these states, in which states the conditions are practically the same, except in that in each state mentioned the density of population is greater than it is in Florida.

Yours very truly, (Signed) R. Hudson Burr, Chairman.

[fol. 93]

APPENDIX B

Docket No. 18364

Florida Intrastate Log Scales Compared with Various Interstate Scales in the South, (Reduced to Cents per 100 Pounds)

	Florida Intrastate Scales				Interstate Scales in the Southeast		Interstate Scales in the Mississippi Valley		
	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9
Distance	Atlantic Coast Line* (other than cedar)	A. C. L. & S. A. L. (not over six feet in length)	Seaboard Air Line (other than cedar, and over six feet long)	Georgia Southern & Florida (other than cedar)	On A. C. L., S. A. L., Southern and as net transit rates on L. & N.	Single-line scale prescribed in 178 I. C. C. 671 to destinations in Tennessee	Net transit scale on I. C. and M. & O. (except cedar, cherry and certain foreign woods)	Local scale on Illinois Central (except cedar, walnut and cherry)	Local scale on Mobile & Ohio (except cedar, walnut, cherry and mahogany)
5 miles and under	1.71	2.14	2.81	1.95	2.5	3.5	2	3.5	4.5
10 miles and over 5	1.71	2.14	2.81	2.40	2.5	3.5	2	3.5	4.5
15 miles and over 10	1.71	2.37	2.81	3.16	3	4	2	4.5	6
20 miles and over 15	1.71	2.37	2.81	3.16	3	4	2.5	5	6
25 miles and over 20	1.71	2.75	3.37	3.66	3.5	4.5	2.5	6	7
30 miles and over 25	1.71	2.75	3.37	3.66	3.5	4.5	2.5	6	7
35 miles and over 30	1.71	2.88	3.94	3.83	4	5	3.5	6.5	7
40 miles and over 35	1.71	2.88	3.94	3.83	4	5	3.5	7	8.5
45 miles and over 40	2.10	3.25	3.94	4.33	4.5	5.5	4	8	8.5
50 miles and over 45	2.10	3.25	3.94	4.33	4.5	5.5	4.5	8.5	8.5
55 miles and over 50	2.10	3.50	4.50	4.60	4.5	6	4.5	8.5	8.5
60 miles and over 55	2.10	3.50	4.50	4.60	5	6	5	8.5	8.5
65 miles and over 60	2.30	3.75	4.50	5.00	5	6.5	5	9	8.5
70 miles and over 65	2.30	3.75	4.50	5.00	5	6.5	5	9	8.5
75 miles and over 70	2.30	4.00	5.06	5.33	5.5	7	6	10.5	8.5
80 miles and over 75	2.30	4.00	5.06	5.33	5.5	7	6	10.5	8.5
85 miles and over 80	2.30	4.25	5.63	5.66	5.5	7	6	10.5	8.5
90 miles and over 85	2.30	4.25	5.63	5.66	6	7.5	6.5	10.5	10.5
95 miles and over 90	2.60	4.50	6.19	6.00	6	7.5	6.5	11	10.5
100 miles and over 95	2.60	4.50	6.19	6.00	6	7.5	6.5	11	10.5
105 miles and over 100	2.80	4.62	6.19	6.16	6.5	8	6.5	11	10.5
110 miles and over 105	2.80	4.62	6.19	6.16	6.5	8	6.5	11	10.5
115 miles and over 110	3.20	5.00	6.19	6.66	6.5	8	6.5	11	10.5
120 miles and over 115	3.20	5.00	6.19	6.66	6.5	8	6.5	11	10.5
125 miles and over 120	3.20	5.13	6.75	....	7	8.5	7	11.5	10.5
130 miles and over 125	3.20	5.13	6.75	....	7	8.5	7	11.5	10.5
135 miles and over 130	3.40	5.13	6.75	....	7	8.5	7	11.5	10.5
140 miles and over 135	3.40	5.13	6.75	....	7	8.5	7	11.5	10.5
145 miles and over 140	3.40	5.50	7.31	....	7.5	9	7	11.5	11.5
150 miles and over 145	3.40	5.50	7.31	....	7.5	9	7	11.5	11.5
155 miles and over 150	3.40	5.75	....	....	7.5	9	7	11.5	11.5
160 miles and over 155	3.40	5.75	....	....	7.5	9	7	11.5	11.5
165 miles and over 160	3.70	6.25	....	....	8	9.5	8	12.5	11.5
170 miles and over 165	3.70	6.25	....	....	8	9.5	8	12.5	11.5
180 miles and over 170	8.33	6.25	....	....	8	9.5	....	....	....
200 miles and over 180	8.33	6.25	....	....	8.5	10	....	....	....
220 miles and over 200	8.67	6.50	....	....	9	10.5	....	....	....
240 miles and over 220	9.00	6.75	....	....	9.5	11	....	....	....
260 miles and over 240	9.17	6.87	....	....	10	11.5	....	....	....
280 miles and over 260	9.50	7.12	....	....	10.5	12	....	....	....
290 miles and over 280	9.67	7.25	....	....	11	12.5	....	....	....
300 miles and over 290	9.83	7.37	....	....	11	12.5	....	....	....

* Cummer scale to and including 170 miles; class P minimum 30,000 pounds for distances over 170 miles.

Note: On A. C. L. scale does not apply on cedar, cherry, mahogany, or walnut logs. (Scale runs to 550 miles.)

(Scale runs to 800 miles.)

Note: On I. C. does not apply on pine or walnut.

[fol. 94]

APPENDIX C

Docket No. 18364

Comparison of Cummer Scale with Intrastate Rates on Logs Between Points on the Atlantic Coast Line Railroad in Virginia, North Carolina, South Carolina, Georgia and Alabama. (Reduced to Cents per 100 Pounds)

Miles	Cummer Scale (except cedar)	Virginia (except cedar, cherry, mahogany and walnut)	North Carolina	South Carolina	Georgia		Alabama
					Transit	Local	
5	1.71	2.5	1.8	2	1.83	3.05	2.5
7	1.71	2.5	1.8	2	1.83	3.05	2.5
10	1.71	2.5	1.8	2	2.11	3.51	2.5
12	1.71	3	1.8	2.5	2.11	3.51	3
15	1.71	3	2.13	2.5	2.11	4.17	3
17	1.71	3	2.13	2.5	2.5	4.17	3
20	1.71	3	2.13	2.5	2.63	4.38	3
22	1.71	3.5	2.13	3	2.63	4.38	3.5
25	1.71	3.5	2.62	3	2.88	4.79	3.5
27	1.71	3.5	2.62	3	2.88	4.79	3.5
30	1.71	3.5	2.62	3	3	5	3.5
32	1.71	4	2.62	3	3	5	4
35	1.71	4	2.88	3	3.25	5.41	4
37	1.71	4	2.88	3	3.25	5.41	4
40	1.71	4	2.88	3	3.38	5.61	4
42	2.1	4.5	2.88	3.5	3.38	5.61	4.5
45	2.1	4.5	2.88	3.5	3.5	5.91	4.5
47	2.1	4.5	3.25	3.5	3.5	5.91	4.5
50	2.1	4.5	3.25	3.5	3.5	5.91	4.5
52	2.1	4.5	3.25	3.5	3.5	5.91	4.5
55	2.1	4.5	3.5	3.5	3.63	6.04	4.5
57	2.1	5	3.5	4	3.63	6.04	5
60	2.1	5	3.5	4	4	6.66	5
62	2.3	5	3.5	4	4	6.66	5
65	2.3	5	4	4	4.13	6.87	5
67	2.3	5	4	4	4.13	6.87	5
70	2.3	5	4	4	4.25	7.08	5
72	2.3	5.5	4	5	4.25	7.08	5.5
75	2.3	...	4.25	5	4.38	7.29	5.5
77	2.3	...	4.25	5	4.38	7.29	5.5
80	2.3	...	4.25	5	4.63	7.71	5.5
82	2.3	...	4.25	5	4.63	7.71	5.5
85	2.3	...	4.62	5	4.75	7.91	5.5
87	2.3	...	4.62	5	4.75	7.91	6
90	2.3	...	4.62	5	4.88	8.12	6
92	2.6	...	4.62	5	4.88	8.12	6
95	2.6	...	5	5	5.13	8.54	6
97	2.6	...	5	5	5.13	8.54	6
100	2.6	...	5	5	5.38	8.96	6
110	2.8	...	5.38	6.5	5.5	9.17	6.5
120	3.2	...	5.63	6.5	5.63	9.34	6.5
130	3.2	...	6.13	7	5.75	9.58	7
140	3.4	...	6.25	7	6	10	7
150	3.4	...	6.75	8	6.25	10.41	7.5
160	3.4	...	7.13	8	6.38	10.62	7.5
170	3.7	...	7.38	8	6.5	10.83	8

[fol. 95]

APPENDIX D

Docket No. 18364

Comparison of Rates and Car-Revenue Under Rates Assailed on Logs with Important Commodities Moving Between North Florida and Georgia Points on the Atlantic Coast Line

	Rates (in cents per 100 pounds)						Revenue per car					
	Logs		Georgia-Florida interstate				Logs		Georgia-Florida interstate			
Miles	Interstate	Florida intrastate	Common brick	Gravel and sand	Lime	Cement	Interstate 55,000 lbs.	Florida intrastate 55,000 lbs.	Brick 66,580 lbs.	Gravel and sand 92,540 lbs.	Lime 50,000 lbs.	Cement 70,740 lbs.
5	2.5	1.71	3	2.5	2.8	4	$13.75	$9.41	$19.97	$23.14	$14.00	$28.30
10	2.5	1.71	3	2.5	3.6	5	13.75	9.41	19.97	23.14	18.00	35.37
15	3	1.71	3.5	2.75	4	6	16.50	9.41	23.30	25.45	20.00	42.44
20	3	1.71	3.5	2.75	4.4	7	16.50	9.41	23.30	25.45	22.00	49.52
25	3.5	1.71	4	3	4.8	8	19.25	9.41	26.63	27.76	24.00	56.59
30	3.5	1.71	4	3	5.2	8	19.25	9.41	26.63	27.76	26.00	56.59
35	4	1.71	4.5	3.5	5.6	8.5	22.00	9.41	29.96	32.39	28.00	60.13
40	4	1.71	4.5	3.5	6	8.5	22.00	9.41	29.96	32.39	30.00	60.13
45	4.5	2.10	5	4	6.4	9	24.75	11.55	33.29	37.02	32.00	63.67
50	4.5	2.10		4	6.8	9	24.75	11.55	33.29	37.02	34.00	63.67
55	4.5	2.10	5	4	7.2	9.5	24.75	11.55	33.29	37.02	36.00	67.20
60	5	2.10	5	4	7.6	9.5	27.50	11.55	33.29	37.02	38.00	67.20
65	5	2.30	5.5	4.5	8	10	27.50	12.65	36.62	41.64	40.00	70.74
70	5	2.30	5.5	4.5	8.4	10	27.50	12.65	36.62	41.64	42.00	70.74
75	5.5	2.30	6	4.5	8.8	10.5	30.25	12.65	39.95	41.64	44.00	74.28
80	5.5	2.30	6	4.5	8.8	10.5	30.25	12.65	39.95	41.64	44.00	74.28
85	5.5	2.30	6.5	5	9.2	11	30.25	12.65	43.28	46.27	46.00	77.81
90	6	2.30	6.5	5	9.2	11	33.00	12.65	43.28	46.27	46.00	77.81

95.....	6	2.60	6.5	5	9.6	11.5	33.00	14.30	43.28	46.27	48.00	81.35
100.....	6	2.60	6.5	5	9.6	11.5	33.00	14.30	43.28	46.27	48.00	81.35
110.....	6.5	2.80	7	5.5	10	12	35.75	15.40	46.61	50.90	50.00	84.89
120.....	6.5	3.20	7	5.5	10	12	35.75	17.60	46.61	50.90	50.00	84.89
130.....	7	3.20	7	6	10.4	12.5	38.50	17.60	46.61	55.52	52.00	88.43
140.....	7	3.40	7	6	10.4	12.5	38.50	18.70	46.61	55.52	52.00	88.43
150.....	7.5	3.40	7.5	6	10.8	13	41.25	18.70	49.94	55.52	54.00	91.96
160.....	7.5	3.40	7.5	6.5	10.8	13	41.25	18.70	49.94	60.15	54.00	91.96
170.....	8	3.70	8	6.5	11.2	13.5	44.00	20.35	53.26	60.15	56.00	95.50

NOTE: Loadings shown are the average for the system in 1925. Average haul for system in May, 1926: logs, 109 miles; brick, 213 miles; sand and gravel, 120 miles; lime, 217 miles; cement, 243 miles.

[fol. 96] APPENDIX E

Docket No. 18364

Estimated Cost of Transporting Logs in Florida for Average Distance of 81.36 miles. Based on A.C.L. Average Costs per Unit for Calendar Year 1929 applied to the Average Units Involved in Hauling Logs in that State.

Basic Data

Operating Expenses:			
Total Freight Service Operating Expenses			$36,308,813
Expenses not involved in handling log traffic:			
Maintenance of Way and Structures:			
Acct. No.			
241—Wharves and docks		$135,980	
201—Superintendence (proportion)—5.334% x $135,980		7,253	
Maintenance of Equipment:			
323 & 324—Floating equipment—Repairs and Depreciation		33,481	
301—Superintendence (proportion)—3.845% x $33,481		1,287	
Traffic:			
352—Outside agencies	488,740		
353—Advertising	4,579		
354—Traffic associations	46,802		
356—Industrial and immigration bureaus	16,637	556,758	
351—Superintendence (proportion)—81.94% x $556,758		456,246	
Transportation—Rail Line:			
408—Operating floating equipment		33,543	
371—Superintendence (proportion)—4.392% x $33,543		1,473	
		$1,226,021	
General Expenses:			
Proportion applicable to above items—4.490% x $1,226,021	55,048		
Total expenses not involved			1,281,069
Net Freight Service Operating Expenses			$36,027,744

Apportionment between Haulage and Non-Haulage Expenses:

Net Freight Service Operating Expenses apportioned:	Haulage Expenses	Non-Haulage Expenses
70.3539% to Haulage and 29.6461% to Non-Haulage, based on proportions obtained from those of Maintenance of Way and Structures and Transportation—Rail Line accounts, which are segregated between Road or Haulage and Yard or Non-Haulage Expenses (See testimony witness Pettijohn—R.1465)	$24,643,384	$10,384,360
Deduction for excess terminal expense (platform and clerical) incurred for less-than-carload over that incurred for carload freight, estimated at 75% of Accounts 373—Station employees, and 376—Station supplies and expenses ($3,407,704 x 75%)		2,555,778
Net amounts applicable to carload traffic	$24,643,384	$7,828,582

Gross ton-miles	11,600,829,000	
Average Haulage Expense per Gross Ton-Mile	$.0021243	
Revenue Ton-Miles	3,281,770,000	
Loaded Car-Miles (Revenue and Non-Revenue)	209,835,784	
Revenue Tons per Loaded Car-Mile (Revenue and Non-Revenue)	15.6397	
Total Revenue Tons Carried	18,951,802	
Total Loaded Cars Carried (Revenue and Non-Revenue)	1,211,775	
Average Non-Haulage Expense per Loaded Car		$6.46

[fol. 97] Taxes:

U. S. Government (Corporation income)	$570,076	
Other than U. S. Government (State taxes)	5,669,924	
Total Taxes	$6,240,000	
Total Operating Expenses (Freight and Passenger)	53,431,589	
Taxes per dollar of Operating Expense		$0.11678
Interest on Investment at 5¾ per cent:		
Property Investment as of December 31, 1929	$306,439,250	
5¾ per cent Interest on Investment	17,620,257	
Interest on Investment per dollar of Operating Expense		$0.32977
Statistical Data for Log Traffic in Florida:		
Average Revenue per Car under so-called Cummer Scale	$15.12	
Average Distance Hauled—Miles	81.36	
Average Billing Weight—Pounds	56754.	
Average Tare Weight of Car—Pounds	33000.	
Average Tare Weight of Car—Empty Haul—Pounds	33000.	
Gross Weight—Pounds	122754.	
Gross Weight—Tons	61.377	
Gross Ton-Miles per car (61.377 gross tons x 81.36 Miles)	4994.	

Computation of Costs:

Estimated Cost Per Car of Hauling Logs in Florida based on A. C. L. R. R. Average Costs Per Unit:

Operating Expenses:		
Haulage Expenses: 4,994 Gross Ton-Miles x $.0021243 Per G. T. Mile	$10.61	
Non-Haulage Expenses: Average per Loaded Car	6.46	
Total Operating Expenses		$17.07
Taxes: $17.07 (Operating Expenses) x $0.11678 (Taxes per dollar of Operating Expenses)		1.99
Interest on Investment at 5¾ Per Cent:		
$17.07 (Operating Expenses) x $0.32977 (Interest per dollar of Operating Expenses)		5.63
Total Cost Per Car		$24.69
Cost per 100 pounds	4.35 cents	
Average Revenue (Cummer Scale) Per Car of Logs for Average Haul 81.36 miles		$15.12

[fol. 98] APPENDIX F

Docket No. 18364

Minimum Rates Prescribed Herein on Florida Intrastate Log Traffic

Distance	Rate[1] cents per 100 pounds
10 miles and under	2.5
20 miles and over 10	3
30 miles and over 20	3.5
40 miles and over 30	4
55 miles and over 40	4.5
70 miles and over 55	5
85 miles and over 70	5.5
100 miles and over 85	6
120 miles and over 100	6.5
140 miles and over 120	7
160 miles and over 140	7.5
170 miles and over 160	8

[1] Minimum 50,000 pounds.

[fol. 99] Order

At a General Session of the INTERSTATE COMMERCE COMMISSION, Held at Its Office in Washington, D. C., on the 5th Day of July, A. D. 1932

No. 18364

GEORGIA PUBLIC SERVICE COMMISSION

v.

ATLANTIC COAST LINE RAILROAD COMPANY

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made and filed a report on further hearing containing its findings of fact and conclusions thereon,

which said report is hereby referred to and made a part hereof:

It is ordered, That said defendant be, and it is hereby, notified and required to cease and desist from practicing the unjust discrimination found in said report to exist in the relation of intrastate and interstate rates and to establish, put in force, and maintain rates for the transportation of logs over six feet in length, except walnut, cherry, and cedar, in carloads, minimum weight 40,000 pounds, in intrastate commerce within and throughout the state of Florida for distances of 170 miles or less, which shall be the same as those set forth in Appendix F to the aforesaid report on further hearing.

And it is further ordered, That this order shall continue in force until the further order of the commission.

By the commission.

George B. McGinty, Secretary. (Seal.)

[fol. 100] EXHIBIT "B" TO BILL OF COMPLAINT

Order

At a General Session of the INTERSTATE COMMERCE COMMISSION, Held at Its Office in Washington, D. C., on the 28th Day of July, A. D. 1932

No. 18364

GEORGIA PUBLIC SERVICE COMMISSION

v.

ATLANTIC COAST LINE RAILROAD COMPANY

It is ordered, That the third paragraph of the order heretofore entered in this proceeding on July 5, 1932, be, and it is hereby, amended so as to read as follows:

And it is further ordered, That this order shall become effective on or before September 15, 1932, and that defendant shall comply therewith upon not less than thirty days' notice to this commission and to the general public by filing and posting tariffs in the manner prescribed in section 6 of the interstate commerce act, and that this order shall remain in force until the further order of the Commission.

It is further ordered, That in all other respects the aforesaid order of July 5, 1932, shall remain in force and effect.

It is further ordered, That Appendix F to the report herein on further hearing be, and it is hereby, amended so as to provide that the rates named in said Appendix F shall be subject to a minimum weight of 40,000 pounds.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 101] Recital as to Exhibits Filed in Case No. 690

Exhibit No. 1, Consists of bound volume of printed transcript of Record of State of Florida et al. v. United States of America et al., Nos. 16, 17 and 18, October Term, 1930.

Exhibit No. 2, Certified copy of proceedings before I. C. C. Docket No. 18364.

Exhibits Nos. 3, 4, 5, 6, 7, 8 and 9 are attached.

[fol. 102] Plaintiffs' Exhibit 3

Interstate Commerce Commission, Washington

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of the following:

Copy of letter dated Washington, D. C., May 15, 1931, addressed to Hon. George B. McGinty, Secretary, Interstate Commerce Commission, Washington, D. C., and The Public Service Commission, Atlanta, Georgia, signed August G. Gutheim, and of enclosure referred to therein,

Copy of copy of letter dated Tallahassee, May 16, 1931, addressed to Mr. Carl H. Davis, Atty., A. C. L. Railroad Company, Wilmington, N. C., Mr. Robt. C. Alston, Alston, Alston, Foster & Moise, 1204-16 Citizens & Southern Bank Bldg., Atlanta, Georgia, and Mr. Frank W. Gwathmey, Spec. Counsel, 1210 Shoreham Bldg., Washington, D. C., signed Florida Railroad Commission, By Theo. T. Turnbull, Counsel,

Copy of letter dated Washington, D. C., May 27, 1931, addressed to Hon. George B. McGinty, Secretary, Interstate Commerce Commission, Washington, D. C., signed H. P. Adair, C. E. Cotterill, A. G. Gutheim, J. V. Norman, Counsel for various intervening Florida log shippers,

Copy of letter dated Tallahassee, Florida, May 29, 1931, addressed to Hon. George B. McGinty, Secretary, Interstate Commerce Commission, Washington, D. C., signed Florida Railroad Commission, T. T. Turnbull, Counsel,

Copy of letter dated Washington, D. C., June 2, 1931, addressed to George B. McGinty, Esq., Secretary, Interstate Commerce Commission, Washington, D. C., signed F. W. Gwathmey, Attorney for Atlantic Coast Line Railroad Company,

Copy of copy of letter dated Washington, June 3, 1931, addressed to Mr. T. T. Turnbull, Counsel, Florida Railroad Commission, Tallahassee, Fla., signed G. B. McGinty, Secretary,

Copy of copy of letter dated Washington, June 3, 1931, addressed to Mr. H. P. Adair, Atlantic National Bank Bldg., Jacksonville, Florida, Mr. C. E. Cotterill, 525 Grant Building, Atlanta, Ga., Mr. A. C. Gutheim, 712 Jackson Place, Washington, D. C., and Mr. J. V. Norman, 1506 Inter-Southern Bldg., Louisville, Ky., signed G. B. McGinty, Secretary, and

Copy of letter dated Washington, D. C., June 4, 1931, addressed to Hon. George B. McGinty, Secretary, Inter-
[fol. 103] state Commerce Commission, Washington, D. C., signed H. P. Adair, C. E. Cotterill, A. C. Gutheim, J. V. Norman, Counsel for various intervening Florida log shippers,

now on file and of record in the office of this Commission.

In witness whereof I have hereunto set my hand and affixed the Seal of said Commission this 10th day of September, A. D. 1932. George B. McGinty, Secretary of the Interstate Commerce Commission. (Seal Interstate Commerce Commission.)

[fol. 104] August G. Gutheim, Attorney at Law, Number 712 Jackson Place, Washington, D. C.

May 15, 1931.

Hon. George B. McGinty, Secretary, Interstate Commerce Commission, Washington, D. C. The Public Service Commission, Atlanta, Georgia.

In re I. C. C. Docket No. 18364, Georgia Public Service Commission v. Atlantic Coast Line Railroad Company

Sirs: There is forwarded herewith copy of letter which counsel for various intervening log hippers in the State

of Florida have addressed to counsel for the Atlantic Coast Line Railroad Company, calling for certain information to be produced at the hearing in the above-entitled proceeding to be held in Jacksonville, Florida, on June 10, 1931.

Yours truly, August G. Gutheim.

[fol. 105] Law Offices, Knight, Adair, Cooper & Osborne

Atlantic National Bank Building,
Jacksonville, Florida,
May 14th, 1931.

Carl H. Davis, Esquire, Counsel, Atlantic Coast Line Railroad Company, Wilmington, North Carolina. Robert C. Alston, Esquire, Counsel, Atlantic Coast Line Railroad Company, Atlanta, Georgia. Frank W. Gwathmey, Esquire, Counsel, Atlantic Coast Line Railroad Company, Washington, D. C.

Re Interstate Commerce Commission Docket 18364, Georgia Public Service Commission vs. Atlantic Coast Line Railroad Company

Gentlemen: We hereby request you to produce at the further hearing to be had in Jacksonville, Florida, on June 10th, 1931, at 10:00 o'clock A. M., in the above entitled cause, the following data:

(a). A statement, supported by individual car record movements, showing by classes of logs, except cedar logs (and except ash, gum, hickory, ark, pine and cypress logs not over six feet in length), by points of origin and destination, and by rates, the number of cars, total tonnage, and charges applicable to such logs originating on your line of railroad at points in the State of Florida and destined to points in the State of Georgia, during the following periods:

February 1, 1926 to January 31, 1927.
February 1, 1927 to January 31, 1928.
February 1, 1928 to January 31, 1929.
February 1, 1929 to January 31, 1930.
February 1, 1930 to January 31, 1931.

[fol. 106] (b). A statement, supported by individual car record movements, showing by classes of logs, except cedar

logs (and except ash, gum, hickory, oak, pine and cypress logs not over six feet in length) by points of origin and destination, and by rates, (the movements under the Cummer Scale and under the scale prescribed by the Interstate Commerce Commission's order of August 2, 1928, to be so identified), the number of cars, total tonnage, and charges applicable to the transportation of such logs originating on your line of railroad at points in the State of Florida and destined to points in the State of Florida on your line of railroad, during the following periods:

February 1, 1926, to January 31st, 1927.
February 1, 1927, to January 31st, 1928.
February 1, 1928, to January 31st, 1929.
February 1, 1929, to January 31st, 1930.
February 1, 1930, to January 31st, 1931.

(c). A statement showing the gross earnings of the Atlantic Coast Line Railroad Company for the transportation of logs, except cedar logs (and except ash, gum, hickory, oak, pine and cypress logs not over six feet in length), interstate as well as intrastate over all or any parts of its railway lines wherever situate during the years ending respectively January 31st, 1927, January 31st, 1928, January 31st, 1929, January 31st, 1930, January 31st, 1931.

If it is not practicable for you to furnish the data requested in the above paragraph (c) except by calendar years, then please furnish that data for the calendar years 1926, 1927, 1928, 1929 and 1930.

Please inform us whether or not you will furnish the above data at the hearing.

A copy of this letter is being furnished the Interstate Commerce Commission and the Georgia Public Service Commission.

Very truly yours, H. P. Adair, C. E. Cotterill, A. G. Gutheim, J. V. Morman, Counsel for Various Florida Log Shippers, Interveners.

HPA/fgk.

[fol. 107] Railroad Commission, State of Florida

Tallahassee, May 16, 1931.

Mr. Carl H. Davis, Atty., A. C. L. Railroad Company, Wilmington, N. C. Mr. Robt. C. Alston, Alston, Alston,

Foster & Moise, 1204-16 Citizens & Southern Bank Bldg., Atlanta, Georgia. Mr. Frank W. Gwathmey, Spec. Counsel, 1210 Shoreham Bldg., Washington, D. C.

In re I. C. C. Docket No. 18364, Georgia Public Service Commission vs. Atlantic Coast Line Railroad Company

GENTLEMEN: We hereby request you to produce at the further hearing to be had at Jacksonville, Florida, on June 10th, 1931, at 10:00 o'clock A. M., in the above entitled cause, the following data:

(a) A statement, supported by individual car record movements, showing by classes of logs, except cedar logs (and except ash, gum, hickory, oak, pine and cypress logs not over six feet in length) by points of origin and destination, and by rates, the number of cars, total tonnage, and charges applicable to such logs originating on your line of railroad at points in the State of Florida and destined to points in the State of Georgia, during the following periods:

February 1, 1926, to January 31, 1927.
February 1, 1927, to January 31, 1928.
February 1, 1928, to January 31, 1929.
February 1, 1929, to January 31, 1930.
February 1, 1930, to January 31, 1931.

[fol. 108] (b) A statement, supported by individual car record movements, showing by classes of logs, except cedar logs (and except ash, gum, hickory, oak, pine and cypress logs not over six feet in length) by points of origin and destination, and by rates (the movements under the Cummer Scale and under the scale prescribed by the Interstate Commerce Commission's order of August 2, 1928, to be so identified), the number of cars, total tonnage, and charges applicable to the transportation of such logs originating on your line of railroad at points in the State of Florida and destined to points in the State of Florida on your line of railroad, during the following periods:

February 1, 1926, to January 31, 1927.
February 1, 1927, to January 31, 1928.
February 1, 1928, to January 31, 1929.
February 1, 1929, to January 31, 1930.
February 1, 1930, to January 31, 1931.

(c) A statement, supported by individual car record movements, showing by classes of logs, except cedar logs (and except ash, gum, hickory, oak, pine and cypress logs not over six feet in length) by points of origin and destination, and by rates, the number of cars, total tonnage, and charges applicable to such logs originating on your line of railroad in the State of Florida and destined to points of origin on the line of some other carrier in the State of Florida.

(d) A statement, supported by individual car record movements, showing by classes of logs, except cedar logs (and except ash, gum, hickory, oak, pine and cypress logs not over six feet in length) by points of origin and destination, and by rates, the number of cars, total tonnage and charges applicable to such logs originating on the line of another carrier within the State of Florida but destined to a point in the State of Florida upon the line of your railroad.

(e) A statement, supported by individual car record movements, showing by classes of logs, except cedar logs (and except ash, gum, hickory, oak, pine and cypress logs not over six feet in length) by points of origin and destination, and by rates, the number of cars, total tonnage and charges applicable to such logs originating and terminating at points in the State of Florida off your line of railroad but which have been transported over your lines as a connecting line carrier.

[fol. 109] (f) A statement showing the gross earnings of the Atlantic Coast Line Railroad Company for the transportation of logs, except cedar logs (and except ash, gum, hickory, oak, pine and cypress logs not over six feet in length) interstate as well as intrastate over all or any parts of its railway lines wherever situate during the years ending respectively January 31, 1927, January 31st, 1928, January 31st, 1929, January 31st, 1930, January 31st, 1931.

If it is not practicable for you to furnish the data requested in the above paragraph (f) except by calendar years, then please furnish that data for the calendar years 1926, 1927, 1928, 1929 and 1930 respectively.

Please inform us whether or not you will furnish the above data at the hearing.

A copy of this letter is being furnished the Interstate Commerce Commission and the Georgia Public Service Commission.

Very truly yours, Florida Railroad Commission, by Theo. T. Turnbull, Counsel.

[fol. 110] August G. Gutheim, Attorney at Law, Number 712 Jackson Place, Washington, D. C.

May 27, 1931.

Hon. George B. McGinty, Secretary, Interstate Commerce Commission, Washington, D. C.

In re I. C. C. 18364, Georgia Public Service Commission v. Atlantic Coast Line Railroad Company

DEAR SIR: The above-entitled proceeding is set for further hearing before Examiner Hoy at Jacksonville, Florida on June 10 next. The original complaint of the Georgia Public Service Commission in this proceeding attacked the lawfulness of interstate rates on logs from origins in northern Florida to destinations in Georgia. Violations of Sections 1, 3, and 13 were alleged, bringing into the case intrastate rates on logs within Florida. The report and order of the Commission, Georgia P. S. Commission v. A. C. L. R. R. Co., 146 I. C. C. 717, were found to be unlawful by the Supreme Court of the United States in Florida, et al. v. United States, 282 U. S. 194, following which a permanent injunction against the same was entered by the District Court for the Northern District of Georgia, Atlanta Division.

The Commission's order setting the case for further hearing followed. Thereupon counsel for the various intervening Florida log shippers requested the one defendant, the Atlantic Coast Line Railroad Company, under date of May 14, 1931, to prepare and to produce at the further hearing the following data:

(a). A statement, supported by individual car record movements, showing by classes of logs, except cedar logs (and except ash, gum, hickory, oak, pine and cypress logs not over six feet in length), by points of origin and destination, and by rates, the number of cars, total tonnage, and charges applicable to such logs originating on your line

of railroad at points in the State of Florida and destined to points in the State of Georgia, during the following periods:

February 1, 1926 to January 31, 1927.
February 1, 1927 to January 31, 1928.
February 1, 1928 to January 31, 1929.
February 1, 1929 to January 31, 1930.
February 1, 1930 to January 31, 1931.

[fol. 111] (b). A statement, supported by individual car record movements, showing by classes of logs, except cedar logs, (and except ash, gum, hickory, oak, pine and cypress logs not over six feet in length) by points of origin and destination, and by rates, (the movements under the Cummer Scale and under the scale prescribed by the Interstate Commerce Commission's order of August 2, 1928, to be so identified), the number of cars, total tonnage, and charges applicable to the transportation of such logs originating on your line of railroad at points in the State of Florida and destined to points in the State of Florida on your line of railroad, during the following periods:

February 1, 1926 to January 31st, 1927.
February 1, 1927 to January 31st, 1928.
February 1, 1928 to January 31st, 1929.
February 1, 1929 to January 31st, 1930.
February 1, 1930 to January 31st, 1931.

(c). A statement showing the gross earnings of the Atlantic Coast Line Railroad Company for the transportation of logs, except cedar logs (and except ash, gum, hickory, oak, pine and cypress logs not over six feet in length), interstate as well as intrastate over all or any parts of its railway lines wherever situate during the years ending respectively January 31st, 1927, January 31st, 1928, January 31st, 1929, January 31st, 1930, January 31st, 1931.

If it is not practicable for you to furnish the data requested in the above paragraph (c) except by calendar years, then please furnish that data for the calendar years 1926, 1927, 1928, 1929 and 1930."

A copy of our communication to the carrier was mailed to you and to complainant under date of May 15, 1931.

Under date of May 21, 1931, we are in advice from Mr. Frank W. Gwathmey, Special Counsel for the defendant in this matter, as follows:

"While we expect to submit at this hearing certain data concerning the movement of logs by the Atlantic Coast Line Railroad Company, and the revenue derived therefrom, we regret that we are not in a position to compile and furnish the information requested in your respective letters. The records of the movement of logs during the yearly periods referred to by you have not been kept upon the basis of a separation as between the several classes or length of logs handled. Neither during the periods referred to, nor at the present time, is it the practice of shippers to indicate in their bills of lading the class of logs offered for shipment, except in the case of cedar logs, upon which special rates have been applied. For these reasons, the underlying data necessary to compile the statements which you request is not available. In addition, it would not be practicable to compile this information within the time available even if it could be obtained by an examination of the original records of the company."

[fol. 112] When this complaint was first filed the Atlantic Coast Line Railroad Company, defendant, denied the allegations of unlawfulness and prayed that the complaint be dismissed. The developments in the proceedings since would seem to indicate that the Atlantic Coast Line no longer assumes the position of a defendant but stands with the complainant.

In view of the allegations of violation of Sections 1, 3, and 13 of the Act, it would seem that there should be of record before the Commission in the further hearing all of the data which these intervening Florida log shippers requested the carrier to produce.

In view of the carrier's refusal to furnish the information requested, counsel for the various Florida log shippers respectfully request that the Commission issue its subpoena duces tecum upon the Atlantic Coast Line Railroad Company requiring the carrier to produce the data requested as above set forth at the further hearing in this proceeding at Jacksonville, Florida on June 10, 1931.

Yours truly, (S'g'n) H. P. Adair, C. E. Cotterill, A. G. Gutheim, J. V. Norman, Counsel for Various Intervening Florida Log shippers.

Copy for Messrs. Robert C. Alston, Carl H. Davis, Frank W. Gwathmey.

[fol. 113] August G. Gutheim, Attorney at Law, Number 712 Jackson Place, Washington, D. C.

Tallahassee, Florida,

May 29, 1931.

Hon. George B. McGinty, Secretary, Interstate Commerce Commission, Washington, D. C.

In re I. C. C. Docket 18364, Georgia P. S. Commission v. A. C. L. R. R. Co.

DEAR SIR: The above-styled proceeding is set for further hearing at Jacksonville, Fla. on June 10 before Examiner Hoy. The original complaint in this case was brought by the Georgia Public Service Commission, attacking the lawfulness of interstate rates on logs from origins in northern Florida to destinations in Georgia; the complaint alleged violations of Sections 1, 3, and 13, thus bringing into the case intrastate rates on logs within the State of Florida. The report and order of the Commission, Georgia P. S. Commission v. A. C. L. R. R. Co., 146 I. C. C. 717, were found to be unlawful by the Supreme Court of the United States in Florida v. United States, 282 U. S. 194. A permanent injunction against the order of the Commission was subsequently entered by the District Court for the Northern District of Georgia, Atlanta Division. The order of the Interstate Commerce Commission setting the case for further hearing followed.

Thereupon the Florida Railroad Commission, an intervener, addressed the Atlantic Coast Line Railroad Company, defendant, requesting it to prepare and produce at the further hearing the following data:

(a). A statement supported by individual car record movements, showing by classes of logs, except cedar logs (and except ash, gum, hickory, oak, pine and cypress logs not over six feet in length), by points of origin and destination, and by rates, the number of cars, total tonnage and charges applicable to such logs originating on your line of railroad at points in the State of Florida and destined to

points in the State of Georgia, during the following periods:

February 1, 1926 to January 31, 1927.
February 1, 1927 to January 31, 1928.
February 1, 1928 to January 31, 1929.
February 1, 1929 to January 31, 1930.
February 1, 1930 to January 31, 1931.

(b). A statement, supported by individual car record movements, showing by classes of logs, except cedar logs (and except ash, gum, hickory, oak, pine and cypress logs not over six feet in length), by points of origin and destination, and by rates, (the movements under the Cummer Scale and under the scale prescribed by the Interstate Commerce Commission's order of August 2, 1928, to be so identified), the number of cars, total tonnage, and charges [fol. 114] applicable to the transportation of such logs originating on your line of railroad at points in the State of Florida and destined to points in the State of Florida on your line of railroad during the following periods:

February 1, 1926 to January 31, 1927.
February 1, 1927 to January 31, 1928.
February 1, 1928 to January 31, 1929.
February 1, 1929 to January 31, 1930.
February 1, 1930 to January 31, 1931.

(c). A statement supported by individual car record movements, showing by classes of logs, except cedar logs (and except ash, gum, hickory, oak, pine and cypress logs not over six feet in length) points of origin and destination, and by rates, the number of cars, total tonnage, and charges applicable to such logs originating on your line of railroad in the State of Florida and destined to points of origin on the line of some other carrier in the State of Florida.

(d). A statement, supported by individual car record movements, showing by classes of logs, except cedar logs (and except ash, gum, hickory, oak, pine and cypress logs not over six feet in length) by points of origin and destination, and by rates, the number of cars, total tonnage, and charges applicable to such logs originating on the line of another carrier within the State of Florida but destined to

a point in the State of Florida upon the line of your railroad.

(e). A statement supported by individual car record movements, showing by classes of logs, except cedar logs (and except ash, gum, hickory, oak, pine and cypress logs not over six feet in length) by points of origin and destination, and by rates, the number of cars, total tonnage and charges applicable to such logs originating and terminating at points in the State of Florida off your line of railroad but which have been transported over your lines as a connecting line carrier.

(f). A statement showing the gross earnings of the Atlantic Coast Line Railroad Company for the transportation of logs, except cedar logs (and except ash, gum, hickory, oak, pine and cypress logs not over six feet in length) interstate as well as intrastate overall or any parts of its railway lines wherever situate during the years ending respectively January 31st, 1927, January 31st, 1928, January 31st, 1929, January 31st, 1930, and January 31st, 1931.

If it is not practicable for you to furnish the data requested in the above paragraph (f) except by calendar years, then please furnish this data for the calendar years 1926, 1927, 1928, 1929, and 1930 respectively."

Items (a), (b) and (f) are the identical data requested also by the various intervening Florida log shippers.

Under date of May 21, Mr. Frank W. Gwathmey, Special Counsel for the Atlantic Coast Line, addressed me jointly with Messrs. Knight, Odair, Cooper & Osborne, one of counsel for the Florida log shippers, as follows:

[fol. 115] "While we expect to submit at this hearing certain data concerning the movement of logs by the Atlantic Coast Line Railroad Company, and the revenue derived thereon, we regret that we are not in a position to compile and furnish the information requested in your respective letters. The records of the movement of logs during the yearly periods referred to by you have not been kept upon the basis of a separation of the interstate and intrastate movements, nor of the separation as between the several classes, or length of logs handled. Neither during the periods referred to, nor at the present time, is it the practice of shippers to indicate in their bills of lading the class

of logs offered for shipment, except in the case of cedar logs, upon which special rates have been applied. For these reasons, the underlying data necessary to compile the statements which you request is not available. In addition, it would not be practicable to compile this information within the time available even if it could be obtained by an examination of the original records of the company."

Because of the allegations in the complaint of violation of Sections 1 and 3, and particularly also, of Section 13, of the Interstate Commerce Act, it would seem to us that there should be submitted at the further hearing all of the data which we have asked the Atlantic Coast Line to produce, and which they have declined to furnish.

In view of the carrier's refusal to furnish the information requested, the Florida Railroad Commission respectfully requests that the Interstate Commerce Commission issue its subpoena duces tecum upon the Atlantic Coast Line Railroad Company requiring the carrier to produce the data outlined above at the further hearing in this proceeding at Jacksonville, Florida, on June 10, 1931.

Yours truly, Florida Railroad Commission, By T. T. Turnbull, Counsel.

Copy for Messrs. Robert C. Alston, Frank W. Gwathmey, Carl D. Davis.

Copy.

[fol. 116] Atlantic Coast Line Railroad Company, Central of Georgia Railway Company, Ocean Steamship Company of Savannah, Florida East Coast Railway Company, Merchants and Miners Transportation Co., Clinchfield Railroad Company, Charleston and Western Carolina Railway Co., Eastern Steamship Lines, Inc.

Seaboard Air Line Railway Company, Richmond, Fredericksburg & Potomac R. R. Co., Nashville, Chattanooga & St. Louis Railway, Clyde Steamship Company, Atlanta and West Point Railroad Company, The Western Railway of Alabama, Georgia Railroad.

Frank W. Gwathmey, special counsel; Henry Thurtell, assistant special counsel, Charles P. Reynolds, attorney; Richard B. Gwathmey, attorney.

Office of Special Counsel, Interstate Commerce Cases,
1210 Shoreham Building, Washington, D. C.

Refer to File No. 1590

June 2, 1931. fwg.

I. C. C. Docket No. 18364

GEORGIA PUBLIC SERVICE COMMISSION

v.

ATLANTIC COAST LINE RAILROAD COMPANY

George B. McGinty, Esq., Secretary,
Interstate Commerce Commission,
Washington, D. C.

DEAR SIR: I have copy of a letter to you dated May 27th from counsel for certain shipper interveners in the above case in which the Commission is requested to issue its subpoena duces tecum to require the Atlantic Coast Line Railroad Company to produce certain data at the hearing set for June 10, 1931.

Your attention is respectfully directed to the statement in my letter of May 21st (quoted in the letter of May 27th) that the Atlantic Coast Line Railroad Company has no records from which this data can be compiled; also to the fact that the subpoena requested by opposing counsel is not for the production of any document or paper which is now in the defendant's possession, but it is sought rather to compel the defendant through subpoena to prepare and compile certain statements; and in addition, that the request relates to a miscellaneous mass of information, very large in volume, with no indication whatever as to the extent, if any, of the relevancy thereof to any issue in the proceeding.

Under these conditions, it is respectfully urged on behalf of the defendant that no subpoena should be issued.

[fol. 117] Very truly yours, (S.) F. W. Gwathmey, Attorney for Atlantic Coast Line Railroad Company.

Copy to August T. Gutheim, Esq., 712 Jackson Place, Washington, D. C. Messrs. Knight, Adair, Copper & Os-

borne, Atlantic National Bank Building, Jacksonville, Fla. Charles E. Cotterill, Esq., Grant Building, Atlanta, Ga. Theo. T. Turnbull, Esq., c/o Florida Railroad Commission, Tallahassee, Fla. J. V. Norman, Esq., Inter-Southern Louisville, Ky.

[fol. 118] EJH:JPM.

Interstate Commerce Commission, Washington

June 3, 1931.

Mr. T. T. Turnbull, Counsel, Florida Railroad Commission, Tallahassee, Fla.

DEAR SIR: This is in response to your letter of May 29th relative to Docket No. 18364, Georgia Public Service Commission v. Atlantic Coast Line Railroad Company. You state therein that on May 14th you requested defendant to prepare and produce at the further hearing on June 10, 1931, certain data, consisting of statements, supported by individual car record movements, showing by classes of logs, by points of origin and destination, and by rates, number of cars, total tonnage, and charges applicable on logs, except cedar logs (and except ash, gum, hickory, oak, pine, and cypress logs not over six feet in length) originating on defendant's line in Florida and destined to points in Georgia during certain periods, showing similar information as to such logs originating at and destined to points on defendant's line in Florida during the same periods, and showing the gross earnings of defendant for the transportation of such logs over all of its lines during certain periods. You also quote from the reply of Mr. Frank W. Gwathmey, counsel for defendant, in which he states that defendant's records have not been kept in such form as would enable it to furnish the statements which you requested. You further state that it would seem to you that all of the data which you requested defendant to produce should be of record in this case, and request, in view of defendant's refusal to furnish same, that the Commission issue its subpœna duces tecum upon defendant requiring it to produce the data requested at the further hearing on June 10th.

Your request is for a subpœna duces tecum to produce certain data, consisting of certain statements to be com-

piled by defendant, which data seems to you should be of record in this proceeding but which defendant states it cannot furnish. You do not specify just what books, papers, or documents of defendant you desire it to produce at the further hearing, as required by rule XII (b) of the Rules of Practice. That rule also provides that there should be a showing that the books, papers or documents sought will be of service in the determination of the proceeding. There is no such showing in your letter of May 29th.

It seems apparent, as stated by Mr. Gwathmey, that even if the statements which you desire could be compiled from the original records of defendant, there is not sufficient time within which it could be done before the further hear-
[fol. 119] ing on June 10th. Mr. Gwathmey states that defendant expects to submit certain data concerning the movement of logs over its lines and the revenues derived therefrom and it may well be that such data will be sufficiently complete and satisfactory to all parties and to the Commission that additional data will not be deemed necessary.

Respectfully, G. B. McGinty, Secretary.

[fol. 120] EJH:JPM.

Interstate Commerce Commission, Office of the Secretary, Washington

George B. McGinty, Secretary.

June 3, 1931.

Mr. H. P. Adair, Atlantic National Bank Bldg., Jacksonville, Florida. Mr. C. E. Cotterill, 525 Grant Building, Atlanta, Ga. Mr. A. C. Gutheim, 712 Jackson Place, Washington, D. C. Mr. J. V. Norman, 1506 Inter-Southern Bldg., Louisville, Ky.

DEAR SIRS: This is in response to your joint letter of May 27th relative to Docket No. 18364, Georgia Public Service Commission v. Atlantic Coast Line Railroad Company. You state therein that on May 14th you requested defendant to prepare and produce at the further hearing on June 10, 1931, certain data, consisting of statements, supported by individual car record movements, showing

by classes of logs, by points of origin and destination, and by rates, number of cars, total tonnage, and charges applicable on logs, except cedar logs (and except ash, gum, hickory, oak, pine, and cypress logs not over six feet in length) originating on defendant's line in Florida and destined to points in Georgia during certain periods, showing similar information as to such logs originating at and destined to points on defendant's line in Florida during the same periods, and showing the gross earnings of defendant for the transportation of such logs over all of its lines during certain periods. You also quote from the reply of Mr. Frank W. Gwathmey, counsel for defendant, in which he states that defendant's records have not been kept in such form as would enable it to furnish the statements which you requested. You further state that it would seem to you that all of the data which you requested defendant to produce should be of record in this case, and request, in view of defendant's refusal to furnish same, that the commission issue its subpœna duces tecum upon defendant requiring it to produce the data requested at the further hearing on June 10th.

Your request is for a subpœna duces tecum to produce certain data, consisting of certain statements to be compiled by defendant, which data seems to you should be of record in this proceeding but which defendant states it [fol. 121] cannot furnish. You do not specify just what books, papers, or documents of defendant you desire it to produce at the further hearing, as required by rule XII (b) of the Rules of Practice. That rule also provides that there should be a showing that the books, papers or documents sought will be of service in the determination of the proceeding. There is no such showing in your letter of May 27th.

It seems apparent, as stated by Mr. Gwathmey, that even if the statements which you desire could be compiled from the original records of defendant, there is not sufficient time within which it could be done before the further hearing on June 10th. Mr. Gwathmey states that defendant expects to submit certain data concerning the movement of logs over its lines and the revenues derived therefrom and it may well be that such data will be sufficiently complete and satisfactory to all parties and to the Commission that additional data will not be deemed necessary.

Respectfully, G. B. McGinty, Secretary.

Copies to: Mr. Carl H. Davis, Counsel, Atlantic Coast Line Railroad Company, Wilmington, N. C. Mr. Robert C. Alston, Counsel, Atlantic Coast Line Railroad Company, Atlanta, Ga. Mr. Frank W. Gwathmey, Counsel, Atlantic Coast Line Railroad Company, Washington, D. C.

[fol. 122] August G. Gutheim, Attorney At Law, Number 8 Jackson Place

Washington, D. C., June 4, 1931.

Hon. George B. McGinty, Secretary, Interstate Commerce Commission, Washington, D. C.

In re I. C. C. 18364, Georgia Public Service Commission v. Atlantic Coast Line R. R. Co.

DEAR SIR: With reference to your letter of June 3 addressed jointly to Messrs. H. P. Adair, C. E. Cotterill, J. C. Norman and myself in the matter of our request in joint letter of May 27 for subpœna duces tecum on proper officers of the Atlantic Coast Line to produce certain data outlined therein for the further hearing in the above-entitled proceeding at Jacksonville, Florida on June 10 before Examiner Hoy.

Counsel for these intervening Florida log shippers are without information as to what specific books or papers or documents of the defendant, Atlantic Coast Line Railroad Company contain the data which is sought. That is information which is peculiarly in the hands of the carrier. Moreover, the defendant Atlantic Coast Line Railroad Company has not informed us as to the nature of the "certain data concerning the movement of logs by the Atlantic Coast Line Railroad Company and the revenue derived therefrom" and we are therefore unable to advise the Commission whether it will be sufficiently complete and satisfactory.

We are however, still of the opinion that the data asked for in our letter of May 27 is necessary, and we respectfully renew our request for the issuance of subpœna duces tecum upon the proper officers of the Atlantic Coast Line for same, to cover all books, documents, and other papers which contain the data required. Our letter of May 27, page 3, first two paragraphs, outlines the reasons why the

data sought would be of service in the determination of the proceeding.

In Florida, et al. v. United States, 282 U. S. 194, the Supreme Court found unlawful the order of the Interstate Commerce Commission entered in the above-entitled proceeding, now set for further hearing. Violations of Sections 1, 3, and 13 of the Interstate Commerce Act were alleged in the original complaint, and of course, are again in issue in the further hearing. Developments since the original complaint was filed point to the fact that the defendant Atlantic Coast Line will stand with complainant. In Florida, et al. v. United States, supra, the Supreme Court, in discussing the Section 13 aspect of the case, said:

[fol. 123] "* * * it must appear that there are findings, supported by evidence, of the essential facts as to *the particular traffic and revenue*, and the effect of the interstate rates * * * upon the income of the carrier * * *." (Italics ours.)

And again—"In dealing with unjust discrimination as between persons and localities in relation to interstate commerce, the question is one of the relation of rates to each other."

And also that in considering the authority to change intrastate rates in the interest of the carrier's revenue, "the question is that of the relation of rates to income."

We therefore respectfully submit that the data which these intervening Florida log shippers seek through the issuance of a subpœna duces tecum is of vital importance in the proper determination of this proceeding by the Commission, and urge that the defendant Atlantic Coast Line Railroad Company be required to produce same.

If such data is not furnished at the hearing now set for Jacksonville June 10, we shall reserve the right to ask that the Commission give this request further consideration, to the end that this information be placed before the Commission before the case is finally presented for a determination of the issues raised.

Yours truly, (S'g'n) H. P. Adair, C. E. Cotterill, A. G. Gutheim, J. V. Norman, Counsel for Various Intervening Florida Log Shippers.

Copy for Messrs. Robert C. Alston, Carl H. Davis, Frank W. Gwathmey.

[fol. 124] PLAINTIFF'S EXHIBIT 4

INTERSTATE COMMERCE COMMISSION, WASHINGTON

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of order of the Commission entered May 19, 1914, Classification of Operating Revenues and Operating Expenses of Steam Roads, prescribed by the Interstate Commerce Commission, in accordance with Section 20 of the Act to Regulate Commerce, effective July 1, 1914; of orders of the Commission entered June 2, 1924, July 25, 1925, April 18, 1928, and November 23, 1928, In the Matter of a Uniform System of Accounts to be kept by Steam Roads; and of order of the Commission entered June 2, 1924, In the Matter of the Recovery and Payment of Excess Net Railway Operating Income Under the Provisions of Section 15a of the Interstate Commerce Act, the originals of which are now on file and of record in the office of this Commission.

In witness whereof I have hereunto set my hand and affixed the Seal of said Commission this 6th day of September, A. D. 1932.

George B. McGinty, Secretary of the Interstate Commerce Commission. (Seal Interstate Commerce Commission. 1887.)

CLASSIFICATION
OF
OPERATING REVENUES AND OPERATING EXPENSES
OF
STEAM ROADS

PRESCRIBED BY THE
INTERSTATE COMMERCE COMMISSION
IN ACCORDANCE WITH SECTION 20 OF THE
ACT TO REGULATE COMMERCE

ISSUE OF 1914

Effective on July 1, 1914

WASHINGTON
GOVERNMENT PRINTING OFFICE
1914

CLASSIFICATION

OF

OPERATING REVENUES AND OPERATING EXPENSES

OF

STEAM ROADS

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INTERSTATE COMMERCE COMMISSION

"IN ACCORDANCE WITH SECTION 20 OF THE ACT TO REGULATE COMMERCE

ISSUE OF 1914

Effective on July 1, 1914

WASHINGTON
GOVERNMENT PRINTING OFFICE
1914

THE INTERSTATE COMMERCE COMMISSION.

JAMES S. HARLAN, *of Illinois.*
JUDSON C. CLEMENTS, *of Georgia.*
EDGAR E. CLARK, *of Iowa.*
CHARLES C. MCCHORD, *of Kentucky.*
BALTHASAR H. MEYER, *of Wisconsin.*
HENRY C. HALL, *of Colorado.*
WINTHROP M. DANIELS, *of New Jersey.*
GEORGE B. MCGINTY, *Secr*

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ORDER.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 19th day of May, 1914.

The subject of a Uniform System of Accounts to be prescribed for and kept by carriers being under consideration, the following order was entered:

It is ordered, That the Classification of Operating Revenues and Operating Expenses of Steam Roads and the text pertaining thereto, embodied in printed form to be hereafter known as Issue of 1914, a copy of which is now before this Commission, be, and is hereby, approved; that a copy thereof duly authenticated by the Secretary of the Commission be filed in its archives, and a second copy thereof, in like manner authenticated, in the office of the Division of Carriers' Accounts; and that each of said copies so authenticated and filed shall be deemed an original record thereof.

It is further ordered, That the said Classification of Operating Revenues and Operating Expenses of Steam Roads, with the text pertaining thereto, be, and is hereby, prescribed for the use of carriers by rail (exclusive of electric railways) subject to the provisions of the Act to Regulate Commerce as amended, in the keeping and recording of their operating revenue and operating expense accounts; that each and every such carrier and each and every receiver or operating trustee of any such carrier be required to keep all operating revenue and operating expense accounts in conformity therewith; and that a copy of the said issue be sent to each and every such carrier and to each and every receiver or operating trustee of any such carrier.

It is further ordered, That any such carrier or any receiver or operating trustee of any such carrier may subdivide any primary account established in the said issue or may make assignment of the amount credited or charged to any such primary account to operating divisions, to its individual lines, or to States: *Provided, however*, That such subprimary accounts set up or such assignments made by any such carrier or by any receiver or operating trustee of any such carrier do not impair the integrity of the accounts hereby prescribed: *And provided also*, That a list of such subprimary accounts set up or such assignments made be first filed in the office of the Division of Carriers' Accounts, subject to disapproval by the Commission.

It is further ordered, That in order that the basis of comparison with previous years be not destroyed, any such carrier or any receiver or operating trustee of any such carrier may, during the twelve months from the time that the said issue becomes effective, keep and maintain, in addition to the operating revenue and operating expense accounts hereby prescribed, such portion or portions of its present accounts with respect to operating revenue and operating expense items as may be deemed desirable by any such carrier or by any receiver or operating trustee thereof, for the purpose of such comparison; or, during the same period, may maintain such groupings of the primary accounts hereby prescribed as may be desired for that purpose.

It is further ordered, That, unless otherwise ordered, any such carrier or any receiver or operating trustee of any such carrier may keep any temporary or experimental accounts for revenues or expenses, the purpose of which shall be to develop the efficiency of operations: *Provided, however*, That such temporary or experimental accounts shall not impair the integrity of any general or primary account hereby prescribed.

It is further ordered, That July 1, 1914, be, and is hereby, fixed as the date on which the said issue of the Classification of Operating Revenues and Operating Expenses of Steam Roads shall become effective.

By the Commission:

GEORGE B. MCGINTY,
Secretary.

[SEAL.]

INTRODUCTORY LETTER.

INTERSTATE COMMERCE COMMISSION,
DIVISION OF CARRIERS' ACCOUNTS,
Washington, May 19, 1914.

TO ACCOUNTING OFFICERS OF STEAM RAILWAYS:

This Classification of Operating Revenues and Operating Expenses supersedes the Classification of Operating Revenues, First Issue, effective July 1, 1907, and the Supplement thereto, effective July 1, 1908; the Classification of Operating Expenses, Third Revised Issue, effective July 1, 1907, and the Supplement thereto, effective July 1, 1908; and the Classification of Revenues and Expenses for Outside Operations, First Issue, effective July 1, 1908. It also supersedes conflicting instructions contained in Accounting Bulletin No. 8.

Accounts are provided in this classification for the revenues and expenses of operations which heretofore have been classed as auxiliary or outside operations. The purpose in merging these accounts has been to secure a statement of revenues and expenses in connection with the operation of all physical property the cost of which is includible in the accounts for investment in road and equipment.

The accounts for maintenance of physical property have been arranged to correspond with those for the investment in such property. Depreciation accounts have been provided for the current depreciation of fixed improvements, although until further directed the recognition in operating expenses of current depreciation of fixed improvements is optional with the carrier. It is provided that organization and general administration expenses directly assignable to investments in stocks, bonds, and other securities shall be excluded from the accounts of this classification and included in income account No. 549, "Maintenance of investment organization."

The general and special instructions contain a comprehensive statement of the principles underlying the classification, indicating generally the application of the accounting rules. The attention of accounting officers is called to the importance of requiring all employees who are assigned to accounting work in connection with operating revenues and operating expenses to familiarize themselves thoroughly with these instructions.

In the preparation of the revision of the accounting rules contained in this and other classifications for steam roads, which are concurrently issued, the Commission has had the cooperation of the Association of American Railway Accounting Officers and of its Standing Committee on Corporate, Fiscal, and General Accounts.

The classification, in tentative form, has been presented for criticism and suggestions to the chief accounting officer of each railway and to the railway commissions of the several States. All suggestions received from such parties have been given careful consideration, and many of them have been incorporated in the classification as here issued.

FRED W. SWENEY,
Chief Examiner of Accounts.

GENERAL INSTRUCTIONS.

The carrier's records shall be kept with sufficient particularity to show fully the facts pertaining to all entries made in the accounts provided herein for railway operations. Where the full information is not recorded in the general books, the entries therein shall be supported by other records in which the full details shall be shown. Such general book entries shall contain sufficient reference to the detail records to permit ready identification, and the detail records shall be filed in such manner as to be readily accessible for examination by representatives of the Interstate Commerce Commission.

1. OPERATING ACCOUNTS.—The accounts of this classification are designed to show the revenues and expenses (including the maintenance of the facilities used) of the carrier's railway operations, including rail-line transportation, water-line transportation, if any, and services incident to transportation.

Transportation includes the receipt, conveyance, and delivery of traffic.

Rail-line transportation includes not only the conveyance of traffic over tracks, but also the necessary conveyance by water transfers (ferriage, lighterage, and floatage) either between track terminals or between track terminals and points not reached by tracks, such as the water transfers at present operated by carriers having track terminals at New York harbor, and the water transfers at present operated by the—

Ann Arbor Railroad Company between Frankfort, Mich., and Manistee, Mich., Menominee, Mich., Kewaunee, Wis., and Manitowoc, Wis.

Atchison, Topeka & Santa Fe Railway Company between Ferry Point, Cal., and San Francisco, Cal.

Morgan's Louisiana & Texas Railroad & Steamship Company across the Mississippi River near New Orleans, La.

Nashville, Chattanooga & St. Louis Railway between Incline, Ala., and Gunters Landing, Ala.

New York, Philadelphia & Norfolk Railroad Company between Cape Charles, Va., and Norfolk, Va.

Southern Railway Company between Pinners Point, Va., and Norfolk, Va.

Southern Pacific Company between Oakland, Cal., and San Francisco, Cal.

Water-line transportation includes the transportation of local traffic from port to port, and the transportation of both local and interline rail and water-line traffic from port to port, such as the water-line transportation operations at present conducted by the—

Baltimore, Chesapeake & Atlantic Railway Company on Chesapeake Bay and the Potomac River.

Central Railroad Company of New Jersey between New York, N. Y., and Atlantic Highlands, N. J.

Erie Railroad Company between Buffalo, N. Y., and Manitowoc, Wis., Milwaukee, Wis., and Chicago, Ill.

Southern Pacific Company between New York, N. Y., and New Orleans, La.; between New York, N. Y., and Galveston, Tex.; between New Orleans, La., and Habana, Cuba; and between San Francisco, Cal., and Sacramento, Cal.

Incidental revenues from meals, liquors, books, periodicals, etc., sold on vessels, have, because of established practice, been provided for in the primary accounts included in revenue general account II, Transportation—Water Line.

Carriers are at liberty to subdivide the general and primary accounts here given, but if this option be exercised a statement of the accounts adopted shall be filed in the office of the Division of Carriers' Accounts of the Interstate Commerce Commission.

The carrier means the accounting carrier, except when otherwise specifically indicated.

2. UNAUDITED ITEMS AFFECTING OPERATING ACCOUNTS.—When for any cause the amount of any item affecting operating revenues or operating expenses can not be accurately determined in time for inclusion in the accounts of the month in which the transaction occurs, the amount of the item shall be estimated and in such form charged or credited to operating accounts and credited to balance-sheet account No. 778, "Other unadjusted credits," or charged to balance-sheet account No. 727, "Other unadjusted debits," as may be appropriate, the necessary adjustments being made later when the item is audited. The carrier is not required to anticipate minor items which would not appreciably affect the operating accounts.

3. DELAYED ITEMS.—When no provision has been made through entries in the accounts of these classifications for anticipating delayed items chargeable or creditable to the accounts herein, and the amount of any such item is relatively so large that its inclusion in the accounts for a single year would seriously distort those accounts, the carrier, if so authorized upon application to the Interstate Commerce Commission, shall distribute to Profit and Loss so much of the amount as may be authorized.

The carrier shall file with the Commission for approval the full particulars concerning each such item and the reasons which, in its judgment, indicate the propriety of such accounting.

When the amount of a delayed item is relatively so large that its inclusion in the accounts for a single month will seriously distort those accounts it may be distributed in equal monthly charges to the remaining months of the current fiscal year.

Delayed items are items representing transactions which occurred before the current fiscal year.

4. MISCELLANEOUS OPERATIONS.—The revenue and expenses of miscellaneous operations involving the use of such facilities as hotels and restaurants, power plants, cold-storage plants, coal-storage plants, cotton-compress plants, wood-preserving plants, ice-supply plants, etc., shall not be included in the accounts of this classification when the facilities used are distinct from those used by the carrier in the service of transportation or in the maintenance of facilities used in transportation service, and the operations are not incident to such service. (See income accounts No. 502, "Revenues from miscellaneous operations," and No. 534, "Expenses of miscellaneous operations," and balance-sheet account No. 705, "Miscellaneous physical property.")

5. SUBMISSION OF QUESTIONS.—To the end that uniformity of accounting may be maintained from year to year, carriers shall submit all questions of doubtful interpretation of the accounting rules to the Commission for consideration and decision.

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SPECIAL INSTRUCTIONS.

1. ACCOUNTS FOR OPERATING REVENUES.—The accounts provided for operating revenues are designed to show amounts of money which a carrier becomes entitled to receive from transportation and from operations incident thereto.

Credits to the revenue accounts shall as nearly as practicable be upon the basis of accruals of revenue.

No charge shall be made against the accounts of this classification for amounts representing tariff charges which for any cause are uncollected, the service for which the charge is made having been properly performed and individuals or companies being liable for the charges.

Uncollectible charges against individuals and companies, representing tariff charges for transportation service rendered for which such individuals and companies are liable, shall be charged to income account No. 533, "Uncollectible railway revenues." This includes items such as charges where credit has been extended and the debtor becomes insolvent, and also uncollectible undercharges discovered after the service has been rendered.

Uncollected tariff charges on unclaimed and refused shipments of freight, such refused shipments having been transported in accordance with the contract of shipment, shall be charged to a suspense account, to which shall be credited, to the extent of the tariff charges included therein, the proceeds derived from the sale of such unclaimed and refused freight. When the excess of the tariff charges over the amount realized from the sale of the freight is found to be uncollectible, it shall be cleared to income account No. 533, "Uncollectible railway revenues."

When the amount realized from the sale of such unclaimed and refused freight exceeds the amount of the tariff charges for the transportation thereof, the excess (if lawfully retained by the carrier) shall be credited to profit and loss account No. 607, "Miscellaneous credits."

The carrier's tariff charges on lost, destroyed, or damaged shipments, for which charges neither consignees nor consignors are liable, shall be charged to the revenue accounts previously credited.

Overcharges, when discovered, shall be credited to balance-sheet account No. 778, "Other unadjusted credits," and when found to be unrefundable, shall be cleared to profit and loss account No. 605, "Unrefundable overcharges."

2. INTERPRETATION OF ITEM LISTS.—Lists of items to be credited and of items to be charged have been given as a part of the text of this classification for the purpose of clearly indicating the application of the accounting rules. They are not to be considered as comprising all the items creditable or chargeable to the several accounts, but merely as representative of them.

The items contained in the lists of items to be charged to the respective accounts are chargeable only when such items have been, through oversight, included in the credits to the accounts, or they are items of revenue payable to others for service to be rendered in accordance with the tariff provisions applicable to the rates upon which the credits to the several accounts have been based.

TEXT PERTAINING TO OPERATING REVENUE ACCOUNTS.

I. TRANSPORTATION—RAIL LINE.

The primary accounts included in this general account are designed to show amounts of money which the carrier becomes entitled to receive or which accrue to its benefit from service rendered in transporting property or persons by rail line. (See general instructions, section 1.)

101. FREIGHT.

This account shall include revenue from the transportation of freight and from transit, stop, and reconsigning privileges, upon the basis of lawful tariff rates.

ITEMS TO BE CREDITED.

(See special instructions, section 2.)

(a) Revenue upon the basis of local freight tariff rates, regardless of class of train in which the freight is transported.
(b) The carrier's proportion of revenue upon the basis of through freight tariff rates, regardless of class of train on which the freight is transported.
(c) Revenue from transportation of mail matter, and empty mail pouches, at freight tariff rates.
(d) Revenue from transportation of freight on special trains at rates based on weights of shipments.
(e) Revenue on basis of classifications and freight tariffs from transportation of caretakers of freight shipments.
(f) Revenue from reconsigning privileges.
(g) Revenue from stop privileges.
(h) Revenue from transit privileges.
(i) Revenue upon the basis of arbitraries out of freight rates for water transfers (ferriage, lighterage, and floatage).

ITEMS TO BE CHARGED.

(See special instructions, section 2.)

Amounts paid as bridge and ferry arbitraries on freight.
Amounts paid for completing a haul.
Amounts paid for elevation of freight.
Amounts paid for switching services, in connection with the transportation of freight, on the basis of switching tariffs, and allowances out of through rates, including amounts paid for switching empty cars in connection with a freight revenue movement.
Amounts paid for transferring freight between stations.
Arbitraries and allowances to others for lighterage and wharfage.
The carrier's proportion of overcharges resulting from the use of erroneous rates, weights, classifications or computations.
The carrier's proportion of refunds on account of errors in routing and billing.
The carrier's proportion of uncollected revenue on freight lost or destroyed in transit.
The carrier's proportion of uncollected tariff charges on damaged shipments for which charges neither shipper nor consignee is liable.

NOTE A.—Amounts paid for switching empty cars otherwise than in connection with loaded movements shall be charged to operating expense account No. 411, "Other expenses," except that amounts paid for switching equipment for repairs shall be included in the appropriate equipment repair accounts.

NOTE B.—Other carriers' proportion of revenue and of uncollectible undercharges paid by the carrier on account of its errors in routing and billing shall be charged to operating expense account No. 411, "Other expenses."

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.

NOTE C.—Other carriers' proportion of revenue paid by the carrier on freight lost, destroyed, or damaged in transit, for which neither consignees nor consignors are liable shall be charged to operating expense account No. 418, "Loss and damage—Freight."

NOTE D.—When a lessee company transports freight over the tracks of another carrier on the basis of a proportion of revenues under a joint arrangement, it shall include the entire compensation in its revenues and statistics, charging the appropriate joint facility expense and rental accounts with the amounts paid the lessor company, and the lessor company shall credit the corresponding accounts.

NOTE E.—The accrued revenue derived from the transportation of cream, sweet milk, etc., on a basis of lawful tariffs at rates per package, regardless of weights, shall be included in account No. 109, "Milk."

NOTE F.—Revenue from the transportation of caretakers of freight shipments, when not included as a part of the freight charges on the waybill covering the freight shipments, shall be credited to account No. 102, "Passenger."

102. PASSENGER.

This account shall include the revenue from the transportation of passengers, based upon tariff fares for passengers so transported; also from the transportation at special fares of excepted classes of passengers as provided by law.

ITEMS TO BE CREDITED.

(See special instructions, section 2.)

(a) Revenue upon the basis of local tariff fares.
(b) The carrier's proportion of revenue upon the basis of through tariff fares.
(c) Revenue from extra fares on limited trains.
(d) Revenue from additional fares for exclusive use of drawing rooms or state rooms.
(e) Revenue from mileage and scrip coupons honored.
(f) Revenue from transportation of corpses.
(g) Revenue from transportation of passengers on special trains at fares based on rate per capita.
(h) Revenue upon the basis of arbitraries out of passenger fares for water transfers (ferriage).

ITEMS TO BE CHARGED.

(See special instructions, section 2.)

Amounts paid as bridge and ferry passenger arbitraries.
Amounts paid for switching empty passenger-train cars in connection with the transportation of passengers on the basis of tariff fares for passengers so transported.
Amounts paid for switching services in completing a transportation movement.
Amounts paid for transferring passengers or baggage between stations or connecting lines.
Redemptions of unused and partially unused local passenger tickets.
Refunds of extra fares on limited trains.
Refunds of local tariff fares.
The carrier's proportion of redemptions of unused and partially unused through passenger tickets.
The carrier's proportion of refunds of through tariff fares.
The carrier's proportion of overcharges resulting from the application in error of fares in excess of tariffs.

NOTE A.—Refundable cash fare penalty collections made by conductors, and the refundable portions of amounts derived from the sales of mileage tickets, mileage credentials, and scrip shall not be credited to this account but to an appropriate suspense account.

NOTE B.—This account shall be credited with the cash value of coupons from mileage tickets and scrip only as they are honored for transportation. Gross receipts from mileage tickets and scrip when sold shall be credited to an open account. The open account shall be charged and this account credited with the cash value of coupons as honored.

NOTE C.—When a lessee company transports passengers over the tracks of another carrier on the basis of a proportion of revenues under a joint arrangement, it shall include the entire compensation in its revenues and statistics, charging the appropriate joint facility expense and rental accounts with the amounts paid the lessor company, and the lessor company shall credit the corresponding joint facility accounts.

NOTE D.—Amounts paid for switching empty passenger-train cars otherwise than in connection with loaded movements shall be charged to operating expense account No. 411, "Other expenses," except that charges for switching equipment for repairs shall be included in the appropriate equipment repair accounts.

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.

103. EXCESS BAGGAGE.

This account shall include the revenue from the transportation of baggage in excess of free authorized allowances on the basis of excess baggage tariff rates.

To this account shall be credited the cash value of coupons from baggage scrip books only as the coupons therefrom are honored for transportation of excess baggage.

NOTE A.—Revenue derived from the transportation of shipments of silk, fish, etc., in passenger trains at freight tariff rates shall be included in account No. 101, "Freight."

NOTE B.—Revenue derived from the transportation of packages, articles, dogs, etc., on passenger trains on the basis of passenger tariff rates shall be included in account No. 108, "Other passenger-train."

NOTE C.—The refundable portions of amounts derived from the sale of baggage scrip books shall not be credited to this account.

NOTE D.—The gross receipts from baggage scrip books when sold shall be credited to an open account. The open account shall be charged and this account credited with the cash value of coupons as honored.

104. SLEEPING CAR.

This account shall include the revenue from berth and seat accommodations furnished in sleeping cars on the basis of berth or seat rates for the space occupied.

105. PARLOR AND CHAIR CAR.

This account shall include the revenue from seat accommodations furnished in parlor, observation, chair, and other special passenger cars when operated in passenger-train service or in special-train service at seat rates for space occupied.

106. MAIL.

This account shall include the revenue from the transportation of mail at established rates for specified routes; from the use of railway post-office cars when in carrier's service transporting mails; from the use of special mail facilities; and from bonuses for special mail transportation.

To this account shall be charged fines and penalties imposed by the Government when not collected from agents or employees.

NOTE.—The revenue from the transportation of mail matter and empty mail pouches on freight trains at freight tariff rates shall be included in account No. 101, "Freight."

107. EXPRESS.

This account shall include the revenue from transportation of express matter and from use of facilities on trains and at stations incident to such transportation.

When a railway company transacts an express business through its regular railway organization, the revenue therefrom shall be credited to this account.

NOTE.—When contracts for express privileges provide specific amounts for the rent of facilities at stations, such amounts shall be included in revenue account No. 142, "Rents of buildings and other property."

108. OTHER PASSENGER-TRAIN.

This account shall include the revenue from transportation incident to the operation of passenger trains, not provided for otherwise.

LIST OF ITEMS.

(See special instructions, section 2.)

(a) Revenue from transportation of packages, newspapers, articles, dogs, etc., on passenger trains at other than freight or excess baggage rates.
(b) Revenue received under a guaranteed lump-sum minimum for the transportation of passengers on regular or chartered trains, in excess of regular tariff fares for the passengers actually transported.
(c) The carrier's proportion of revenue derived from the operation over its lines of sleeping, parlor, chair, observation, and other special cars owned and operated by other companies.
(d) Unclaimed penalty collections on trains.
(e) Value of the portions of mileage tickets, mileage coupons, and scrip books unpresented and unredeemed.

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.

109. MILK.

This account shall include the revenue from the transportation of cream, sweet milk, skim milk, sour milk, buttermilk, condensed milk, butter fat, and smearcase or pot cheese, upon the basis of lawful tariffs at rates per package, regardless of weights.

NOTE.—The revenue from the transportation of milk upon the basis of lawful tariffs at rates per specified weights shall be included in revenue account No. 101, "Freight."

110. SWITCHING.

This account shall include the revenue from switching service upon the basis of lawful tariff rates.

To this account shall be credited the carrier's revenue upon the basis of tariff rates, or the carrier's allowance out of through rates, from the switching of cars of all kinds, loaded or empty, either locally at a station or within a switching district, between connecting lines, between local industries, or between connecting lines and local industries; revenue upon the basis of distinct tariff rates for "trap-car" and "ferry-car" service and for spotting cars; also the revenue from interwork switching at industrial plants, and the revenue from "penalty switching" incident to the improper delivery of cars by other carriers.

To this account shall be charged amounts paid others for switching when such switching service is provided for in the switching rate charged by the carrier.

NOTE.—"Penalty switching" charges paid by the carrier shall be included in expense account No. 411, "Other expenses."

111. SPECIAL SERVICE TRAIN.

This account shall include the revenue from running trains either on the basis of a rate per mile or a lump-sum rate for the train.

LIST OF ITEMS.

(See special instructions, section 2.)

(a) The carrier's revenue from handling baggage cars in special trains for theatrical companies.
(b) The carrier's revenue from handling circus or theatrical company trains on basis of specific amounts for transportation between designated stations.
(c) The carrier's revenue from running trains for Federal or State Governments to transport troops, war munitions, camp outfits, etc.

NOTE A.—No account need be kept of the number of tons and ton-miles or of passengers and passenger-miles where the revenues from a train are properly creditable to this account.

NOTE B.—The revenue derived from the transportation of freight and passengers on a special train, upon the basis of a rate per pound, per hundredweight, or per ton for freight, and a rate per capita for passengers shall be credited to revenue accounts No. 101, "Freight," and No. 102, "Passenger," in accordance with the charges for each class of transportation service. Such trains shall be classified as freight, passenger, or mixed, as may be appropriate under the classification of train, locomotive, and car miles.

112. OTHER FREIGHT-TRAIN.

This account shall include the revenue from transportation incident to the operation of freight trains not otherwise provided for, such as revenue in excess of tariff rates for the transportation of freight in revenue trains, with a guaranteed lump-sum minimum.

113. WATER TRANSFERS—FREIGHT.

This account shall include the revenue from the transfer of freight by water transfers (ferriage, lighterage, and floatage) upon the basis of lawful tariff rates for local service.

NOTE.—No revenue shall be included in this account upon the basis of arbitraries out of rates for transportation involving rail line haul.

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.

114. WATER TRANSFERS—PASSENGER.

This account shall include the revenue from the transfer of passengers by water transfers (ferriage) upon the basis of lawful tariff rates for local service.

NOTE.—No revenue shall be included in this account upon the basis of arbitraries out of rates for transportation involving rail line conveyance.

115. WATER TRANSFERS—VEHICLES AND LIVE STOCK.

This account shall include the revenue from the transfer by water transfers upon the basis of lawful local tariff rates, of vehicles of all classes; horses, cattle and other animals; and Government artillery and equipment.

NOTE.—No revenue shall be included in this account upon the basis of arbitraries out of rates for transportation involving rail line haul.

116. WATER TRANSFERS—OTHER.

This account shall include the revenue from water transfers not otherwise provided for, such as the revenue from towing beyond lighterage limits and all other towing for which an extra charge is made; insurance of freight afloat when billed out at other than cost; storage of freight afloat; grain overage in boats; pumping performed for outside parties; and from other similar sources.

To this account shall be charged amounts payable to other companies or individuals for extra lighterage, extra towing, and for all other service when such payments represent revenue collected and credited to this account and not a direct expense.

II. TRANSPORTATION—WATER LINE.

The primary accounts included in this general account are designed to show amounts of money which the carrier becomes entitled to receive or which accrue to its benefit from service rendered in transporting property or persons by water lines. (See general instructions, section 1.)

121. FREIGHT.

This account shall include the revenue from the transportation of freight by water-line service upon the basis of lawful tariff rates.

ITEMS TO BE CREDITED.

(See special instructions, section 2.)

(a) Revenue upon the basis of local freight tariff rates.
(b) Carrier's proportion of revenue upon the basis of through tariff rates.
(c) Revenue from the transportation of mail matter and empty mail pouches at freight tariff rates.
(d) Revenue on the basis of classifications and freight tariffs from the transportation of caretakers of freight shipments.
(e) Arbitraries allowed in rates for cargo insurance.

ITEMS TO BE CHARGED.

(See special instructions, section 2.)

Amounts paid for completing a haul.
Amounts paid for elevation of freight.
Amounts paid for transferring freight between stations or connecting lines.
Arbitraries and allowances to others for lighterage and wharfage.
Carrier's proportion of overcharges resulting from the use of erroneous weights, rates, classifications, or computations.
Carrier's proportion of refunds on account of errors in routing or billing.
Carrier's proportion of uncollected revenue on freight lost or destroyed in transit.
Carrier's proportion of uncollected tariff charges on damaged shipments for which charges neither shipper nor consignee is liable.

NOTE A.—Other carriers' proportion of revenue and of uncollectible undercharges paid by the carrier on account of errors in routing and billing shall be charged to operating expense account No. 432, "Operation of terminals."

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.

NOTE B.—Other carriers' proportion of revenue paid by the carrier on freight lost or destroyed in transit shall be charged to operating expense account No. 433, "Incidental."

NOTE C.—If the carrier maintains a transfer or lighterage service the expenses of which are included in expense account No. 432, "Operation of terminals," the revenues arising from the service shall be included in account No. 128, "Other." If the service is performed by an outside party, its cost to the carrier shall be charged to the appropriate revenue account.

NOTE D.—Revenue from the transportation of caretakers of freight shipments, when not included as a part of the freight charges on the waybill covering the freight shipments, shall be credited to account No. 122, "Passenger."

122. PASSENGER.

This account shall include the revenue from the transportation of passengers by water-line service based on tariff fares for the passengers so transported; also transportation at special fares of excepted classes of passengers as provided by law.

The credits to this account shall appear under appropriate subheads, as follows:

(a) Revenue from the transportation of passengers, including sleeping accommodations and meals (when not separable).
(b) Revenue from the transportation of passengers, not including sleeping accommodations and meals.
(c) Revenue from the rent of staterooms, berths in staterooms, and other sleeping and living accommodations.
(d) Revenue from the sale of meals and food supplies.

ITEMS TO BE CREDITED.

(See special instructions, section 2.)

(a) Revenue upon the basis of local tariff fares.
(b) The carrier's proportion of revenue upon the basis of through tariff fares.
(c) Revenue from extra fares for limited service.
(d) Revenue from mileage and scrip coupons honored.
(e) Revenue from the transportation of corpses.

ITEMS TO BE CHARGED.

(See special instructions, section 2.)

Amounts paid for transferring passengers or baggage between stations or connecting lines.
Redemptions of unused or partially unused local passenger tickets.
Refunds of local tariff fares.
The carrier's proportion of redemptions of unused or partially unused through passenger tickets.
The carrier's proportion of refunds of through tariff fares.
The carrier's proportion of overcharges resulting from the application in error of fares in excess of tariffs.

NOTE.—This account shall be credited with the cash value of coupons from mileage tickets and scrip only as they are honored for transportation. Gross receipts from mileage tickets and scrip, when sold, shall be credited to an open account. The open account shall be charged and this account credited with the cash value of the coupons as honored.

123. EXCESS BAGGAGE.

This account shall include the revenue from the transportation by water-line service of baggage in excess of free authorized allowance on the basis of excess baggage tariff rates; also the revenue from the transportation of packages, articles, dogs, etc., incidental to the transportation of passengers.

To this account shall be credited the cash value of coupons from baggage scrip books only as they are honored for the transportation of excess baggage.

NOTE A.—The refundable portion of amounts derived from the sale of baggage scrip coupons shall not be credited to this account.

NOTE B.—The gross receipts from baggage scrip books, when sold, shall be credited to an open account. The open account shall be charged, and this account credited with the cash value of coupons as honored.

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.

124. OTHER PASSENGER SERVICE.

This account shall include revenue, not otherwise provided for, incident to the transportation of passengers.

ITEMS TO BE CREDITED.

(See special instructions, section 2.)

(a) Revenue from the sale of tobacco, cigars, cigarettes, etc.
(b) Revenue from the sale of books, periodicals, and other news-stand supplies.
(c) Revenue from the rent of steamer chairs and rugs.

125. MAIL.

This account shall include the revenue from the transportation of mail by water-line service at established rates for specified routes; from the use of special facilities; and from bonuses for special mail transportation.

To this account shall be charged fines and penalties imposed by the Government when not collected from agents or employees.

NOTE.—The revenue from the transportation of mail matter and empty mail pouches at freight tariff rates shall be included in account No. 121, "Freight."

126. EXPRESS.

This account shall include the revenue from transportation of express matter by water-line service, and from the use of facilities on vessels and at stations incident to such transportation.

When a carrier transacts an express business by water line through its regular organization, the earnings therefrom shall be credited to this account.

NOTE.—When contracts for express privileges provide specific amounts for the rent of facilities at stations, such amounts shall be included in revenue account No. 142, "Rents of buildings and other property."

127. SPECIAL SERVICE.

This account shall include the revenue from running vessels on excursions or special trips when specific charges not based on the number of passengers carried are made for transportation between designated points; and from running special trips carrying troops, munitions of war, camp outfits, etc., for the Federal or State Governments when specific lump amounts are charged for the transportation.

NOTE.—Lump sums received for passenger excursions or for special trips ordinarily designated as "charter of vessels," shall be treated as revenue incident to transportation, rather than as rent, and shall be included in this account.

128. OTHER.

This account shall include the revenue from transportation by water line not provided for elsewhere.

NOTE.—Revenues upon the basis of distinct tariff rates from services rendered and facilities furnished on wharves and at stations incident to the operation of water-line service shall be included in the primary accounts under general account III, Incidental.

III. INCIDENTAL.

The primary accounts included in this general account are designed to show the amounts which the carrier becomes entitled to receive from services rendered incidentally with rail-line and water-line transportation, for the use of facilities of which the expenses for operation and maintenance are not separable from railway expenses, and from incidental sources not provided for elsewhere.

The accounts for incidental revenue shall be kept in such manner as to show separately, by primary accounts, the revenue from services rendered and facilities furnished on wharves and at stations incident to the operation of water-line service.

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.

131. DINING AND BUFFET.

This account shall include the revenue from dining and buffet service on trains and transfer boats.

ITEMS TO BE CREDITED.

(See special instructions, section 2.)

(a) Revenue from lunches furnished.
(b) Revenue from meals furnished.
(c) Revenue from liquors furnished.
(d) Revenue from tobacco furnished.
(e) Revenue from cigars and cigarettes furnished.

NOTE.—The revenue from dining and buffet service on vessels which are operated in water-line service is provided for in the primary accounts included in general account II, Transportation—Water Line.

132. HOTEL AND RESTAURANT.

This account shall include the revenue from hotels, restaurants, and station lunch counters. (See general instructions, section 4.)

ITEMS TO BE CREDITED.

(See special instructions, section 2.)

(a) Revenue from the rent of rooms.
(b) Revenue from the use of baths.
(c) Revenue from the use of billiard tables.
(d) Revenue from the use of bowling alleys.
(e) Revenue from lunches furnished.
(f) Revenue from meals furnished.
(g) Revenue from liquors furnished.
(h) Revenue from tobacco furnished.
(i) Revenue from cigars furnished.
(j) Revenue from cigarettes furnished.
(k) Revenue from newspapers furnished.
(l) Revenue from periodicals furnished.
(m) Revenue from tonsorial service.
(n) Revenue from laundry work.

NOTE.—This account shall not include the revenues from hotels and restaurants which are entirely distinct from the carrier's transportation plant and the cost of which is included in balance-sheet account No. 705, "Miscellaneous physical property."

133. STATION, TRAIN, AND BOAT PRIVILEGES.

This account shall include revenue from weighing, vending, and other automatic machines located at stations; from advertising at stations and on trains and on transfer boats; from the privilege of operating news stands at stations and selling papers, periodicals, fruit, etc., on trains and on transfer boats; from telephone companies for the privilege of installing and operating commercial telephones at stations; from the operation of eating houses and dining and buffet service on trains and transfer boats when such operation is conducted by individuals or companies other than railway companies and when the expenses incurred by the carrier in connection therewith are not separable from its regular operating expenses; and from similar sources.

NOTE.—The revenue from privileges on vessels operated in water-line service is provided for in the primary accounts included in general account II, Transportation—Water Line.

134. PARCEL ROOM.

This account shall include the revenue from the operation of parcel rooms.

135. STORAGE—FREIGHT.

This account shall include the revenue from the storage of freight.

136. STORAGE—BAGGAGE.

This account shall include the revenue from the storage of baggage.

137. DEMURRAGE.

This account shall include the revenue from the detention of cars incident to loading, unloading, reconsigning, and stops in transit upon the basis of lawful tariffs for demurrage.

138. TELEGRAPH AND TELEPHONE.

This account shall include the revenue from commercial telegraph and telephone operations; also amounts received from telegraph and telephone companies, whether as a proportion of earnings or otherwise, for the privilege of transacting a commercial telegraph or telephone business in offices along the carrier's lines, when the carrier furnishes some service of employees whose pay is included in its operating expenses.

NOTE.—When a telegraph or telephone company rents the telegraph or telephone line of the carrier and pays all expenses incident to its maintenance and operation, the rent received shall be credited to income account No. 510, "Miscellaneous rent income."

139. GRAIN ELEVATOR.

This account shall include the revenue from the operation of grain elevators. (See general instructions, section 4.)

ITEMS TO BE CREDITED.

(See special instructions, section 2.)

(a) Revenue from the elevation of grain.
(b) Revenue from the storage of grain.
(c) Revenue from bagging grain.
(d) Revenue from screening grain.
(e) Revenue from blowing grain.
(f) Revenue from cooling grain.
(g) Revenue from clipping grain.
(h) Revenue from cleaning grain.
(i) Revenue from mixing grain.
(j) Revenue from transferring grain in elevators.
(k) Revenue from loading grain into and unloading grain from boats not covered by elevation charges.
(l) Revenue from trimming grain in boats when performed by elevator employees.
(m) Revenue from the sale of screenings and sweepings.
(n) Revenue from inspecting grain in elevators.

140. STOCKYARD.

This account shall include the revenue from stockyards. (See general instructions, section 4.)

ITEMS TO BE CREDITED.

(See special instructions, section 2.)

(a) Revenue from feeding live stock.
(b) Revenue from watering live stock.
(c) Revenue from bedding live stock.
(d) Revenue from otherwise caring for live stock.
(e) Revenue from shearing sheep.
(f) Revenue from dipping sheep and cattle.
(g) Revenue from stabling horses.
(h) Revenue from inspecting live stock.

141. POWER.

This account shall include the revenue from the sale of electric current and other power. (See general instructions, section 4.)

142. RENTS OF BUILDINGS AND OTHER PROPERTY.

This account shall include the revenue from the exclusive use of buildings and other property or portions thereof, such as depot and station grounds and buildings, general and other offices, wharves, ferry landings, elevators, stockyards, fuel yards, enginehouses, repair shops, and section and other houses, when the property is operated and maintained in connection with the property used in the carrier's transportation operations and the expenses of maintaining and operating the rented portion can not be separated from the expenses of that portion used by the carrier. (See general instructions, section 4.)

NOTE.—When the expenses of maintaining and those of operating property rented to others are separable, the rents received shall be credited and the expenses of maintenance and operation shall be charged to appropriate income accounts.

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.

143. MISCELLANEOUS.

This account shall include the revenue from railway operations not provided for elsewhere. (See general instructions, section 4.)

LIST OF ITEMS.

(See special instructions, section 2.)

(a) Amounts received for privilege of cutting hay along the right of way.
(b) Commissions received for collecting premiums on insurance policies from employees and installment payments for books, watches, etc., sold by dealers to employees.
(c) Profit from jobbing and installing electric power lines for others.
(d) Revenue from boat demurrage.
(e) Revenue from freight and passenger privileges over a carrier's wharves and docks.
(f) Revenue from garnishee fees.
(g) Revenue from operation of coal and ore wharves, cold-storage plants, coal-storage plants, cotton-compress plants, and wood-preserving plants. (See general instructions, section 4.)
(h) Revenue from privilege of mooring and anchoring boats at wharves and docks.
(i) Revenue from sale of cinders produced by carrier.
(j) Revenue from use of carrier's bridges by pedestrians, street car lines, vehicles, etc.
(k) Revenue from temporary use of carrier's tracks for detouring trains, etc.
(l) Revenue from use of tracks incident to delays in loading or removing freight.
(m) Revenue from water furnished boats from water stations operated by the carrier.
(n) Revenue from weighing cars.
(o) The carrier's proportion of gross revenue from operation of clergy bureaus.
(p) The carrier's proportion of gross revenue from operation of ticket validation agencies.
(q) Unclaimed deposits for prepaid transportation.

NOTE.—When a bridge of one carrier is jointly used by itself and another carrier and such use is paid for on the basis of flat rent or charge per train-mile or toll per passenger, per ton, or per car, the compensation therefor shall be credited to the appropriate joint facility, operating expense, and income accounts.

IV. JOINT FACILITY.

151. JOINT FACILITY—CR.

This account shall include the carrier's proportion of revenue collected by others in connection with the operation of joint tracks, yards, terminals, and other facilities.

NOTE A.—The purpose of this account is to show the amounts of revenue from the operation of joint tracks, yards, terminals, and other facilities operated by other companies, which under existing contracts or agreements are credited by the operating company to the tenant companies which participate therein. The bill rendered by any creditor company against a debtor company for the latter's proportion of the expense of maintenance and operation of joint facilities, which includes also a credit covering a proportion of the revenue to be paid over, shall show the distribution of the credit for such proportion of the revenue separately from the distribution of the expense of operation.

NOTE B.—No credits shall be made to this account representing amounts creditable by the operating company to primary accounts Nos. 101 to 109, 111 to 116, 121 to 128, 131, 132, 139 to 141.

152. JOINT FACILITY—DR.

This account shall include that proportion of revenue from the operation of joint tracks, yards, terminals, and other facilities, which is creditable to other companies.

NOTE A.—The purpose of this account is to show the amount of revenue from operation of a terminal company or other carrier which, under the terms of existing contracts or agreements covering the joint use of tracks, yards, and other facilities, is credited to other carriers that participate in the benefits from such joint use. The bill rendered by a creditor company against a debtor company for the latter's proportion of expense of maintaining and operating joint facilities, which includes a credit covering the debtor company's proportion of the revenues from operation of such joint facilities, shall indicate separately the proper distribution of both the revenues and the expenses included in the bill, and such distribution shall be adhered to by the debtor.

NOTE B.—No debits shall be made to this account representing amounts creditable by the operating company to primary accounts Nos. 101 to 109, 111 to 116, 121 to 128, 131, 132, 139 to 141.

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.

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SPECIAL INSTRUCTIONS.

1. ACCOUNTS FOR OPERATING EXPENSES.—The accounts prescribed for operating expenses are designed to show expenses of furnishing transportation service, including the expenses of maintaining the plant used in the service. The accounting shall be as nearly as practicable upon the basis of accruals; however, the option is allowed the carrier of omitting charges to the accounts provided for the depreciation of fixed improvements and of including the depreciation (ledger value less salvage) of such property in the appropriate repair accounts at the time the property is converted or retired for replacement.

Fixed improvements means structures which are fixed as to location, such as tunnels, bridges, buildings, earthworks, etc.

2. MAINTENANCE EXPENSES.—The accounts provided for maintenance of fixed improvements and of equipment are designed to show the cost of repairs and also the loss through depreciation of the property used in operations, including all such expenses resulting from ordinary wear and tear of service, exposure to the elements, inadequacy, obsolescence, or other depreciation, or from accident, fire, flood, or other casualty.

The cost of repairs which has been provided for in the several repair accounts shall include the cost of inspecting to determine the repairs necessary, and of adjusting, repairing, or replacing parts, both of fixed improvements and of equipment, such as the repairing of locomotives, cars, frogs and switches, or the replacing of ties, rails, etc., in tracks; the cost of inspecting and testing after repairs have been made, such as the testing of locomotives after repairs to determine that the repairs have been properly made, and the running of repaired locomotives light in order to break them in for regular service; incidental costs of repairs, such as the construction or removal of false work; cost of relocation of fixed improvements; cost of demolishing retired fixed improvements (except those retired and not replaced) and disposing of the wreckage therefrom when the property is demolished by or for the account of the carrier; cost of protecting service during the progress of addition and betterment work; cost of laying out, cleaning, grading, draining, fencing, mowing, and beautifying grounds pertaining to buildings; repairing sidewalks, driveways, and streets within or adjacent to such grounds; cost of removing snow from the roofs of buildings (when not removed by those employed in the buildings); cost of the periodical restoration of seasonal features, such as gardens, shrubbery, and lawns; cost of operating hothouses in connection with the work of beautifying grounds; cost of restoring sidewalks, driveways, lawns, etc., in grounds after addition and betterment work (see general instructions for the classification of investment in road and equipment, section 12); and cost of clearing and removing casual incumbrances, such as ice, snow, and fallen timber.

The difference between the depreciation upon fixed improvements retired and replaced and the amount provided for through the depreciation accounts, shall be included in the repair accounts when the property is retired. Similar adjustments on account of equipment retired shall be included in the accounts for equipment retirements. (See classification of investment in road and equipment, general account II, Equipment.)

Distinct maintenance accounts have been provided for expenses of a general character, such as superintendence, stationery and printing, and injuries to persons, which, on account of established practice, it is deemed advisable to segregate.

3. COST OF REPAIRS.—It is intended that the repair accounts of this classification shall include the cost of labor, materials and supplies, work-train service, floating equipment work service, special machine service, contract work, privileges, protection from casualties, and other analogous items of expense in connection with the maintenance of the plant used in railway service. The several items of cost here referred to are defined as follows:

(*a*) *Cost of labor* includes amounts paid for the labor of the carrier's own employees. Except where otherwise specified in the text of the accounts, the cost of boarding, traveling, and other incidental expenses of employees shall be included in the accounts to which the pay of the employees is chargeable.

(*b*) *Cost of materials and supplies* includes the cost of materials and supplies, including small tools, at the point of free delivery, plus freight charges of foreign lines, and the costs of inspection and loading assumed by the carrier; also a proportion of store expenses (see section 16). It should not, however, include expenses of transportation over the carrier's line. In calculating the cost of materials used proper allowance shall be made for the value of unused portions and of cuttings, turnings, borings, etc., and for the value of the material recovered from property repaired and from temporary tracks; scaffolding, cofferdams, and other temporary structures used in repair work.

(*c*) *Cost of work-train service* includes cost of labor of enginemen, trainmen, and enginehouse men, including the wages of engine crews and train crews held in readiness for such service; and the cost of fuel and other supplies consumed in connection with the operation of work trains.

(*d*) *Cost of floating equipment work service* includes cost of labor of crews, including wages of crews held in readiness for service; and the cost of fuel and other supplies consumed in connection with the operation of floating equipment work service.

(*e*) *Cost of special machine service* includes the cost of labor expended and of materials and supplies consumed in operating steam shovels, scrapers, rail unloaders, ballast unloaders; pile drivers, dredges, ditchers, weed burners, and other labor-saving machines; also rents paid for use of such machines.

(*f*) *Cost of contract work* includes amounts paid for work performed under contract by other companies, firms, or individuals and specific expenses incident to the award of the contract.

(*g*) *Cost of privileges* includes amounts paid for special privileges, such as the temporary use of public property or streets, in connection with the repairs of the property of the carrier. (Periodical payments for such privileges in connection with permanent use of public property for railway operations shall be included in the income accounts.)

(*h*) *Cost of protection from casualties* includes expenditures for protection against damage by fire, flood, etc., such as payments for discovery or extinguishment of fires, cost of detecting and prosecuting incendiaries, expense for witnesses in relation thereto, amounts paid to municipal corporations and others for fire protection, and other analogous items of expense in connection with repair work, but does not include insurance premiums paid to assure reimbursement for prospective losses.

4. ROYALTIES ON APPLIANCES.—The royalties for patent rights on mechanical appliances used in repairs of equipment shall be included in the cost of the repairs.

5. FIXED IMPROVEMENTS RETIRED AND REPLACED.—The ledger value (less salvage and the credit balance in the accrued depreciation account with respect to the property retired) of fixed improvements retired and replaced with property of like purpose, together with the cost of removing the property retired, shall be included in the

accounts appropriate for the repairs of the property before retirement. (See section 7 of general instructions for the classification of investment in road and equipment.)

6. DISTRIBUTION OF CHARGES FOR PROPERTY RETIRED AND REPLACED.—In case the amount chargeable as operating expenses for property retired and replaced, as provided for in section 7 of the general instructions for the classification of investment in road and equipment, is relatively large and its inclusion would seriously distort the expense accounts for a single year, the carrier, if so authorized by the Commission, may charge the amount thereof to balance-sheet account No. 726, "Property abandoned chargeable to operating expenses," and distribute it thereafter, in accordance with the provisions of that account to the operating expenses of succeeding years.

If so authorized by the Commission, the carrier may charge to Profit and Loss any extraordinarily large item representing the cost of property retired and replaced, instead of charging such item to Operating Expenses. The carrier shall file with the Commission a statement of the cost and a description of the property retired and the reasons which, in its judgment, indicate the propriety of charging the cost of such property to Profit and Loss.

7. CHARGES TO OPERATING EXPENSES FOR FIXED IMPROVEMENTS CONVERTED.—In connection with the conversion of fixed improvements, the ledger value of property before conversion, plus the cost of conversion, less the sum of the estimated value of the property as converted, the amount included in the accrued depreciation account with respect to the property thus converted, and the salvage recovered, shall be charged to the accounts of this classification appropriate for repairs of the property before conversion. (See general instructions for the classification of investment in road and equipment, *section 11.*)

8. DEPRECIATION OF FIXED IMPROVEMENTS.—Depreciation accounts, in which to include uniform monthly charges to cover the depreciation of fixed improvements, have been provided for the purpose of creating reserves which will meet or reduce the amounts otherwise chargeable, as may be appropriate, to operating expense or to profit and loss accounts to cover property retired. Such depreciation charges shall be based in each instance upon the percentage of the original cost (estimated if not known), ledger value, or purchase price of the property determined to be equitable by the carrier's experience and best sources of information as to the actual current loss from depreciation. A statement of the bases used by the carrier for computing these charges shall be included in its annual report to the Commission. Until further directed the use of depreciation accounts for fixed improvements is optional with the carrier. (See balance-sheet account No. 775, "Accrued depreciation.—Road.")

9. JOINT FACILITY ACCOUNTS.—Accounts thus designated have been provided for the joint users of tracks, bridges, yards, wharves, stations, and other facilities to indicate the proper accounting for settlements which cover income and operating expenses in connection with the use of such facilities, and for settlements covering cost of yard service. When the compensation for the use of facilities is a fixed amount or is based upon a charge per passenger, ton, car, or other unit, it shall be fairly apportioned by the operating company among the joint facility operating expense and income accounts. The creditor shall show the distribution of these charges upon its bills, and such distribution shall be adhered to by the debtor.

Train service in connection with the line haul of traffic is not considered a joint facility operation, and the settlements between carriers covering items chargeable to accounts Nos. 392 to 403 shall not be included in the joint facility accounts.

10. CLEARING ACCOUNTS.—In recognition of the fact that certain expenditures incident to the construction and the operation of property are not chargeable directly to any particular property investment or expense account, clearing accounts have been

provided for the purpose of securing an equitable distribution of such items to the proper primary accounts. (See sections 11 to 17, inclusive.)

11. GRAVEL AND SAND PITS AND QUARRIES.—When a gravel or sand pit or quarry is opened for operations likely to extend over a long period, an account shall be set up designated "Operations of gravel pit at ——," or "Operations of quarry at ——," as the case may be. To this account shall be charged—

(*a*) That part of the cost of the land in excess of its estimated value after the gravel, sand, or stone has been removed, the amount thus charged being concurrently credited to the property account in which the cost of the land is included.

(*b*) Amounts paid for the right to enter upon and remove ballast from land not owned by the carrier.

(*c*) The cost of sinking test holes.

(*d*) The expenses for clearing, stripping, draining, and ditching the land, and of moving and changing fences and buildings preparatory to opening the pit or quarry.

(*e*) The cost, in excess of the estimated salvage value, of rails and fastenings used in constructing tracks to and in the gravel pit or quarry, the estimated salvage being carried in an appropriate suspense account.

(*f*) The cost, in excess of the estimated salvage value, of ties and other material, and of labor expended on such tracks.

(*g*) The cost of labor and train service employed in producing, quarrying, and loading ballast, including the cost of operation, repairs, and depreciation of stationary engines, steam shovels, stone crushers, and other similar machinery, and the pay and expenses of watchmen.

(*h*) The cost of explosives and hand tools, and miscellaneous expenses.

(*i*) The cost of installing, operating, and maintaining signals and interlockers at gravel pits.

Credit to these accounts shall be made each month to cover the cost of ballast materia. produced during the month. The cost of production shall include the expenses directly assignable to the monthly output, plus a proportion of the expenses not directly assignable, such as cost of land, tracks, machinery, and interlockers. This latter amount shall be computed upon the basis of the ratio which the monthly output bears to the total estimated yardage to be taken from the pit.

When any portion of the product of such pits or quarries is sold, the cost thereof shall be credited to this clearing account, and the profit thereon, if any, shall be credited to revenue account No. 143, "Miscellaneous."

12. POWER PLANT OPERATIONS.—The accounting for the expenses of maintaining and operating an electric, steam, or other power plant (both building and machinery) shall be determined by the purpose for which the power produced is used.

When the power plant is intended and used for producing power solely for the carrier's own operations and the cost of operating the plant is chargeable to clearing account "Shop expenses," or to any one specific account for operating expenses the expenses of maintenance shall be charged to the appropriate maintenance accounts, and the cost of operation to the account appropriate according to the use of the power.

When the power from such a plant is properly chargeable to more than one account, the expenses of maintaining and operating the plant shall be included in clearing account "Power plant operations." The expense of maintenance shall be cleared from that account to the appropriate maintenance accounts for operating expenses. The expenses of operation shall be apportioned to the appropriate accounts upon the basis of quantity of power used for the various purposes.

When a part of the power produced by a power plant is sold and the remainder is used in the carrier's own operations, the cost of maintaining and operating the plant shall be charged to a clearing account. The expense of maintenance shall be cleared from that account to the appropriate maintenance account in operating expenses. The proportion of the expenses of operation assignable to the power sold,

on the basis of ratio of quantity of power sold to total quantity of power produced, shall be credited to this clearing account and charged to account No. 445, "Producing power sold." The remainder of the cost of operation shall be distributed to the appropriate expense accounts for the carrier's own operations, in the manner indicated in the preceding paragraphs.

When power plants are intended and used solely for furnishing power to others, the investment therein shall be included in balance sheet account No. 705, "Miscellaneous physical property," and the operation shall not be included in the accounts of this classification. (See general instructions, section 4, and income account No. 534, "Expenses of miscellaneous operations.")

13. POWER SUBSTATION OPERATIONS.—The plan outlined for the expenses of operating power plants shall be followed in accounting for the operations of substations.

14. MAINTAINING TRANSMISSION AND DISTRIBUTION SYSTEMS.—The accounting for the maintenance of transmission systems and distribution systems shall be in accordance with instructions pertaining to power plant operations.

15. SHOP EXPENSES.—A clearing account entitled "Shop expenses" shall be kept, to which shall be charged items of expense at shops, enginehouses, repair tracks, and other places at which mechanical work is done, not assignable directly to specific accounts. Such expenses shall be apportioned among the various accounts affected. The basis of distribution shall be the relative proportion which the total amount of charges to "Shop expenses" bears to the total of the directly distributed labor. To avoid monthly fluctuations in the ratio of shop expenses to the total of distributed labor, carriers are permitted to make the monthly apportionment on the basis of a percentage of the distributed labor, provided the shop expense account be adjusted and closed out at the end of each year. The expenses assignable to this account are as follows:

(a) *General shop employees.*—The pay of general foremen in small shops, who exercise direct supervision over all departments unassisted by department foremen; the pay of department foremen, assistant department foremen, other supervising or directing employees, and their clerks; pay of chauffeurs and oilers; pay of sweepers, cleaners, roustabouts, and other unskilled laborers employed in general work in and about shops and shop grounds; pay of watchmen, gatekeepers, and policemen at shops, repair tracks, and other places at which mechanical work is done; pay of employees while attending fires or fire drills; and pay of employees while making, repairing, or having charge of small shop tools.

(b) *Power.*—The cost of fuel used in steam and other power plants in producing power for shops and for other places at which mechanical work is done; cost of oil, grease, waste, and other material used in the operation of such power plants; pay of stationary engineers, firemen, electricians, coal handlers, and other employees engaged in production of power; cost of carbon brushes, fuses, lamps, picks, pokers, scuttles, shovels, and other small tools and supplies; and cost of water and power purchased. (See section 12.)

(c) *Heating.*—The cost of fuel and other supplies used for heating shops and other places at which mechanical work is done, shop offices, watchmen's and gatekeepers' boxes, and inspectors' shanties; and the pay of firemen, coal handlers, and other employees engaged in operating heating boilers. (See section 12.)

(d) *Lighting.*—The cost of electric current, gas, oil, torches, lamp burners, lamp chimneys, lamps not permanently attached to buildings, incandescent lamps and carbons, and other material used in lighting shops and shop offices, repair tracks, and other places at which mechanical work is done, and cost of material used and labor expended in operating electric-light plants and repairing electric-light and other lamps at shops. (See section 12.)

(e) *Switching locomotives.*—All expenses, including wages, fuel, and supplies, of operating switching locomotives when exclusively assigned to switching service at

shops. (The expenses of incidental switching at shops by locomotives in transportation switching service shall be charged to appropriate transportation accounts.)

(*f*) *Shop supplies.*—Fuel for forge and other shop work; supplies and small tools used by mechanics on miscellaneous work and not durable; test-room and laboratory supplies used in connection with shop work; lubricating material for shop machinery and tools; water used at shops and shop offices, repair tracks, and other places at which mechanical work is done; and other supplies used generally in shop work.

LIST OF SUPPLIES AND SMALL TOOLS.

Acid.
Adzes.
Ammonia.
Auger bits.
Augers.
Axes.
Basins.
Bath brick.
Battery brushes.
Beeswax.
Bell cord.
Bluestone.
Bone, granulated.
Borax.
Bottles.
Braces and bits.
Brooms.
Brushes, dust.
Brushes, file.
Brushes, oil.
Brushes, paint.
Brushes, scrub.
Brushes, sweeping.
Brushes, varnish.
Brushes, wall.
Brushes, whitewash.
Brushes, window.
Buckets.
Carpenter tools furnished apprentices.
Casehardening compound.
Cement, belt.
Chalk.
Chalk lines.
Chamois skins.
Charcoal.
Chisels.
Clamps, hand.
Coal picks.
Compound for B. S. hammers.
Compound for grinding.
Compound for hydraulic jacks.
Compound for welding.
Corks.
Cosmic to prevent rust.
Crayon.
Cups, tin.
Cushion beaters.
Dippers.
Disinfectants.
Ditching lines.
Drill bits.
Drinking cups.
Drinking glasses.
Dustpans.
Emery.
Emery boxes.
Emery cloth.
Emery paper.
Faucets.
File cards.
Files.
Fire hooks for stationary boilers.
Fire shovels for stationary boilers.
Flags.
Flannel, canton.
Forks.
Forks, coke.
Funnels.
Gimlets.
Glue.
Gluepots.
Glycerin.
Graphite.
Grindstones.
Ground glass.
Hack-saw blades.
Hammers.
Hammers, babbitt.
Hand leathers.
Handles for tools.
Hatchets.
Hoes.
Keel.
Lampblack.
Lead.
Lye.
Mallets.
Marking brushes.
Marking pots.
Measures, liquid.
Mineral paste.
Mop handles.
Mops.
Muslin.
Nippers.
Oil cans.
Oilstones.
Padlocks.
Paint pots.
Picks.
Pipe-joint grease.
Pliers.
Plumbago.
Polish.
Polish, stove.
Potash.
Prisms.
Rakes.
Rasps.
Ratchet braces.
Red lead.
Resin.
Rope.
Rules.
Sal ammoniac.
Sand soap.
Sandpaper.
Saw blades.
Saws, hand.
Scoops.
Screw drivers.
Screws.
Shellac.
Shovels.
Slate pencils.
Slates.
Sledges.
Soap.
Soda.
Solder.
Soldering fluid.
Spelter solder.
Spigots for oil barrels.
Spirit-level vials.
Spirit levels.
Sponges.
Sprinkling cans.
Squares.
Squirts (lubricating).
Stencil brushes.
Tacks.
Tape lines.
Tapes, metallic.
Tool steel for small hand tools.
Tripoli.
Trucks.
Twine.
Washbasins.
Wheelbarrows.
Whetstones.
White lead.
Whiting.
Window cloths.
Wire.
Wire brushes.
Wrenches.
Zinc cakes.
Zincs.

(*g*) *Incidental expenses.*—Watchmen's uniforms, clocks, and call boxes; traveling expenses connected with the operation of shops and not directly chargeable to other

accounts; removal of snow and ice from transfer tables and shop yards; cleaning of privy vaults; horse keep; cost of ice for shops; and other undistributed shop expenses.

16. MATERIAL STORE EXPENSES.—To a clearing account called "Material store expenses" shall be charged expenses in connection with purchasing, handling, and storing material in and distributing it from the company's storehouses, including the pay of officers and employees in the purchasing and store departments and their traveling, office, and other expenses; also all expenses, including wages, fuel, and supplies, of operating switching locomotives when exclusively assigned to the service of switching at material storehouses. (Expenses of incidental switching at material yards by locomotives in regular switching service shall be charged to the appropriate transportation accounts.) The pay and expenses of men employed in purchasing or inspecting a single class of material, such as ties, shall be added as store expenses to the cost of that particular material.

The total amount of storehouse expense charged to this account shall be so distributed among the accounts to which material has been charged that the amounts thus distributed will be, for each account, in proportion to the value of the material issued chargeable thereto, except that the amount representing the purchasing department expenses shall be apportioned on the value of the material issued which was purchased by that department. To avoid monthly fluctuations in the ratio of store expenses to the value of material purchased or issued, carriers may make a monthly apportionment on the basis of fair percentage rates, provided the store expense account be adjusted and closed out at the end of each year.

17. STATIONERY STORE EXPENSES.—A clearing account entitled "Stationery store expenses" shall be kept, to which shall be charged expenses in connection with purchasing, handling, and storing stationery, and for distributing it from the stationery stores, including the pay of officers and employees in the stationery store department and their traveling, office, and other expenses. The amounts charged to this account shall be apportioned to the accounts to which is charged stationery issued from the store, upon the basis of the charges to these accounts for such stationery. To avoid monthly fluctuations in the ratio of store expenses to the value of material issued or purchased carriers may make a monthly apportionment on the basis of fair percentage rates, provided the stationery store expense account be adjusted and closed out at the end of each year.

18. INSURANCE.—Provision has been made in each of the general accounts for premiums paid and amounts set aside for fire and other insurance. Amounts of insurance recovered on account of losses shall be credited to the accounts to which the losses are chargeable.

19. EQUALIZATION OF EXPENSES.—For the purpose of equalizing the monthly charges for the repairs of fixed improvements and equipment the carrier may include each month in the appropriate primary repair accounts a uniform proportion of the amount of authorized estimates of such expenses for the fiscal or calendar year. In a like manner, the authorized estimates of expenses on account of personal injury or loss and damage liability, for stationery and printing, and for advertising may be equalized in the monthly accounts for the fiscal or calendar year. If the carrier has been unable to carry out its program for repairs and does not adjust its accounts to conform to the actual expenditures, it may carry forward the balances and treat them as provided in section 20, relating to balances in operating reserves. If, on account of claims for personal injury or loss and damage being unsettled at the close of the year, the accounts for such expenses are not adjusted, the balances carried forward in the operating reserve account shall be analyzed as also provided for in section 20 of these instructions.

Charges for stationery and printing, and for advertising, for a fiscal or calendar year shall be adjusted to the actual expenses.

20. BALANCES IN OPERATING RESERVES.—If, at the end of a fiscal year, balances remain in operating reserves, the carrier shall indicate in detail in a formal report to the Commission the amounts therein, and the conditions causing the carrying forward of such balances, except as to balances applicable to personal injury or loss and damage liability, for which balances the carrier shall preserve in its files the details upon which such estimates were based. Separate records shall be kept of the operating reserve accounts for each year.

21. SUBPRIMARY ACCOUNTS FOR WATER LINES AND ELECTRIC DIVISIONS.—When a carrier operates a water line and desires to set up subprimary accounts under the primary accounts for such operations contained in this classification, the subprimary accounts shall conform to the accounts prescribed in the classification of operating expenses of carriers by water. When the carrier operates an electric division and desires to set up subprimary accounts under the primary accounts contained in this classification, the subprimary accounts shall conform to the accounts prescribed in the classification of operating expenses of electric railways.

22. INTERPRETATION OF ITEM LISTS.—Lists of "items," "details," etc., have been given as a part of this classification for the purpose of clearly indicating the application of the accounting rules in specific cases. The lists in every case are to be considered as merely representative and not as excluding from any account analogous items which happen to be omitted from the list appended. On the other hand, the appearance of an item in a list warrants the inclusion of such item in the account concerned only when the text of the account also indicates inclusion, inasmuch as the same item frequently appears in more than one list—for example, the item of blank books under accounts Nos. 276, 334, 358, 410, and 458—and the proper charge in any one instance must be determined by the text of the account.

TEXT PERTAINING TO OPERATING EXPENSE ACCOUNTS.

I. MAINTENANCE OF WAY AND STRUCTURES.

The primary accounts included in this general account are designed to show the expenses of maintaining fixed improvements which are devoted to railway operations, with the exception of shop machinery, power plant machinery, and power substation apparatus, the expenses of maintaining which are includible in general account II, Maintenance of Equipment.

The accounts for maintenance of way and structures shall be kept in such manner as to show separately, by primary accounts, the expenses directly assignable to sleeping-car operations, water-line operations, dining and buffet service, hotels and restaurants, grain elevators, stockyards, producing power sold, and other miscellaneous operations.

201. SUPERINTENDENCE.

This account shall include:

PAY OF OFFICERS.—The pay of officers directly in charge of or engaged in the maintenance of roadway and structures.

LIST OF OFFICERS.

(See special instructions, section 22.)

Vice president.	Chief signal engineer.	Inspector of maintenance.
Assistant vice president.	Assistant engineers.	Building inspector.
General manager.	Architect.	Inspector of roadway stores.
Assistant general manager.	Roadmaster.	Supervisor.
General superintendent.	Assistant roadmaster.	Assistant supervisor.
Assistant general superintendent.	Master carpenter.	Fire chief.
Chief engineer.	Assistant master carpenter.	Fire inspector.
Engineer.	Master mason.	Sanitary inspector.
Division engineer	Superintendent of roadway structures.	
Bridge engineer.	Superintendent of scales.	

PAY OF CLERKS AND ATTENDANTS.—The pay of clerks and other employees in the offices and on the business cars of officers whose pay is chargeable to this account.

LIST OF EMPLOYEES.

(See special instructions, section 22.)

Chief clerk.	Levelmen.	Messengers.
Draftsmen.	Rodmen.	Cooks.
Clerks.	Chainmen.	Porters.
Stenographers.	Axmen.	
Transitmen.	Janitors.	

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.

OFFICE AND OTHER EXPENSES.—Office expenses and other expenses of officers and employees whose pay is chargeable to this account; also amounts paid detective agencies and others for investigations in connection with maintenance of way and structures.

ITEMS OF EXPENSE AND SUPPLIES.

(See special instructions, section 22.)

Atlases and maps.
Books for office use.
Business car service.
Fees and dues in associations.
Furniture repairs and renewals.
Heating.
Lighting.
Official train service.
Periodicals and newspapers.
Power.
Provisions for business cars.
Rent of offices.
Repairs of rented offices.
Telegraph service.
Telephone service.
Traveling expenses.
Water and ice.

SUPPLIES FOR TECHNICAL ASSISTANTS.

(See special instructions, section 22.)

Barometers.
Books and maps.
Boxes for materials and instruments.
Cameras.
Camp equipage.
Chains for surveyors.
Compasses.
Curves.
Drafting boards.
Drafting instruments.
Field glasses.
Field notebooks.
Hatchets.
Levels.
Magnets.
Magnifiers.
Marking chalk.
Oilstones.
Paper, blue-print.
Parallel rules.
Photographic supplies.
Plane tables.
Planimeters.
Plummets.
Protractors.
Ranging poles.
Reading glasses.
Rods for surveyors.
Scales.
Section liners.
Sextants.
Slide rules.
Stakes.
Straightedges.
Tally registers.
Tape lines.
Tee-squares.
Telescopes.
Thermometers.
Thumb tacks.
Tracing linens.
Transits.
Traverse tables.
Triangles.
Tripods.
Verniers.

NOTE A.—When employees designated above are engaged on construction or other work not chargeable to Maintenance of Way and Structures, their pay and expenses while thus employed shall be charged to the specific work on which engaged.

NOTE B.—When officers designated above have supervision over more than one department, their salaries, the pay of their clerks and attendants, and their office and other expenses shall be apportioned equally among the departments over which they have supervision.

NOTE C.—No part of the pay and expenses of the officers and employees designated above shall be charged to other primary accounts under Maintenance of Way and Structures.

NOTE D.—The cost of stationery for maintenance of way and structures offices is chargeable to account No. 276, "Stationery and printing."

202. ROADWAY MAINTENANCE.

This account shall include:

CARE OF ROADBED.—The cost of repairing roadbed.

ITEMS OF ROADWAY EXPENSE.

(See special instructions, section 22.)

Blasting rocks.
Building temporary tracks around slides and washouts.
Constructing and cleaning tile ditches, open ditches, and drains.
Crowning track ties with retaining earth.
Filling borrow and cattle pits.
Keeping tracks clear and repairing subgrade in case of washouts.
Landscape gardening along roadway.
Oiling roadbed.
Removing temporary tracks around slides and washouts.
Repairing roadbed damaged by washouts.
Removing dangerous rocks.
Removing slides.
Restoring roadbed, cuts, fills, and embankments to standard width.
Sloping cuts.
Sodding roadway.

NOTE A.—The cost of drains or sewers laid under tracks shall be included in account No. 208, "Bridges, trestles, and culverts." The cost of landscape gardening within the limits of the grounds around buildings shall be included in the appropriate repair accounts for buildings.

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.

GENERAL CLEANING.—The cost of cutting, removing, and disposing of brush, grass, and weeds from the right of way; plowing and digging fireguards; dressing ballast and cutting sod lines; removing miscellaneous scrap, drift, cinders, dirt, and other material from right of way and from road and terminal tracks (including tracks at stations, engine yards, and car yards); and cleaning streets used as roadways.

NOTE B.—Loading ashes at engine-yard tracks shall be charged to the enginehouse expense accounts.

WATCHING ROADWAY.—The cost of extinguishing fires on right of way and adjacent thereto, and of walking, watching, and patrolling tracks and right of way.

NOTE C.—The cost of watching and patrolling bridges, buildings, and miscellaneous property is provided for in accounts specifically relating to such property.

BANK PROTECTION.—Cost of protecting banks by repairing retaining walls, riprap, piling, piers, dikes, breakwaters, and revetments, and by changing the channels of streams to prevent cutting, washing, and sliding of embankments.

TRAIN SERVICE.—The cost of work-train service in connection with work pertaining to roadway maintenance.

TRACK CHANGES.—The cost of roadway work in connection with taking up and relocating tracks.

OTHER EXPENSES.—The cost of roadway work not provided for elsewhere, such as official roadway inspection train service and premiums in connection with roadway maintenance.

NOTE D.—Tools and supplies used by repair men and watchmen in roadway maintenance service shall be charged to account No. 271, "Small tools and supplies."

(Note carefully special instructions, sections 2 and 3.)

203. ROADWAY—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of roadway. (See special instructions, section 8.)

204. UNDERGROUND POWER TUBES.

This account shall include the cost of repairing power tubes or conduits for underground contacts of electric railways or for underground cables of cable traction railways.

(Note carefully special instructions, sections 2 and 3.)

DETAILS OF UNDERGROUND CONTACT CONSTRUCTION.

(See special instructions, section 22.)

Concrete work.	Manhole frames.	Slot rails.
Drain pipes.	Pulleys.	Yokes.
Manhole covers.	Sheaves.	

NOTE.—The cost of replacing track rails, other track material, electric contact rails, and insulators shall be charged to the accounts provided for such expenses and not to this account.

205. UNDERGROUND POWER TUBES—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of underground power tubes. (See special instructions, section 8.)

206. TUNNELS AND SUBWAYS.

This account shall include the cost of repairing, ventilating, lighting, and watching tunnels and subways for the passage of trains, and the cost of special tools and supplies furnished in connection with the work.

(Note carefully special instructions, sections 2 and 3.)

NOTE.—The cost of repairs to signals and to roadway and tracks in tunnels shall be charged to the appropriate maintenance of way accounts and not to this account.

207. TUNNELS AND SUBWAYS—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of tunnels and subways. (See special instructions, section 8.)

208. BRIDGES, TRESTLES, AND CULVERTS.

This account shall include the cost of repairing (including fuel and supplies used) and watching bridges, trestles, and culverts, including altering and bracing during process of filling, removing old structures in connection with the construction of new structures, dredging and cleaning water channels for protection, and cleaning culverts.

The bridges, trestles, and culverts referred to in this account include only structures which carry the carrier's own tracks.

(Note carefully special instructions, sections 2 and 3.)

DETAILS OF BRIDGE STRUCTURES.

(See special instructions, section 22.)

Abutments.
Bridge signs.
Cofferdams.
Concrete and masonry ends for culverts.
Cribs.
Decking, including gravel for fire protection.
Dike protection.
Drainage systems.
Draw protection.
Drawbridge engines and machinery.
False work.
Guard timbers.
Ice breakers.
Painting.
Pier protection.
Piers and foundations.
Pipe culverts.
Retaining walls.
Riprap around abutments.
Riprap at culvert ends.
Supports.
Water channels.
Waterproofing.
Wing dams.
Wing walls.

NOTE.—When a part or the entire structure of a bridge or trestle is converted, by filling, into an earth embankment, the ledger value of the structure, or of the portion thereof filled, shall be credited to road and equipment account No. 6, "Bridges, trestles, and culverts." In case the bridge is used in lieu of a temporary trestle for the purpose of filling, the estimated cost of such a temporary trestle shall be charged to road and equipment account No. 3, "Grading." The ledger value of the structure, or portion thereof, filled, less the value of the salvage and the estimated cost of trestle charged to road and equipment account No. 3, "Grading," shall be charged to this account.

209. BRIDGES, TRESTLES, AND CULVERTS—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of bridges, trestles, and culverts. (See special instructions, section 8.)

210. ELEVATED STRUCTURES.

This account shall include the cost of repairing elevated structures and foundations of elevated railway systems.

(Note carefully special instructions, sections 2 and 3.)

211. ELEVATED STRUCTURES—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of elevated structures and foundations of elevated railway systems. (See special instructions, section 8.)

212. TIES.

This account shall include the cost of cross, switch, bridge, and other track ties used in the repairs of tracks.

(Note carefully special instructions, sections 2 and 3.)

NOTE A.—The cost of labor for unloading, distributing, and putting ties in tracks, the cost of work-train service in connection with the distribution of the ties laid, and the cost of picking up and concentrating or disposing of the ties released shall be charged to account No. 220, "Track laying and surfacing."

NOTE B.—The excess cost of metal ties applied in place of wooden ties over the cost at current prices of replacing in kind the wooden ties removed shall be charged to road and equipment account No. 8, "Ties."

NOTE C.—The cost of ties used for repairs of tracks in quarries and ballast pits shall be included in the appropriate clearing accounts, and of ties used for repairs of tracks on car floats in account No. 323, "Floating equipment—Repairs."

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.

213. TIES—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of ties. (See special instructions, section 8.)

214. RAILS.

This account shall include the cost (less salvage) of rails used in the repairs of tracks; also the difference between the cost (at current prices at time of removal) of heavy rails removed and the cost of lighter rails applied in repairs of tracks.

(Note carefully special instructions, sections 2 and 3.)

NOTE A.—The cost of labor for unloading, distributing, and putting rails in tracks, the cost of work-train service in connection with the distribution of the rails laid, and the cost of picking up and concentrating the rails released shall be charged to account No. 220, "Track laying and surfacing."

NOTE B.—The excess cost of heavier rails or rails of improved quality or type applied in repairs of tracks over the cost, at current prices, of rails of the weight, type, and quality released shall be charged to road and equipment account No. 9, "Rails."

NOTE C.—The cost of rails used for repairs of tracks in quarries and ballast pits shall be included in the appropriate clearing accounts, and of rails used for repairs of tracks on car floats to account No. 323, "Floating equipment—Repairs."

215. RAILS—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of rails. (See special instructions, section 8.)

216. OTHER TRACK MATERIAL.

This account shall include the cost (less salvage) of all track material used in the repairs of tracks, other than ballast, ties, and rails.

(Note carefully special instructions, sections 2 and 3.)

ITEMS OF OTHER TRACK MATERIAL.

(See special instructions, section 22.)

Angle bars.	Rail braces.	Switch points.
Anticreepers.	Rail chairs.	Switch stands.
Connecting rods.	Rail clips.	Switch-stand bolts.
Derails.	Rail joints.	Switch targets.
Frog and guard-rail blocking.	Rail rests.	Switches.
Frogs.	Rail shims.	Tie plates.
Guard-rail clamps.	Rail splices.	Tie plugs.
Guard-rail fasteners.	Splice bars.	Tie-rods.
Guard rails.	Step chairs.	Track bolts.
Main rods.	Switch chairs.	Track insulators.
Nut locks.	Switch crossings.	Track spikes.
Nuts.	Switch lamps.	
Offset bars.	Switch locks and keys.	

NOTE A.—The cost of labor and train service for distributing, unloading, and applying "other track material" used, and the cost of picking up and concentrating the material released shall be charged to account No. 220, "Track laying and surfacing."

NOTE B.—The excess cost of improved or heavier track material applied for repairs of tracks, under a definite plan of changing standards, over the cost, at current prices, of material of the same weight and quality as that released, shall be charged to road and equipment account No. 10, "Other track material."

NOTE C.—The cost of "other track material" used for repairs of tracks in quarries and ballast pits shall be included in the appropriate clearing accounts, and of such track material used for repairs of tracks on car floats in account No. 323, "Floating equipment—Repairs."

217. OTHER TRACK MATERIAL—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of "other track material." (See special instructions, section 8.)

218. BALLAST.

This account shall include the cost of gravel, stone, slag, cinders, sand, and like ballast material used in the repairs of tracks, including the cost of work-train service and of unloading the material. (See special instructions, section 11.)

When the ballast taken from a pit is not sufficient to justify the opening of a clearing account, the cost of gravel and quarry rights and cost of sinking test holes shall be included in this account.

(Note carefully special instructions, sections 2 and 3.)

NOTE A.—The cost of loading cinders at ash pits shall be charged to account No. 388, "Enginehouse expenses—Yard," or to account No. 400, "Enginehouse expenses—Train." No charge to cover the value of cinders accumulated by the carrier shall be included in this account.

NOTE B.—The cost of labor putting ballast in tracks shall be included in account No. 220, "Track laying and surfacing."

NOTE C.—The excess cost of ballasting tracks over the cost of replacing in kind to its maximum height and width the ballast previously put in the roadbed shall be charged to road and equipment account No. 11, "Ballast."

NOTE D.—Earth placed to form a crown in the middle of the track is not to be considered ballast.

NOTE E.—The cost of ballast used for repairs of temporary tracks, such as gravel pit or quarry tracks, shall be included in the appropriate clearing accounts.

219. BALLAST—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of ballast. (See special instructions, section 8.)

220. TRACK LAYING AND SURFACING.

This account shall include:

APPLYING BALLAST.—The cost of labor expended in preparing the roadbed, and applying ballast for repairs of tracks.

APPLYING TIES.—The cost of labor expended in unloading, distributing, and applying ties for repairs of tracks; in gathering up and disposing of the ties released; and in respacing ties.

APPLYING RAILS.—The cost of labor expended in unloading, distributing, cutting, slotting, drilling, adzing for, and laying rails for repairs of tracks; in gathering up and loading rails released; and in adjusting for expansion and contraction of rails.

APPLYING OTHER TRACK MATERIAL.—The cost of labor expended in unloading, distributing, and applying other track material for repairs of tracks; and the cost of gathering up and loading the material released.

TRACK MAINTENANCE.—The cost of labor expended in alining, surfacing, gauging, and shimming tracks; in tightening track bolts and track spikes; in restoring rails, ties, and ballast in case of washouts, derailments, and wrecks; and in taking up tracks.

TRAIN SERVICE.—The cost of work-train service (except work trains distributing ballast material) in connection with work pertaining to track laying and surfacing.

TRACK CHANGES.—The cost of track work (exclusive of the cost of track material) in taking up and relocating tracks.

OTHER EXPENSES.—The cost of track laying and surfacing work not provided for elsewhere, and expenses, such as repairing and replacing rail rests, official track inspection train service, and premiums in connection with track repairs.

(Note carefully special instructions, sections 2 and 3.)

NOTE.—Tools and supplies used by track repair men and watchmen shall be charged to account No. 271, "Small tools and supplies."

221. RIGHT-OF-WAY FENCES.

This account shall include the cost of repairing right-of-way fences (including permanent snow and sand fences in lieu of ordinary right-of-way fences), farm gates, cattle guards, wing fences, aprons, and hedges, except those around stock-yards, fuel stations, station and shop grounds, and building sites.

(Note carefully special instructions, sections 2 and 3.)

222. RIGHT-OF-WAY FENCES—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of right-of-way fences. (See special instructions, section 8.)

223. SNOW AND SAND FENCES AND SNOWSHEDS.

This account shall include the cost of repairing permanent and portable snow and sand fences and snowsheds for the protection of tracks from snow and sand, including rent of land for placing snow and sand fences.

(Note carefully special instructions, sections 2 and 3.)

NOTE A.—The cost of repairing permanent snow and sand fences which take the place of right-of-way fences shall be included in account No. 221, "Right-of-way fences."

NOTE B.—The cost of setting up, taking down, and storing portable snow and sand fences shall be included in account No. 272, "Removing snow, ice, and sand."

224. SNOW AND SAND FENCES AND SNOWSHEDS—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of snow and sand fences and snowsheds. (See special instructions, section 8.)

225. CROSSINGS AND SIGNS.

This account shall include the cost of repairing farm passes, highway crossings, and crossings of other railways crossing the carrier's right of way, except railways crossing at grade; also cost of repairing track signs.

(Note carefully special instructions, sections 2 and 3.)

DETAILS OF GRADE CROSSINGS.

(See special instructions, section 22.)

Batteries, with track instruments and connections, including battery renewals.
Crossing gates.
Crossing signal bells.
Hose for sprinkling grade crossings.
Paving.
Planking.
Soil crossing drains.
Watch houses at crossings.
Warning signals.
Water for sprinkling grade crossings.
Water pipes.

DETAILS OF OVERGRADE CROSSINGS.

(See special instructions, section 22.)

Bridge substructures.
Bridge superstructures.
Decking, including roadways.
Drainage systems.
Piers, including foundations.
Retaining and wing walls, including foundations

DETAILS OF UNDERGRADE CROSSINGS.

(See special instructions, section 22.)

Drainage systems.
Retaining walls, outside of bridge abutments.
Roadways and sidewalks.
Curbing.

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.

LIST OF SIGNS.

(See special instructions, section 22.)

Boundary signs.
Mile signs.
Monument stones.
Overhead-bridge caution signs.
Section signs.
Slow or stop signs.
Subdivision boards.
Tunnel caution signs.
Water station signs.
Water trough signs.
Whistle signs.
Yard-limit signs.

NOTE A.—The cost of repairing shop and station overgrade footbridges and subways not pu highways shall be included in repairs of such buildings.

NOTE B.—The cost of repairing a bridge or other structure which carries the track of anc carrier over the accounting carrier's tracks shall be included in this account. The cost of repa bridges or trestles, carrying the carrier's tracks over roads, highways, or other railways, sha charged to account No. 208, "Bridges, trestles, and culverts."

NOTE C.—The cost of repairing bridge signs shall be included in account No. 208, "Bridges, tres and culverts."

226. CROSSINGS AND SIGNS—DEPRECIATION.

This account shall include charges covering the current loss from depreciа of crossings and signs. (See special instructions, section 8.)

227. STATION AND OFFICE BUILDINGS.

This account shall include the cost of repairing station and office buildi fixtures, and appurtenances (including those for heating and lighting), u by the carrier in its operations; also the cost of maintaining grounds appurte to such buildings.

(Note carefully special instructions, sections 2 and 3.)

STATION AND OFFICE STRUCTURES AND DETAILS.

(See special instructions, section 22.)

Baggage rooms.
Breakwaters for protection of buildings.
Buildings and rooms for trainmen.
Buildings on piers.
Call bells.
Coal bins.
Coal-transferring machinery (not on coal and ore wharves).
Coal trestles (not at fuel stations).
Commissarial buildings.
Drainage and sewer systems.
Dwellings.
Eating houses.
Electric wiring.
Elevators and machinery.
Express buildings.
Fences.
Fire-engine houses.
Freight cranes.
Freight derricks.
Freight handling machinery.
Freight houses.
Garages.
Gas-supply systems.
General office buildings.
Grain cribs.
Grain elevators.
Grain warehouses.
Greenhouses.
Hay houses.
Heating plants.
Hedges.
Hoisting engines, for handling freight.
Hose houses.
Ice houses.
Lighting plants.
Mail cranes.
Milk stands.
Office buildings.
Ore transferring machinery (not on coal and ore wharves).
Outhouses.
Pavement in ground limits.
Platforms, freight.
Platforms, passenger, including planking between tracks.
Power distribution systems, interior.
Reading rooms.
Rooms for Y. M. C. A.
Scale houses.
Sidewalks.
Stables.
Station footbridges (not hi way crossings).
Station intertrack fences.
Station platforms.
Station signs.
Station stairways.
Station subways (not highw crossings).
Station power houses.
Stations, freight.
Stations, passenger.
Stock pens.
Storehouses.
Telegraph offices.
Telpher systems.
Track scales.
Transfer houses.
Transfer platforms.
Waiting rooms.
Warehouses.
Washrooms.
Water-supply systems.

NOTE.—Incidental cleaning, including the cost of cleaning snow from roofs, when done by st or office employees, shall not be included in this account.

228. STATION AND OFFICE BUILDINGS—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of station and office buildings. (See special instructions, section 8.)

229. ROADWAY BUILDINGS.

This account shall include the cost of repairing roadway shops and other roadway buildings, including drainage, water, gas, and sewer pipes and their connections, machinery and other apparatus, fixtures, and furniture in the buildings also the cost of maintaining the grounds appurtenant to such buildings.

(Note carefully special instructions, sections 2 and 3.)

LIST OF ROADWAY STRUCTURES.

(See special instructions, section 22.)

Bins for material.	Frog shops used solely for repairs of track material.	Repair shops.
Blacksmith shops.	Hand-car houses.	Scrap bins.
Boarding houses.	Lumber sheds.	Section dwelling houses.
Breakwaters for protection of buildings.	Offices.	Stables.
Carpenter shops.	Outhouses.	Storehouses.
Dwellings for roadway employees.	Planing mills.	Tool houses.
Fire-engine houses.	Rail shops used solely for repairs of track material.	Watch houses.

NOTE A.—The cost of repairing signal and interlocker buildings and their appurtenances shall be included in account No. 249, "Signals and interlockers."

NOTE B.—Incidental cleaning, including the cost of cleaning snow from roofs, when done by employees regularly working in the buildings, shall not be included in this account.

230. ROADWAY BUILDINGS—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of roadway buildings. (See special instructions, section 8.)

231 WATER STATIONS.

This account shall include the cost of repairing water stations, fixtures, and appurtenances used by the carrier in its operations, and the cost of maintaining the grounds appurtenant to such stations.

(Note carefully special instructions, sections 2 and 3.)

WATER STATION STRUCTURES AND DETAILS.

(See special instructions, section 22.)

Boilers.	Penstocks.	Tanks and foundations.
Breakwaters for protection of buildings.	Pump houses.	Track tanks.
Buildings on piers.	Pumps.	Tubs.
Cisterns.	Purifying plants.	Water cranes.
Dams.	Reservoirs.	Water-pipe lines.
Fences.	Settling basins.	Water-treating plants.
Outhouses.	Stationary engines.	Wells.
	Steam pipes.	Windmills.

NOTE.—Incidental cleaning, including the cost of cleaning snow from roofs, when done by water station employees, shall not be included in this account.

232. WATER STATIONS—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of water stations. (See special instructions, section 8.)

233. FUEL STATIONS.

This account shall include the cost of repairing fuel stations, fixtures, and appurtenances used by the carrier in its operations, and the cost of maintaining the grounds appurtenant to such stations.

(Note carefully special instructions, sections 2 and 3.)

FUEL STATION STRUCTURES AND DETAILS.

(See special instructions, section 22.)

Breakwaters for protection of buildings.	Fences.	Inclines.
Buckets.	Fuel houses.	Outhouses.
Buildings on piers.	Fuel-oil columns.	Scales.
Coal buggies.	Fuel-oil plants.	Sheds.
Coal hoists.	Fuel-oil pumps.	Stationary engines.
Coal pockets and chutes.	Fuel-oil sumps,	Tipple cars.
Dumping machinery.	Fuel-oil tanks.	Weighing apparatus.
Elevating machinery.	Fuel platforms.	Wood racks.
	Fuel wharves.	

NOTE.—Incidental cleaning, including the cost of cleaning snow from roofs, when done by fuel station employees, shall not be included in this account.

234. FUEL STATIONS—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of fuel stations. (See special instructions, section 8.)

235. SHOPS AND ENGINEHOUSES.

This account shall include the cost of repairing shop and enginehouse buildings, fixtures, and appurtenances used by the carrier in repairing and preparing equipment, and the cost of maintaining the grounds appurtenant to such buildings.

(Note carefully special instructions, sections 2 and 3.)

SHOP AND ENGINEHOUSE STRUCTURES AND DETAILS.

(See special instructions, section 22.)

Air-compressor houses.	Foundries.	Repair shops.
Ash pits and pockets.	Gas-compressor houses.	Sand houses.
Ash plants.	Heating plants.	Scale houses.
Bins for material.	Hose houses.	Scrap bins.
Blacksmith shops.	Ice houses.	Sidewalks.
Breakwaters for protection of buildings.	Laboratories.	Stables.
	Lighting plants.	Steam distribution systems, interior.
Buildings on piers.	Lumber sheds.	
Car sheds.	Machine shops.	Storehouses.
Car shops.	Material and supply truck tracks.	Tanks, gas.
Carpenter shops.		Tanks, oil.
Cinder pits.	Motor-crane tracks.	Test rooms.
Cinder pockets.	Offices, shop.	Tin shops.
Drop pits.	Oil houses.	Tool houses.
Dry houses.	Outhouses.	Track scales.
Electric-power distribution systems within buildings.	Paint shops.	Transfer tables.
	Pipe lines, air, interior.	Turntables.
Enginehouses.	Pipe lines, car-heating.	Upholstering shops.
Fire-engine houses.	Pipe lines, gas, interior.	Warehouses.
Footbridges (not public highways).	Planing mills.	Wash rooms.
	Platforms, shop and yard.	Watch houses.

NOTE A.—The cost of repairing machinery and other apparatus, including special foundations in shops for maintenance of equipment shall be included in account No. 302, "Shop machinery."

NOTE B.—Incidental cleaning, including the cost of cleaning snow from roofs, when done by shop employees, shall not be included in this account.

236. SHOPS AND ENGINEHOUSES—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of shops and enginehouses. (See special instructions, section 8.)

237. GRAIN ELEVATORS.

This account shall include the cost of repairing structures for the transfer, treatment, and storage of grain, including conveyors, machinery and fixtures; also the cost of maintaining the grounds appurtenant to such buildings.

The buildings referred to in this account are large elevators in which a regular grain business is handled or grain is stored for various owners.

(Note carefully special instructions, sections 2 and 3.)

NOTE A.—Small storage elevators at way stations, where the freight is received for shipment, etc., are classed as station buildings.

NOTE B.—Incidental cleaning, including the cost of cleaning snow from roofs, when done by grain elevator employees shall not be included in this account.

238. GRAIN ELEVATORS—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of grain elevators. (See special instructions, section 8.)

239. STORAGE WAREHOUSES.

This account shall include the cost of repairing storage warehouses, including machinery and fixtures therein; also the cost of maintaining the grounds appurtenant to such warehouses.

The buildings referred to herein are not the ordinary freight warehouses or stations where freight is received for shipment, etc., but are warehouses in which merchandise is stored and which the carrier operates as storage warehouses.

(Note carefully special instructions, sections 2 and 3.)

NOTE.—Incidental cleaning, including the cost of cleaning snow from roofs, when done by storage warehouse employees, shall not be included in this account.

240. STORAGE WAREHOUSES—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of storage warehouses. (See special instructions, section 8.)

241. WHARVES AND DOCKS.

This account shall include the cost of repairing wharves located at marine, lake, or river docks; dredging waterways to approaches and around such structures, including removal of dredged-out material; and cutting ice in and around docks and wharves to prevent damage; also cost of repairs of cribwork, racks, or caissons for preserving the depth of water in docks; and cost of repairs of guards, piling, and other protection against damage by drift or ice.

(Note carefully special instructions, sections 2 and 3.)

DETAILS OF WHARVES AND DOCKS.

(See special instructions, section 22.)

Bridge pontoons.	Dry docks.	Ferry slips.
Bulkheads.	Ferry-bridge machinery.	Jetties and inclines.
Caissons.	Ferry bridges.	Transfer-bridge machinery.
Cribwork.	Ferry racks.	Transfer bridges.

NOTE A.—The cost of repairing buildings, tracks, and machinery (not bridge machinery) on wharves and piers shall be charged to the appropriate expense accounts.

NOTE B.—The cost of repairing coal and ore wharves shall be charged to account No. 243, "Coal and ore wharves."

NOTE C.—Incidental cleaning, when done by regular wharf employees, shall not be included in this account.

242. WHARVES AND DOCKS—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of wharves and docks. (See special instructions, section 8.)

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.

243. COAL AND ORE WHARVES.

This account shall include the cost of repairing wharves and docks, in the cost of repairing conveyors, machinery, and fixtures for the transfer ment, blending, or storage of coal or ore.

(Note carefully special instructions, sections 2 and 3.)

NOTE A.—The structures referred to in this account do not include small transfer or storag at stations where coal is stored or delivered, such trestles being classed as station buildings.

NOTE B.—Incidental cleaning, including the cost of cleaning snow from roofs, when don and ore wharf employees, shall not be included in this account.

244. COAL AND ORE WHARVES—DEPRECIATION.

This account shall include charges covering the current loss from depr of coal and ore wharves. (See special instructions, section 8.)

245. GAS PRODUCING PLANTS.

This account shall include the cost of repairing gas producing and g pressing plants, including the machinery and appliances in such plants; cost of maintaining the grounds appurtenant to such plants.

(Note carefully special instructions, sections 2 and 3.)

NOTE.—Incidental cleaning, including the cost of cleaning snow from roofs, when done by ees of the gas producing plant, shall not be included in this account.

246. GAS PRODUCING PLANTS—DEPRECIATION.

This account shall include charges covering the current loss from depr of gas producing plants and gas compressing plants. (See special instru section 8.)

247. TELEGRAPH AND TELEPHONE LINES.

This account shall include:

TELEGRAPH.—The cost of repairs of telegraph outside plant and terminal ment for which the carrier is responsible, including the cost of work-train and of special tools provided for the work.

TELEPHONE.—The cost of repairs of telephone outside plant and terminal ment for which the carrier is responsible, including the cost of work-train and of special tools provided for the work.

(Note carefully special instructions, sections 2 and 3.)

DETAILS OF TELEGRAPH AND TELEPHONE TERMINAL EQUIPMENT.

(See special instructions, section 22.)

Batteries.
Cables and wires, interior.
Conduits, interior.
Connecting wires.
Current-controlling instruments.
Electric generators and motors.
Electric meters.
Engines, stationary.
Fuses and mechanical protectors.
Rectifiers.
Rheostats.
Sending and receiving instruments.
Switchboards.
Testing outfits.
Transformers.

DETAILS OF TELEGRAPH AND TELEPHONE OUTSIDE PLANT.

(See special instructions, section 22.)

Aerial attachments.
Braces.
Brackets.
Cable boxes and appurtenances.
Cables and wires, aerial.
Conduits and appurtenances.
Cross arms.
Guy stubs.
Guy wires.
Insulators.
Poles.
Submarine cables and connections.
Telephone pole boxes.
Towers.
Underground cables and connections.

NOTE.—The salaries, rent, other office expenses, and traveling expenses of superinte telegraph and telephone, their assistants, clerks, and attendants, when engaged both in ma and operating telegraph and telephone lines, shall be apportioned equally between this acc account No. 407, "Telegraph and telephone operation."

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTION

248. TELEGRAPH AND TELEPHONE LINES—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of telegraph and telephone lines. (See special instructions, section 8.)

249. SIGNALS AND INTERLOCKERS.

This account shall include the cost of repairing signals and interlockers governing the movement of trains, including salaries, rent, and other office expenses, and the traveling expenses of division signal engineers, signal supervisors, their assistants, clerks, and attendants; also the cost of special tools furnished for such work.

(Note carefully special instructions, sections 2 and 3.)

DETAILS OF SIGNALS AND INTERLOCKERS.

(See special instructions, section 22.)

Air compressors.
Batteries.
Boilers.
Distant signals.
Dynamos.
Engines, stationary.
Gates at crossings of other railroads.
Home signals.
Interlocker buildings.
Interlocker machinery.
Interlocker mechanism.
Levers.
Power transmission lines.
Rail bonds.
Railway-crossing signals.
Relays.
Semaphores.
Signal and switch levers.
Signal arms.
Signal blades.
Signal bridges.
Signal buildings.
Signal lamp brackets and connections.
Signal lamps.
Signal machinery.
Signal poles and foundations.
Signal pulleys and foundations.
Special appliances.
Station signals.
Train-order signals.
Wiring.

NOTE.—The cost of repairing track material, such as switches, special track fastenings, split rails, and frogs used in connection with interlockers, shall be charged to account No. 216, "Other track material."

250. SIGNALS AND INTERLOCKERS—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of signals and interlockers. (See special instructions, section 8.)

251. POWER PLANT DAMS, CANALS, AND PIPE LINES.

This account shall include the cost of repairing dams, canals, and pipe lines and accessories devoted to the utilization of water power for the operation of trains and cars, and to furnish power, heat, and light for general purposes.

(Note carefully special instructions, sections 2 and 3.)

DETAILS OF DAMS, CANALS AND PIPE LINES.

(See special instructions, section 22.)

Aqueducts.
Bridges.
Fences.
Footbridges.
Fore bays.
Gates.
Grids.
Inlet valves.
Penstocks.
Reservoirs.
Roadways.
Sluices.
Valves.
Viaducts.
Walls.

252. POWER PLANT DAMS, CANALS, AND PIPE LINES—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of power plant dams, canals, and pipe lines. (See special instructions, section 8.)

253. POWER PLANT BUILDINGS.

This account shall include the cost of repairing the buildings of power plants which furnish power for the operation of trains and cars, and furnish power, heat, and light for general purposes, including distinct power plant buildings at shops;

drainage, water, and sewer pipes and their connections; miscellaneous furniture and fixtures; and the cost of maintaining the grounds appurtenant to such buildings.

(Note carefully special instructions, sections 2 and 3.)

NOTE A.—The cost of repairing machinery and other apparatus in general power plants shall be included in account No. 304, "Power plant machinery."

NOTE B.—Incidental cleaning, including the cost of cleaning snow from roofs, when done by power plant employees, shall not be included in this account.

254. POWER PLANT BUILDINGS—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of power plant buildings. (See special instructions, section 8.)

255. POWER SUBSTATION BUILDINGS.

This account shall include the cost of repairing buildings of power substations, including storage-battery stations, used to transform power for the operation of trains and cars, and to furnish power, heat, and light for general purposes; drainage, water, and sewer pipes and their connections; fixtures, including wiring for lighting and heating; and miscellaneous furniture and fixtures; also the cost of maintaining the grounds appurtenant to such buildings.

(Note carefully special instructions, sections 2 and 3.)

NOTE A.—The cost of repairing substation apparatus for transforming or storing power in power substations shall be included in account No. 306, "Power substation apparatus."

NOTE B.—Incidental cleaning, including the cost of cleaning snow from roofs, when done by substation employees, shall not be included in this account.

256. POWER SUBSTATION BUILDINGS—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of power substation buildings. (See special instructions, section 8.)

257. POWER TRANSMISSION SYSTEMS.

This account shall include the cost of repairing systems for transmitting high-tension power from power houses to the point where transformed for use, including the cost of work-train service and special tools furnished for such work.

(Note carefully special instructions, sections 2 and 3.)

DETAILS OF POWER TRANSMISSION SYSTEMS.

(See special instructions, section 22.)

Cables.
Cut-outs (not at power houses and substations).
Feed wires.
Guard wires.
Insulators and connections.
Span wires.
Switchboards (not at power houses and substations).
Transformers (not at power houses and substations).

NOTE A.—The cost of repairing track material, such as insulated rail splices used in connection with transmission systems shall be charged to account No. 216, "Other track material."

NOTE B.—When the electric current generated or received is changed by means of (*a*) rotary converters, (*b*) motor generator sets, or (*c*) static transformers (substation apparatus), that portion of the line or outside conductor system carrying current other than the operating kind or voltage shall be classed as transmission system. When the electric current is generated or received and used substantially unchanged in voltage and kind, the line or outside conductor system, including any feeders, trolley wires, booster circuits, and supplementary return, shall be classed wholly as distribution system. Tie lines between generating stations and substations should follow the same rule as other lines.

258. POWER TRANSMISSION SYSTEMS—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of power transmission lines. (See special instructions, section 8.)

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.

259. POWER DISTRIBUTION SYSTEMS.

This account shall include the cost of repairing electric distribution systems, whether overhead, surface, or underground, for conveying low-tension power for propelling trains and cars, and for power, heat, light, and general purposes. (Note carefully special instructions, sections 2 and 3.)

DETAILS OF POWER DISTRIBUTION SYSTEMS.

(See special instructions, section 22.)

Compressed-air pipe lines.
Cut-outs (not at power houses and substations).
Feed wires.
Guard wires.
Insulators and connections.
Overhead trolley wires.
Rail bond plugs.
Rail bonds.
Rail insulating devices.
Span wires.
Steam pipe lines.
Switchboards (not at power houses and substations).
Third rail.
Third-rail braces.
Third-rail insulation and protection.
Third-rail supports.

NOTE A.—The cost of repairing and replacing track material, such as insulated rail splices, used in connection with electric distribution systems, shall be charged to account No. 216, "Other track material."

NOTE B.—The cost of repairing that portion of distribution systems located in shop buildings and station and office buildings shall be included in the cost of repairing the buildings. The cost of repairing distribution systems in plants used exclusively for operating signals and interlockers shall be included in account No. 249, "Signals and interlockers."

NOTE C.—When the electric current generated or received is changed by means of (*a*) rotary converters, (*b*) motor generator sets, or (*c*) static transformers (substation apparatus), that portion of the line or outside conductor system carrying current other than the operating kind or voltage shall be classed as transmission system. When the electric current is generated or received and used substantially unchanged in voltage and kind, the line or outside conductor system, including any feeders, trolley wires, booster circuits, and supplementary return, shall be classed wholly as distribution system. Tie lines between generating stations and substations should follow the same rule as other lines.

260. POWER DISTRIBUTION SYSTEMS—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of power distribution systems. (See special instructions, section 8.)

261. POWER LINE POLES AND FIXTURES.

This account shall include the cost of repairing and replacing electric line poles, cross arms, and insulating pins; brackets and other pole fixtures; and braces and other supports for holding poles in position; also the cost of repairing structures primarily for supporting the overhead electric construction. (Note carefully special instructions, sections 2 and 3.)

262. POWER LINE POLES AND FIXTURES—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of power line poles and fixtures. (See special instructions, section 8.)

263. UNDERGROUND CONDUITS.

This account shall include the cost of repairing conduits required for underground electric wires and cables of electric railway construction, including manholes, sewer connections, sewer traps, and all other material necessary for the maintenance of the conduit system. (Note carefully special instructions, sections 2 and 3.)

264. UNDERGROUND CONDUITS—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of underground conduits. (See special instructions, section 8.)

265. MISCELLANEOUS STRUCTURES.

This account shall include the cost of repairing permanent structures, not provided for elsewhere, including the cost of repairing all furniture and fixtures to equip them for use. It shall also include the cost of maintenance of the grounds appurtenant to such structures.

(Note carefully special instructions, sections 2 and 3.)

NOTE A.—When separable the cost of maintaining structures which are rented to other companies or individuals shall be charged to the income account in which is included the rent received for use of the structures.

NOTE B.—Incidental cleaning, including the cost of cleaning snow from roofs, when done by employees regularly working in miscellaneous buildings, shall not be included in this account.

266. MISCELLANEOUS STRUCTURES—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of miscellaneous structures. (See special instructions, section 8.)

267. PAVING.

This account shall include the cost of repairing paving about tracks in public highways and streets through which the carrier's tracks are laid.

(Note carefully special instructions, sections 2 and 3.)

NOTE.—The cost of repairing paving upon the carrier's lands, within the grounds of buildings or other structures, shall be included in the accounts provided for the repairs of the structures, and the cost of repairing paving upon the carrier's right of way at crossings in account No. 225, "Crossings and signs."

268. PAVING—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of paving. (See special instructions, section 8.)

269. ROADWAY MACHINES.

This account shall include the cost of repairing roadway machines which are used for the repairs of roadway and structures.

(Note carefully special instructions, sections 2 and 3.)

LIST OF ROADWAY MACHINES.

(See special instructions, section 22.)

Boilers, portable.
Cars, hand.
Cars, lever.
Cars, motor inspection.
Cars, push.
Cars (small), crane, for supply yards and general use.
Concrete mixers.
Ditching machines.
Dredging machines.
Engines, portable.
Grading outfits.
Hydraulic outfits.
Jacks, hydraulic.
Log loaders.
Pile drivers.
Plows, unloading.
Rail unloaders.
Rock crushers.
Steam rollers.
Timber trucks.
Velocipedes.

NOTE A.—The cost of repairing machines in the maintenance of equipment shops shall be included in account No. 302, "Shop machinery," as provided for therein.

NOTE B.—The cost of repairing roadway machines, such as pile drivers, log loaders, hoisting engines, and concrete mixers, when permanently mounted for movement on carrier's tracks, shall be included in account No. 326, "Work equipment—Repairs."

270. ROADWAY MACHINES—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of roadway machines. (See special instructions, section 8.)

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.

271 SMALL TOOLS AND SUPPLIES.

This account shall include:

ROADWAY AND TRACK TOOLS.—The cost of roadway tools (except special tools provided for elsewhere), including the cost of repairing such tools.

(Note carefully special instructions, sections 2 and 3.)

LIST OF ROADWAY AND TRACK TOOLS.

(See special instructions, section 22.)

Adzes.	Hammers, napping.	Rakes.
Anvils.	Hammers, paving.	Rope.
Augers.	Hammers, spiking.	Saws, crosscut.
Axes.	Handles for tools.	Saws, hand.
Ballast forks.	Hatchets.	Scrap boxes.
Bars, claw.	Hoes.	Scythes.
Bars, crow.	Jack levers.	Shovels.
Bars, lining.	Jacks, ratchet.	Sickles.
Bars, pinch.	Jacks, screw.	Sledges.
Bars, raising.	Jacks, track.	Spades.
Bars, tamping.	Kegs, water.	Spike mauls.
Braces and bits.	Ladders.	Spike pullers.
Brooms.	Lanterns and fixtures.	Spot boards.
Brush hooks.	Lawn mowers.	Squares.
Cable stretchers.	Levels.	Straightening machines.
Cables.	Lines for ditching.	Tape lines.
Cans, oil.	Nippers.	Thermometers for laying rail.
Cans, water.	Oilstones.	Tongs.
Cant hooks.	Padlocks.	Tool boxes.
Chains.	Pails, water.	Torches.
Chisels, track.	Paint brushes.	Track gauges.
Chisels, wood.	Picks, clay.	Track levels.
Curbing hooks.	Picks, tamping.	Vises.
Dippers.	Pike poles.	Weed spuds.
Drawing knives.	Post-hole diggers.	Wheelbarrows.
Drill bits.	Post-hole tampers.	Whetstones.
Drills (portable).	Punches.	Wood mallets.
Flags, signal.	Rail benders.	Wrenches, monkey.
Furnaces (portable).	Rail tongs.	Wrenches, track.
Grindstones.		

ROADWAY AND TRACK SUPPLIES.—The cost of supplies consumed in connection with the operation of roadway machines while used in repairs of roadway and tracks; and cost of supplies used by trackwalkers, track watchmen, and roadway and track repair men.

ITEMS OF ROADWAY SUPPLIES.

(See special instructions, section 22.)

Alcohol for hydraulic jacks.
Fuel for heating tool and other section houses.
Fuel for portable forges used in roadway and track work.
Gasoline for motor cars.
Oatmeal and ice for drinking water used by roadway and track repair men.
Oil and waste for hand cars, lever cars, motor inspection cars, and push cars.
Oil and wicks for lanterns used by trackwalkers, track watchmen, and roadway and track repair men.
Oil and wicks for lighting tool and other section houses.
Torpedoes used by trackwalkers, track watchmen, and roadway and track repair men.
Water for section houses.

272 REMOVING SNOW, ICE, AND SAND.

This account shall include the cost of keeping track and roadway clear of snow, ice, and sand.

It shall include cost of preventing accumulation, such as the cost of distributing, setting up, inspecting, taking down, and regathering portable snow and sand fences; and cost of tools furnished for the purpose; also cost of storing fences.

It shall include cost of removing accumulations of snow, ice, and sand, cost of snow-plow and flanger service, and of work-train service; cost of applying and

removing flangers from locomotives and cars, and of slatting pilots; cost of salt to keep switches clear; and cost of meals and lodging for men employed in removal service.

(Note carefully special instructions, sections 2 and 3.)

273. ASSESSMENTS FOR PUBLIC IMPROVEMENTS.

This account shall include the carrier's proportion of the cost of repairing public improvements, such as sewers, curbs, gutters, pavement and sidewalks, including costs of such repairs made under Government regulations by the carrier's own employees.

(Note carefully special instructions, sections 2 and 3.)

NOTE.—The cost of repairs, required by Government authority, to paving between rails and adjacent to tracks laid through public highways shall be included in account No. 267, "Paving."

274. INJURIES TO PERSONS.

This account shall include expenses on account of injuries to persons which occur directly in connection with the maintenance of way and structures, including injuries occurring in connection with the operation of work trains in such service, and injuries caused by defective highways within the right of way.

It shall also include expenses on account of injuries to employees incurred while demolishing structures, the maintenance of which would be chargeable to Maintenance of Way and Structures; services of employees and others called in consultation in connection with claim adjustments; pay and expenses of employees while engaged as witnesses at inquests and lawsuits; and a suitable proportion of donations made to hospitals.

ITEMS OF EXPENSE.

(See special instructions, section 22.)

Artificial limbs.
Carriage fees.
Claim adjusters' and clerks' services.
Claim adjusters' office expenses.
Compensation for injuries or death.
Final judgments, including plaintiffs' court costs.
Funeral expenses.
Hospital attendance.
Medical and surgical services.
Medical and surgical supplies.
Notarial fees.
Nursing.
Railway transportation.
Undertakers' services.
Undertakers' supplies.
Witnesses' fees and expenses at inquests and lawsuits.

NOTE A.—Expenses incident to personal injury suits, not otherwise provided for, shall be included in account No. 454, "Law expenses."

NOTE B.—Amounts donated by a carrier to hospitals shall be distributed, 25 per cent to account No. 274, "Injuries to persons"; 25 per cent to account No. 332, "Injuries to persons"; and 50 per cent to account No. 420, "Injuries to persons."

NOTE C.—The pay, office rent, office expenses, and other expenses of claim adjusters, claim clerks and others in charge of or engaged in connection with claim cases, when not assignable to a distinct class of claims, shall be apportioned equally among the several classes of claims over which they have jurisdiction or in connection with which they are engaged.

275. INSURANCE.

This account shall include premiums, except reinsurance premiums, for insuring the carrier against loss through injuries to persons or damage to or destruction or loss of property, whether caused by fire, accident, or other cause, when such loss to the carrier would be chargeable to Maintenance of Way and Structures; also premiums on fidelity bonds of employees whose pay is chargeable to Maintenance of Way and Structures. (See special instructions, section 18.)

NOTE.—The premiums paid by the carrier to its insurance fund shall be credited to an insurance reserve account, to which account shall be charged the amount of all claims for injuries to persons and damages to the property covered by its insurance. To such account shall also be charged all reinsurance premiums paid to insurance companies, and to it shall be credited all amounts recovered from insurance companies in reimbursement for losses under such reinsurance.

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.

276. STATIONERY AND PRINTING.

This account shall include the cost of stationery and printing used in connection with maintenance of way and structures.

STATIONERY AND PRINTING ITEMS.

(See special instructions, section 22.)

Adding machines.
Addressographs and supplies.
Arm rests.
Binders.
Blank books.
Blotters.
Blotting paper.
Bristol board.
Calculating machines.
Calendars.
Carbon paper.
Cardboard.
Cards, blank and printed.
Circulars.
Computing tables.
Copy (impression) books.
Copying brushes.
Copying presses.
Crayons.
Cross-section books.
Cross-section paper.
Cyclostyles.
Dating stamps and ribbons.
Dictaphones.
Dictographs.
Drawing paper.
Duplicators.
Electric pens.
Envelopes.
Erasers, rubber and steel.
Eyelet punches.
Eyelets.
File boxes, paper.
Forms, blank and printed.
Glass pens.
Hectographs.
Indexes.
Ink for writing and drawing
Inkstands.
Invoice books.
Legal cap paper.
Letter paper.
Manifold paper.
Manifold pens.
Mimeographs.
Mucilage.
Mucilage brushes.
Neostyles.
Note paper.
Notices.
Numbering stamps.
Oil paper.
Paper.
Paper baskets.
Paper clips.
Paper cutters.
Paper fasteners.
Paper files.
Paper weights.
Papyrographs.
Pencil sharpeners.
Pencils for writing and drawing.
Penholders.
Penracks.
Pens for writing and drawing.
Phonographs and records.
Pins.
Postage.
Profile books and paper.
Punches (not conductors' or baggagemen's).
Rubber bands.
Rubber stamps.
Rulers.
Ruling pens.
Scrapbooks.
Sealing wax.
Seals.
Shears.
Shipping tags.
Shorthand notebooks.
Sponge cups.
Sponges.
Stamps, impression.
Stylographs.
Tablets, blank and printed.
Tape.
Telegraph blanks.
Tissue (impression) paper.
Tracing cloth.
Tracing paper.
Twine.
Typewriters and ribbons.
Wage tables.
Wastebaskets.
Water colors.
Water holders.
Wrapping paper.
Wringers for copying presses.

NOTE—The cost of dictionaries, periodicals, technical books, etc., shall be included in the appropriate superintendence accounts.

277. OTHER EXPENSES.

This account shall include all expenses in connection with maintenance of way and structures not provided for elsewhere.

ITEMS OF EXPENSE.

(See special instructions, section 22.)

Pay and expenses of maintenance of way employees attending conferences with officers in connection with wage disputes.
Fees paid arbitrators in wage disputes with maintenance of way employees.
Payments to maintenance of way employees for time absent on account of sickness, when not compensation for personal injuries.
Gratuities paid to persons for discovering defective rails, etc.

278. MAINTAINING JOINT TRACKS YARDS, AND OTHER FACILITIES—DR.

This account shall include the carrier's proportion of the costs incurred by others in maintaining joint tracks, yards, terminals, and other facilities.

NOTE.—The purpose of this account is to show the amounts accruing against the carrier for its proportion of the cost of maintaining tracks, yards, and other roadway and structure facilities maintained by others and in the joint use of which the carrier participates. (See special instructions section 9.)

279. MAINTAINING JOINT TRACKS, YARDS, AND OTHER FACILITIES—CR.

This account shall include amounts chargeable to others as their proportions of the cost incurred by the carrier in maintaining joint tracks, yards, terminals, and other facilities.

NOTE.—The purpose of this account is to show the amounts accruing in favor of the carrier and against others for their proportions of the cost of maintaining tracks, yards, and other roadway and structure facilities maintained by the carrier and in the joint use of which others participate. (See special instructions, section 9.)

II. MAINTENANCE OF EQUIPMENT.

The primary accounts included in this general account are designed to show the expenses of maintaining the carrier's equipment and the carrier's expense for the repairs of other equipment used in its operations, also the cost of maintaining the fixed improvements which are classified as shop and power plant machinery, and power substation apparatus. The repair accounts shall include foreign roads' freight charges for transporting the carrier's equipment to shops for repairs and for transporting such equipment to the carrier's line after repairs have been made. No charge shall be made to these accounts for transporting equipment in the carrier's transportation service trains to shops for repairs or from shops after repairs have been made.

The accounts for maintenance of equipment shall be kept in such manner as to show separately, by primary accounts, the expenses directly assignable to sleeping car operations, water-line operations, dining and buffet service, producing power sold, and other miscellaneous operations.

301. SUPERINTENDENCE.

This account shall include:

PAY OF OFFICERS.—The pay of officers directly in charge of or engaged in the maintenance of equipment.

LIST OF OFFICERS.

(See special instructions, section 22.)

Vice president.
Assistant vice president.
General superintendent of motive power.
Assistant general superintendent of motive power.
Mechanical superintendent.
Superintendent of motive power.
Assistant superintendent of motive power.
Mechanical engineer.
Assistant mechanical engineer.
Chief chemist.
General equipment inspector.
Engineer of tests.
Supervisor of car department.
Electrical engineer.
Assistant electrical engineer.
Chemist and assistant chemist.
Master car builder.
Master mechanic.
General foreman.
Chief car inspector.
Inspector of passenger-train cars.
General car inspector.
Traveling boiler inspector.

PAY OF CLERKS AND ATTENDANTS.—The pay of clerks and other employees in the offices and on business cars of officers whose pay is chargeable to this account.

LIST OF EMPLOYEES.

(See special instructions, section 22.)

Chief motive power clerks.
Chief clerks.
Draftsmen.
Stenographers.
Motive power clerks.
Shop clerks.
Messengers.
Cooks.
Porters.

OFFICE AND OTHER EXPENSES.—Office expenses and other expenses of officers and employees whose pay is chargeable to this account, and amounts paid to detective agencies and others for investigations in connection with repairs of equipment.

ITEMS OF EXPENSE AND SUPPLIES.

(See special instructions, section 22.)

Atlases and maps.
Barometers.
Books for office use.
Business car service.
Drafting instruments.
Drafting supplies.
Engineering supplies.
Fees and dues in technical associations.
Furniture repairs and renewals.
Heating.
Lighting.
Official train service.
Periodicals and newspapers.
Power.
Provisions for business cars.
Rent of offices.
Repair of rented offices.
Telegraph service.
Telephone service.
Traveling expenses.
Water and ice.

NOTE A.—When employees designated above are engaged on construction or other work not chargeable to Maintenance of Equipment, their pay and expenses while thus employed shall be charged to accounts covering the specific work on which engaged.

NOTE B.—When officers designated above have supervision over more than one department, their salaries, the pay of their clerks and attendants, and their office and other expenses shall be apportioned equally among the departments over which they have jurisdiction.

NOTE C.—The cost of stationery purchased for maintenance of equipment offices is chargeable to account No. 334, "Stationery and printing."

NOTE D.—The pay of general foremen in small shops, who exercise direct supervision over all departments, unassisted by departmental foremen, shall be apportioned through clearing account "Shop expenses."

302. SHOP MACHINERY.

This account shall include the cost of repairing machinery and other apparatus, including special foundations, in shops and enginehouses.

(Note carefully special instructions, sections 2 and 3.)

LIST OF SHOP MACHINERY.

(See special instructions, section 22.)

Air compressors.
Ash conveyors.
Belting.
Blowers.
Boilers for furnishing power.
Boring machines.
Cars, small motor.
Cars, push.
Cranes.
Drill presses.
Drilling machines.
Drop tables.
Forges.
Framing machines.
Furnaces.
Grinding and polishing machines.
Hoists.
Hydraulic jacks.
Lathes.
Lifting magnets.
Metal chimneys.
Milling machines.
Motors.
Pipe cutting and threading machines.
Planers.
Pneumatic hammers.
Power machinery, where no distinct power plant is provided.
Punches.
Riveters.
Saws.
Shafting.
Shapers.
Slotters.
Stationary engines.
Steam hammers.
Vises.
Welding machines.
Woodworking machines.

NOTE A.—The cost of repairing power plant machinery for shop power when located in distinct buildings shall be included in account No. 304, "Power plant machinery."

NOTE B.—The cost of repairing boilers used exclusively for heating shall be included in the appropriate repair accounts for buildings.

NOTE C.—The cost of small tools which are soon worn out, when used by mechanics on miscellaneous work, shall be included in clearing account "Shop expenses," and when used on repairs of equipment shall be included in the appropriate accounts for repairs of equipment.

NOTE D.—The cost of repairing machinery and tools in shops used exclusively for maintenance of way and structures shall be included in account No. 229, "Roadway buildings."

303. SHOP MACHINERY—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of shop machinery. (See special instructions, section 8.)

304. POWER PLANT MACHINERY.

This account shall include the cost of repairing machinery and other apparatus, including special foundations, for generating power in power plants used for the operation of trains and cars and to furnish power, heat, and light for general purposes. It shall also include the cost of repairing machinery and other apparatus for transforming and storing power, when such apparatus is contained in a power plant.

(Note carefully special instructions, sections 2 and 3.)

DETAILS OF POWER PLANT MACHINERY.

(See special instructions, section 22.)

Ammeters.	Engine-room appliances and tools.	Purifiers.
Batteries.	Feed-water heaters.	Rheostats.
Belting.	Furnaces.	Sewer connections.
Boiler-room appliances and tools.	Generators.	Shafting.
Boilers and fittings.	Globes.	Stationary engines.
Boosters.	Hangers.	Steam distribution systems.
Cables.	Heating apparatus.	Steam fittings.
Circuit breakers.	Hoists.	Switchboards.
Clutches.	Insulators.	Tanks.
Conductors.	Lamps.	Transformers.
Cranes.	Lighting apparatus.	Turbines.
Draft machinery.	Lubricating devices.	Voltmeters.
Dynamos.	Mechanical stokers.	Water meters.
Economizers.	Piping.	Water wheels.
Electric-power distribution systems, interior.	Poles.	Wires from generators or transformers to switchboards.
	Pumps.	

NOTE A.—The cost of repairing power apparatus in shops where no distinct plant is provided shall be included in account No. 302, "Shop machinery."

NOTE B.—The cost of repairing power apparatus in stations and offices used solely for station and office purposes, where no distinct plant is provided, shall be included in account No. 227, "Station and office buildings."

NOTE C.—The cost of repairing power apparatus in plants used solely for operating signals and interlockers shall be included in account No. 249, "Signals and interlockers."

305. POWER PLANT MACHINERY—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of power plant machinery. (See special instructions, section 8.)

306. POWER SUBSTATION APPARATUS.

This account shall include the cost of repairing machinery and other apparatus, including special foundations, for transforming or storing power in power substations used for the operation of trains and cars and for power, heat, and light for general purposes.

(Note carefully special instructions, sections 2 and 3.)

DETAILS OF POWER SUBSTATION APPARATUS.

(See special instructions, section 22.)

Rotary converters.	Switchboards.
Storage batteries.	Transformers.

NOTE.—When machinery and other apparatus for transforming and storing power are located in a power plant the cost of repairs shall be included in account No. 304, "Power plant machinery."

307 POWER SUBSTATION APPARATUS—DEPRECIATION.

This account shall include charges covering the current loss from depreciation of power substation apparatus. (See special instructions, section 8.)

308. STEAM LOCOMOTIVES—REPAIRS.

This account shall include the cost of repairing transportation service steam locomotives and tenders, including all appurtenances, and the cost of small hand tools used in repair work.

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.

This account shall also include the cost of work-train service for the transportation of locomotives without steam to shops for repairs, including the pay and expenses of caretakers, and the pay and expenses of caretakers of locomotives without steam which are hauled in transportation service trains to shops for repairs; also notarial fees in connection with reports on conditions of locomotives

(Note carefully special instructions, sections 2 and 3, and general instructions for income, profit and loss, and general balance-sheet accounts, section 2.)

LIST OF APPURTENANCES TO LOCOMOTIVES.

(See special instructions, section 22.)

Air-brake equipment and hose.	Head lamps.
Arm rests.	Packing (except for lubricating).
Awnings.	Pneumatic sanding equipment.
Brake fixtures.	Seat boxes.
Cab cushions.	Speed recorders.
Cab lamps.	Steam-gauge lamps.
Clocks.	Steam-heat equipment and hose.
Coal boards.	Storm doors.
Fire extinguishing apparatus.	Tool boxes.
Gongs.	Train-signal equipment and hose.

NOTE A.—The cost of inspecting smokestacks and ash pans of locomotives in service shall be included in the appropriate enginehouse expense accounts.

NOTE B.—The cost of repairing steam locomotives and tenders of foreign lines, waybilled as freight, and damaged in transit shall be charged to account No. 418, "Loss and damage—Freight"; and the cost of repairing steam locomotives and tenders of foreign lines having trackage rights over the carrier's line, damaged by collision, wreck, or other cause, for which the carrier is liable, shall be charged to account No. 416, "Damage to property."

NOTE C.—The cost of running locomotives under steam to shops for repairs in connection with transportation service shall be included in the cost of the service in connection with which the movement occurs.

NOTE D.—The cost of repairing steam locomotives used solely in work service in connection with operations shall be included in account No. 326, "Work equipment—Repairs." The cost of repairing locomotives on account of construction work shall be included in the cost of the work. (See general instructions for the classification of investment in road and equipment, section 4c.)

309. STEAM LOCOMOTIVES—DEPRECIATION.

This account shall include uniform monthly charges representing the depreciation of steam locomotives. These charges shall be based upon the percentage of the original cost (estimated if not known), ledger value, or purchase price of such equipment determined to be equitable from the carrier's experience and best sources of information as to the average current loss from depreciation. A statement of the percentages used by the carrier for computing these charges, together with the estimated life of the equipment upon which such percentages are based, shall be included in its annual report to the Commission.

Depreciation charges with respect to any locomotive shall cease when the difference between the ledger value and the estimated scrap value shall have been credited to the accrued depreciation account.

(See general instructions for income, profit and loss, and general balance-sheet accounts, section 2.)

NOTE.—All charges to this account for depreciation of the carrier's equipment shall be concurrently credited to balance-sheet account No. 776 "Accrued depreciation—Equipment."

310. STEAM LOCOMOTIVES—RETIREMENTS.

This account shall include amounts necessary to adjust the difference between the ledger value (less salvage) of steam locomotives retired from service and the amount of accrued depreciation charged on account of such retired locomotives to the date of their retirement. (See road and equipment account II, Equipment, paragraphs 4 and 5.)

NOTE.—Steam locomotives permanently retired from service, but held pending disposition, shall be written out of service and carried in an appropriate suspense account at an equitable valuation.

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.

311. OTHER LOCOMOTIVES—REPAIRS.

This account shall include the cost of repairs of transportation service locomotives other than steam locomotives, analogous to those set forth for steam locomotives in account No. 308, "Steam locomotives—Repairs."

(Note carefully special instructions, sections 2 and 3.)

312. OTHER LOCOMOTIVES—DEPRECIATION.

This account shall include uniform monthly charges representing the depreciation of other than steam locomotives. These charges shall be based upon the percentage of the original cost (estimated if not known), ledger value, or purchase price of such equipment determined to be equitable from the carrier's experience and best sources of information as to the average current loss from depreciation. A statement of the percentages used by the carrier for computing these charges, together with the estimated life of the equipment upon which such percentages are based, shall be included in its annual report to the Commission.

Depreciation charges with respect to any locomotive shall cease when the difference between the ledger value and the estimated scrap value shall have been credited to the accrued depreciation account.

NOTE.—All charges to this account for depreciation of the carrier's equipment shall be concurrently credited to balance-sheet account No. 776, "Accrued depreciation—Equipment."

313. OTHER LOCOMOTIVES—RETIREMENTS.

This account shall include amounts necessary to adjust the difference between the ledger value (less salvage) of locomotives other than steam locomotives retired from service and the amount of accrued depreciation charged on account of such retired locomotives to the date of their retirement. (See road and equipment account II, Equipment, paragraphs 4 and 5.)

NOTE.—Locomotives permanently retired from service but held pending disposition shall be written out of service and carried in an appropriate suspense account at an equitable valuation.

314. FREIGHT-TRAIN CARS—REPAIRS.

This account shall include the cost of repairing freight-train cars and appurtenances, and cost of repairs of the freight car feature of motor cars engaged in transportation service; also cost of small hand tools used in repairs. This account shall also include the net loss sustained on account of the destruction of foreign freight cars in the carrier's transportation service and amounts paid to others for repairs of freight cars for which the carrier is liable.

(Note carefully special instructions, sections 2 and 3, and general instructions for income, profit and loss, and general balance-sheet accounts, section 2.)

LIST OF FREIGHT-TRAIN CARS.

(See special instructions, section 22.)

Ballast (commercial).	Furniture.	Platform.
Beer.	Gondola.	Poling.
Box.	Gondola (hopper).	Poultry.
Cabin.	Gondola (long).	Produce.
Caboose.	Gun truck.	Rack.
Charcoal.	Hay.	Refrigerator.
Coal.	Lime.	Stock.
Coke.	Logging.	Tank (in commercial service).
Dump (commercial).	Oil tank.	Water (in commercial service).
Flat.	Ore.	Work (in commercial service).
Fruit.		

LIST OF APPURTENANCES TO FREIGHT-TRAIN CARS.

(See special instructions, section 22.)

Air-brake equipment, including hose.	Heating equipment.	Speed recorders.
Cooking equipment and utensils.	Ice boxes.	Train-signal equipment, including hose.
Cushions.	Lamps and fixtures.	Water tanks.
	Seats.	

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.

NOTE A.—The cost of candles, wicks, lamp chimneys, globes, and shades for oil or other lamps in freight-train cars shall be charged to account No. 402, "Train supplies and expenses."

NOTE B.—The cost of repairing freight-train cars of foreign lines waybilled as freight and damaged in transit shall be charged to account No. 418, "Loss and damage—Freight"; and the cost of repairing freight-train cars of foreign lines having trackage rights over the carrier's line, when damaged by collision, wreck, or other cause, for which the carrier is liable, shall be charged to account No. 416, "Damage to property."

315. FREIGHT-TRAIN CARS—DEPRECIATION.

This account shall include uniform monthly charges representing the depreciation of freight-train cars. These charges shall be based upon the percentage of the original cost (estimated if not known), ledger value, or purchase price of such equipment determined to be equitable from the carrier's experience and best sources of information as to the average current loss from depreciation. A statement of the percentages used by the carrier for computing these charges, together with the estimated life of the equipment upon which such percentages are based, shall be included in its annual report to the Commission.

Depreciation charges with respect to any freight-train car shall cease when the difference between the ledger value and the estimated scrap value shall have been credited to the accrued depreciation account.

(See general instructions for income, profit and loss, and general balance-sheet accounts, section 2.)

NOTE.—All charges to this account for depreciation of the carrier's equipment shall be concurrently credited to balance-sheet account No. 776, "Accrued depreciation—Equipment."

316. FREIGHT-TRAIN CARS—RETIREMENTS.

This account shall include amounts necessary to adjust the difference between the ledger value (less salvage) of freight-train cars retired from service and the amount of accrued depreciation charged on account of such retired cars, to the date of their retirement. (See road and equipment account II, Equipment, paragraphs 4 and 5.)

NOTE.—Freight-train cars permanently retired from service, but held pending disposition, shall be written out of service, and carried in an appropriate suspense account at an equitable valuation.

317. PASSENGER-TRAIN CARS—REPAIRS.

This account shall include the cost of repairing passenger-train cars and appurtenances and passenger car features of motor cars used in transportation service; small hand tools used in repairs; the net loss sustained on account of the destruction of foreign passenger-train cars in the carrier's transportation service, and amounts paid others for repairs of passenger-train cars for which the carrier is liable.

(Note carefully special instructions, sections 2 and 3, and general instructions for income, profit and loss, and general balance-sheet accounts, section 2.)

LIST OF PASSENGER-TRAIN CARS.

(See special instructions, section 22.)

Baggage.
Baggage-express.
Baggage-mail.
Baggage-mail-express.
Buffet.
Café.
Chair.
Club.
Colonist.
Combination passenger and baggage.
Dining.
Express.
Immigrant.
Library.
Mail.
Milk.
Observation.
Parlor.
Parlor-baggage.
Passenger.
Passenger-baggage.
Passenger-baggage-mail.
Postal.
Refrigerator-express.
Sleeping.
Smoking.
Tourist.

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.

LIST OF APPURTENANCES TO PASSENGER-TRAIN CARS.

(See special instructions, section 22.)

Air-brake equipment, including hose.	Ice boxes.	Table glassware.
Bedding.	Ice tanks.	Table linen.
Chairs.	Kitchen equipment and utensils.	Table silver.
Coat hooks.	Lighting equipment.	Toilet equipment.
Curtains and fixtures.	Mail catchers.	Train-signal equipment, including hose.
Cushions.	Parcel racks.	Water tanks.
Electric bells.	Ranges and boilers.	
Floor coverings.	Seats.	
Heating equipment and steam-heat hose.	Speed recorders.	
	Steam heat hose.	
	Table china.	

NOTE A.—The cost of candles, wicks, and lamp chimneys, and of globes and shades for electric and other lights in passenger-train cars shall be charged to account No. 402, "Train supplies and expenses."

NOTE B.—The cost of repairing passenger-train cars of foreign lines, which are waybilled as freight and have been damaged in transit, shall be charged to account No. 418, "Loss and damage—Freight," and the cost of repairing passenger-train cars of foreign lines having trackage rights over the carrier's line, when damaged by collision, wreck, or otherwise, for which the carrier is liable, shall be charged to account No. 416, "Damage to property."

318. PASSENGER-TRAIN CARS—DEPRECIATION.

This account shall include uniform monthly charges representing the depreciation of passenger-train cars. These charges shall be based upon the percentage of the original cost (estimated if not known), ledger value, or purchase price of such equipment determined to be equitable from the carrier's experience and best sources of information as to the average current loss from depreciation. A statement of the percentages used by the carrier for computing these charges, together with the estimated life of the equipment upon which such percentages are based, shall be included in its annual report to the Commission.

Depreciation charges with respect to any passenger-train car shall cease when the difference between the ledger value and the estimated scrap value shall have been credited to the accrued depreciation account.

(See general instructions for income, profit and loss, and general balance-sheet accounts, section 2.)

NOTE.—All charges to this account for depreciation of the carrier's equipment shall be concurrently credited to balance-sheet account No. 776, "Accrued depreciation—Equipment."

319. PASSENGER-TRAIN CARS—RETIREMENTS.

This account shall include amounts necessary to adjust the difference between the ledger value (less salvage) of passenger-train cars retired from service and the amount of accrued depreciation charged on account of such retired cars to the date of their retirement. (See road and equipment account II, Equipment, paragraphs 4 and 5.)

NOTE.—Passenger-train cars permanently retired from service, but held pending disposition, shall be written out of service and carried in an appropriate suspense account at an equitable valuation.

320. MOTOR EQUIPMENT OF CARS—REPAIRS.

This account shall include the cost of repairing motor equipment affixed to cars; also cost of small hand tools used in repairs. The cars to which this account has reference are distinct from independent locomotives used for the propulsion of trains.

(Note carefully special instructions, sections 2 and 3.)

ITEMS OF MOTOR EQUIPMENT.

(See special instructions, section 22.)

Batteries, storage.	Lightning arresters.	Switches.
Circuit breakers.	Motors.	Third-rail contact.
Controllers.	Overload switches.	Trolley poles.
Engines, internal-combustion.	Rheostats.	Trolleys.
Generators.		

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.

321. MOTOR EQUIPMENT OF CARS—DEPRECIATION.

This account shall include uniform monthly charges representing the depreciation of the motor equipment of cars. These charges shall be based upon the percentage of the original cost (estimated if not known), ledger value, or purchase price of such equipment determined to be equitable from the carrier's experience and best sources of information as to the average current loss from depreciation. A statement of the percentages used by the carrier for computing these charges, together with the estimated life of the equipment upon which such percentages are based, shall be included in its annual report to the Commission.

Depreciation charges with respect to the motor equipment of cars shall cease when the difference between the ledger value and the estimated scrap value shall have been credited to the accrued depreciation account.

NOTE.—All charges to this account for depreciation of the carrier's equipment shall be concurrently credited to balance-sheet account No. 776, "Accrued depreciation—Equipment."

322. MOTOR EQUIPMENT OF CARS—RETIREMENTS.

This account shall include amounts necessary to adjust the difference between the ledger value (less salvage) of motor equipment of cars retired from service, and the amount of accrued depreciation charged on such retired equipment to the date of its retirement. (See road and equipment account II, Equipment, paragraphs 4 and 5.)

NOTE.—The motor equipment of cars permanently retired from service but held pending disposition shall be written out of service and carried in an appropriate suspense account at an equitable valuation.

323. FLOATING EQUIPMENT—REPAIRS.

This account shall include the cost of repairing floating equipment (other than work equipment), including appurtenances, and cost of small hand tools used in repairs.

The pay and expenses of captains and engineers and of boat employees, while engaged on maintenance of floating equipment, shall be included in this account.

(Note carefully special instructions, sections 2 and 3.)

LIST OF FLOATING EQUIPMENT.

(See special instructions, section 22.)

Barges.	Lighters.	Steamboats.
Canal boats.	Power launches.	Steamships.
Car and other floats.	Power lighters.	Transfer boats.
Ferryboats.	Scows.	Tugboats.

LIST OF APPURTENANCES, TOOL EQUIPMENT, AND FURNITURE.

(See special instructions, section 22.)

Anchors.	Flue cleaners.	Racks.
Axes.	Furniture.	Railings.
Barometers.	Gangplanks.	Rakes.
Beds and bedding.	Hatchets.	Rigging.
Binnacle lamps.	Heating equipment.	Safes.
Blocks and tackle.	Hoisting equipment.	Sails.
Boilers and foundations.	Hooks.	Scales.
Cables.	Keys.	Seats, chairs, and cushions.
Capstan bars.	Kitchen equipment.	Shovels.
Carpets.	Life preservers.	Slice bars and pokers.
Charts.	Lighting equipment.	Spyglasses.
China, crockery, and glassware.	Linen.	Steam distribution systems.
Chronometers.	Lines.	Steering equipment.
Clocks.	Logs.	Telescopes.
Compasses.	Machinery and foundations.	Ticket cases.
Counters.	Masts.	Tool boxes.
Desks.	Office furniture.	Tools, miscellaneous.
Engines and foundations.	Oil cans.	Tracks on car floats.
Fire buckets.	Pianos and other musical instruments.	Ventilating equipment.
Fire extinguishers.	Pumps.	Wrenches.
Floor coverings.		

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.

NOTE A.—When the compensation for the use of floating equipment includes rent, maintenance, and operation, the portion covering rent shall be included in income account No. 539, "Rent for floating equipment," the portion covering repairs shall be included in this account, the portion covering depreciation shall be included in account No. 324, "Floating equipment—Depreciation," and the portion covering operation shall be included in account No. 408, "Operating floating equipment;" or in the primary accounts in general account V, Transportation—Water Line, as may be appropriate.

NOTE B.—The cost of repairs resulting from casualties shall be charged to the casualty accounts when covered by insurance and to insurance reserves to the extent of the accruals therein when such reserves have been provided for the damage to property. Any part of such cost not recoverable from underwriters or chargeable to insurance reserves shall be charged to the repair account.

324. FLOATING EQUIPMENT—DEPRECIATION.

This account shall include uniform monthly charges representing the depreciation of floating equipment other than work equipment. These charges shall be based upon the percentage of the original cost (estimated if not known), ledger value, or purchase price of such equipment determined to be equitable from the carrier's experience and best sources of information as to the average current loss from depreciation. A statement of the percentages used by the carrier for computing these charges, together with the estimated life of the equipment upon which such percentages are based, shall be included in its annual report to the Commission.

Depreciation charges with respect to any floating equipment shall cease when the difference between the ledger value and the estimated scrap value shall have been credited to the accrued depreciation account.

NOTE A.—All charges to this account for depreciation of the carrier's equipment shall be concurrently credited to balance-sheet account No. 776, "Accrued depreciation—Equipment."

NOTE B.—When the compensation for the use of floating equipment includes rent, maintenance, and operation, the portion covering rent shall be included in income account No. 539, "Rent for floating equipment," the portion covering repairs shall be included in account No. 323, "Floating equipment—Repairs," the portion covering depreciation shall be included in this account, and the portion covering operation shall be included in account No. 408, "Operating floating equipment," or in the primary accounts in general account V, Transportation—Water Line, as may be appropriate.

325. FLOATING EQUIPMENT—RETIREMENTS.

This account shall include amounts necessary to adjust the difference between the ledger value (less salvage) of floating equipment, other than work equipment, retired from service and the amount of accrued depreciation charged on account of such retired equipment to the date of its retirement. (See road and equipment account II, Equipment, paragraphs 4 and 5.)

NOTE.—When floating equipment is permanently retired from service but held pending disposition, it shall be written out of service and carried in an appropriate suspense account at an equitable valuation.

326. WORK EQUIPMENT—REPAIRS.

This account shall include the cost of repairing rail and floating work equipment, including appurtenances, and cost of small hand tools used in repairs.

The cost of fitting up commercial cars for work service in connection with maintenance and operation; the cost of refitting them for commercial service; the cost of repairs to locomotives while in service for repairs of road and equipment; and the cost of repairs to foreign cars damaged while in such service shall be included in this account; also amounts paid in settlement for such cars destroyed in such service.

(Note carefully special instructions, sections 2 and 3, and general instructions for income, profit and loss, and general balance-sheet accounts, section 2.)

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.

LIST OF WORK EQUIPMENT—RAIL.

(See special instructions, section 22.)

Air-brake instruction cars.	Grading cars.	Scraper cars.
Ballast cars.	Gravel cars.	Snow dozers.
Ballast unloader cars.	Indicator cars.	Snow drags.
Boarding cars.	Locomotive tanks used as water cars.	Snow plows (not attached to but moved by locomotives).
Bridge cars.	Locomotives.	Sprinkling cars.
Business cars.	Officer's cars.	Steam shovels.
Camp cars.	Outfit cars.	Steam wrecking derricks.
Cinder cars.	Painters' cars.	Supply cars.
Concrete mixers (mounted).	Pay cars.	Sweeper cars.
Derrick cars.	Pile drivers (mounted).	Tool and block cars.
Dirt spreaders (mounted).	Rail saws (mounted).	Tool cars.
Ditching cars.	Salt cars.	Water cars.
Dump cars.	Sanding cars.	Weed burners (mounted).
Dynamometer cars.	Scale test cars.	Wrecking cars.
Gas-tank cars.		

APPURTENANCES TO WORK EQUIPMENT—RAIL.

(See special instructions, section 22.)

Air-brake equipment.	Flue cleaners.	Oil cans.
Beds and bedding.	Hatchets.	Rakes.
Blocking.	Heating equipment.	Ranges.
Blocks and tackle.	Hooks.	Shovels.
Boilers on cars.	Jacks.	Slice bars and pokers.
Bunks, seats, and chairs.	Kitchen utensils.	Tool boxes.
Chains.	Lighting equipment.	Tools, miscellaneous.
China, crockery, and glassware.	Linen.	Train-signal equipment.
Cushions.	Lines.	Wrecking trucks.
Engines on cars.	Machinery on cars.	Wrenches.

LIST OF WORK EQUIPMENT—FLOATING.

(See special instructions, section 22.)

Derricks.	Dredges.	Pile drivers.

APPURTENANCES TO WORK EQUIPMENT—FLOATING.

(See special instructions, section 22.)

Anchors.	Floor coverings.	Oil cans.
Axes.	Flue cleaners.	Pumps.
Barometers.	Gangplanks.	Rakes.
Beds and bedding.	Hatchets.	Rigging.
Blocks and tackle.	Heating equipment.	Sails.
Boilers and foundations.	Hoisting equipment.	Seats and chairs.
Cables.	Hooks.	Shovels.
China, crockery, and glassware.	Keys.	Slice bars and pokers.
Compasses.	Life preservers.	Steam distribution systems.
Cushions.	Lighting equipment.	Steering equipment.
Desks.	Linen.	Tool boxes.
Engines and foundations.	Lines.	Tools, miscellaneous.
Fire extinguishers.	Machinery and foundations.	Wrenches.
Fire buckets.	Masts.	

NOTE.—The cost of repairs to work equipment on account of construction work shall be included in the cost of the construction work on which it is used. (See general instructions for the classification of investment in road and equipment, section 4c.)

327: WORK EQUIPMENT—DEPRECIATION.

This account shall include uniform monthly charges representing the depreciation of work equipment. These charges shall be based upon the percentage of the original cost (estimated if not known), ledger value, or purchase price of such equipment, determined to be equitable from the carrier's experience and best sources of information as to the average current loss from depreciation. A statement of the percentages used by the carrier for computing these charges, together with the estimated life of the equipment upon which such percentages are based, shall be included in its annual report to the Commission.

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.

Depreciation charges with respect to any work equipment shall cease when the difference between the ledger value and the estimated scrap value shall have been credited to the accrued depreciation account.

(See general instructions for income, profit and loss, and general balance-sheet accounts, section 2.)

NOTE.—All charges to this account for depreciation of the carrier's equipment shall be concurrently credited to balance-sheet account No. 776, "Accrued depreciation—Equipment."

328. WORK EQUIPMENT—RETIREMENTS.

This account shall include amounts necessary to adjust the difference between the ledger value (less salvage) of work equipment retired from service and the amount of accrued depreciation charged on account of such retired equipment to the date of its retirement. (See road and equipment account II, Equipment, paragraphs 4 and 5.)

NOTE.—When work equipment is permanently retired from service, but held pending disposition, it shall be written out of service and carried in an appropriate suspense account at an equitable valuation.

329. MISCELLANEOUS EQUIPMENT—REPAIRS.

This account shall include the cost of repairing miscellaneous equipment, such as wagons, automobiles, and other highway vehicles, and harness.

(Note carefully special instructions, sections 2 and 3.)

330. MISCELLANEOUS EQUIPMENT—DEPRECIATION.

This account shall include uniform monthly charges representing the depreciation of miscellaneous equipment. These charges shall be based upon the percentage of the original cost (estimated if not known), ledger value, or purchase price of such equipment, determined to be equitable from the carrier's experience and best sources of information as to the average current loss from depreciation. A statement of the bases used by the carrier for computing these charges shall be included in its annual report to the Commission.

NOTE.—All charges to this account for depreciation of the carrier's equipment shall be concurrently credited to balance-sheet account No. 776, "Accrued depreciation—Equipment."

331. MISCELLANEOUS EQUIPMENT—RETIREMENTS.

This account shall include amounts necessary to adjust the difference between the ledger value (less salvage) of miscellaneous equipment, including horses, retired from service and the amount of accrued depreciation charged on account of such retired equipment to the date of its retirement. (See road and equipment account II, Equipment, paragraphs 4 and 5.)

NOTE.—Miscellaneous equipment permanently retired from service, but held pending disposition, shall be written out of service and carried in an appropriate suspense account at an equitable valuation.

332. INJURIES TO PERSONS.

This account shall include expenses on account of injuries to persons which occur directly in connection with repairs of equipment.

Services of employees and others called in consultation in relation to claim adjustments, pay and expenses of employees while engaged as witnesses at inquests and lawsuits, and a suitable proportion of donations made to hospitals shall be included in this account.

ITEMS OF EXPENSE.

(See special instructions, section 22.)

Artificial limbs.
Carriage fees.
Claim adjusters' and clerks' services.
Claim adjusters' office expenses.
Compensation for injuries or death.
Final judgments, including plaintiffs' court costs.
Funeral expenses.
Hospital attendance.
Medical and surgical services.
Medical and surgical supplies.
Notarial fees.
Nursing.
Railway transportation.
Undertakers' services.
Undertakers' supplies.
Witnesses' fees and expenses at inquests and lawsuits.

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.

NOTE A.—Expenses incident to personal injury suits, not otherwise provided for, shall be included in account No. 454, "Law expenses."

NOTE B.—Amounts donated by a carrier to hospitals shall be distributed, 25 per cent to account No. 274, "Injuries to persons"; 25 per cent to account No. 332, "Injuries to persons"; and 50 per cent to account No. 420, "Injuries to persons."

NOTE C.—The pay, office rent, and office and other expenses of claim adjusters, claim clerks, and others in charge of or engaged in connection with claim cases, when not assignable to a distinct class of claims, shall be apportioned equally among the several classes of claims over which they have jurisdiction or in connection with which they are engaged.

333. INSURANCE.

This account shall include premiums, except reinsurance premiums, for insuring the carrier against loss, through injuries to persons or damage to or destruction or loss of property, whether caused by fire, accident, or other cause, when such loss to the carrier would be chargeable to Maintenance of Equipment; also premiums on fidelity bonds of employees whose pay is chargeable to Maintenance of Equipment. (See special instructions, section 18.)

NOTE.—The premiums paid by the carrier to its insurance fund shall be credited to an insurance reserve account, to which account shall be charged the amount of all claims for injuries to persons and damages to the property covered by its insurance. To such account shall also be charged all reinsurance premiums paid to insurance companies, and to it shall be credited all amounts recovered from insurance companies for damage to the property reinsured by them.

334. STATIONERY AND PRINTING.

This account shall include the cost of stationery and printing used in connection with maintenance of equipment.

STATIONERY AND PRINTING ITEMS.

(See special instructions, section 22.)

Adding machines.
Addressographs and supplies.
Arm rests.
Binders.
Blank books.
Blotters.
Blotting paper.
Bristol board.
Calculating machines.
Calendars.
Carbon paper.
Cardboard.
Cards, blank and printed.
Circulars.
Computing tables.
Copy (impression) books.
Copying brushes.
Copying presses.
Crayons.
Cyclostyles.
Dating stamps and ribbons.
Dictaphones.
Dictographs.
Drawing paper.
Duplicators.
Electric pens.
Envelopes.
Erasers, rubber and steel.
Eyelet punches.
Eyelets.
File boxes, paper.
Forms, blank and printed.
Glass pens.
Hectographs.
Indexes.
Ink for writing and drawing.
Inkstands.
Invoice books.
Legal cap paper.
Letter paper.
Manifold paper.
Manifold pens.
Mimeographs.
Mucilage.
Mucilage brushes.
Neostyles.
Note paper.
Notices.
Numbering stamps.
Oil paper.
Paper.
Paper baskets.
Paper clips.
Paper cutters.
Paper fasteners.
Paper files.
Paper weights.
Papyrographs.
Parchment paper.
Pencil sharpeners.
Pencils for writing and drawing.
Penholders.
Penracks.
Pens for writing and drawing.
Phonographs and records.
Pins.
Postage.
Punches (not conductors' or baggagemen's).
Rubber bands.
Rubber stamps.
Rulers.
Ruling pens.
Scrapbooks.
Sealing wax.
Seals.
Shears.
Shipping tags.
Shorthand notebooks.
Sponge cups.
Sponges.
Stamps, impression.
Stylographs.
Tablets, blank and printed.
Tape.
Telegraph blanks.
Tissue (impression) paper.
Tracing cloth.
Tracing paper.
Twine.
Typewriters and ribbons.
Wage tables.
Wastebaskets.
Water colors.
Water holders.
Wrapping paper.
Wringers for copying presses.

NOTE.—The cost of dictionaries, periodicals, technical books, etc., shall be included in the appropriate superintendence accounts.

335. OTHER EXPENSES.

This account shall include expenses in connection with the maintenance of equipment not properly chargeable to other accounts for maintenance of equipment or to clearing accounts such as "Material store expenses" and "Shop expenses."

ITEMS OF EXPENSE.

(See special instructions, section 22.)

Pay and expenses of mechanical department employees attending conferences with officers in connection with mechanical department wage disputes.
Fees paid arbitrators in connection with mechanical department wage disputes.
Payments to mechanical department employees for time absent on account of sickness when not in compensation for personal injuries.

336. MAINTAINING JOINT EQUIPMENT AT TERMINALS—DR.

This account shall include the carrier's proportion of expenses incurred by others in maintaining equipment used for the operation of joint terminals, including the carrier's proportion of expenses of repairing equipment made necessary by accidents in terminals, when such expenses are participated in by more than one party using the joint terminals.

NOTE.—The purpose of this account is to show the amount accruing against the carrier for its proportion of the expense of maintaining equipment at terminals which is maintained by others and in the joint use of which the carrier participates.

337. MAINTAINING JOINT EQUIPMENT AT TERMINALS—CR.

This account shall include amounts chargeable to others as their proportions of expenses incurred by the carrier in maintaining equipment used for the operation of joint terminals, and for expenses of repairing equipment made necessary by accidents in terminals, when such expenses are participated in by more than one party using the joint terminals.

NOTE.—The purpose of this account is to show the amounts accruing in favor of the carrier and against others for their proportions of the expense of maintaining equipment at terminals which is maintained by the carrier and in the joint use of which others participate.

III. TRAFFIC.

The primary accounts included in this general account are designed to show the expenses incurred for advertising, soliciting, and securing traffic for the carrier's lines and for preparing and distributing tariffs governing such traffic.

The accounts for traffic expenses shall be kept in such manner as to show separately, by primary accounts, the expenses directly assignable to water-line operations.

351. SUPERINTENDENCE.

This account shall include:

PAY OF OFFICERS.—The pay of officers directly in charge of or engaged in supervising the procurement of traffic, and the preparation and distribution of tariffs, division sheets, and classifications.

LIST OF OFFICERS.

(See special instructions, section 22.)

Vice president.
Assistant to vice president.
Traffic director.
Traffic manager.
General freight agent.
Assistant general freight agent.
Chief of tariff bureau.
Traveling tariff inspector.
Live stock agent.
General passenger agent.
Assistant general passenger agent.
Division passenger agent.
Division freight agent.
General baggage agent.
General express agent.
General express manager.
Coal traffic agent.

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.

PAY OF CLERKS AND ATTENDANTS.—The pay of clerks and other employees in the offices and on business cars of officers whose pay is chargeable to this account.

LIST OF EMPLOYEES.

(See special instructions, section 22.)

Chief clerk.	Stenographers.	Porters.
Clerks.	Messengers.	Attendants.
File clerks.	Cooks.	

OFFICE AND OTHER EXPENSES.—Office expenses and other expenses of officers and employees whose pay is chargeable to this account.

ITEMS OF EXPENSE AND SUPPLIES.

(See special instructions, section 22.)

Atlases and maps.	Furniture repairs and renewals.	Rent of offices.
Barometers.	Heating.	Repairs of rented offices.
Bicycles.	Lighting.	Telegraph service.
Books for office use.	Official train service.	Telephone service.
Business car service.	Periodicals and newspapers.	Traveling expenses.
Express charges.	Power.	Water and ice.
Fees and dues in commercial and other clubs.	Provisions for business cars.	

NOTE A.—When officers designated above have supervision over more than one department, their salaries, the pay of their clerks and attendants, and their office and other expenses shall be apportioned equally among the departments over which they have jurisdiction.

NOTE B.—The pay and expenses of officers engaged exclusively in soliciting traffic are chargeable to account No. 352, "Outside agencies."

NOTE C.—The cost of stationery for traffic offices is chargeable to account No. 358, "Stationery and printing," except stationery chargeable to accounts Nos. 354, 355, and 356.

352. OUTSIDE AGENCIES.

This account shall include the pay, and the office, traveling, and other expenses of general, commercial, city, and district agents and others soliciting traffic, the employees of their offices, and traveling agents and solicitors located on or off the line of the carrier's road.

City ticket and freight offices, separate from regular station ticket and freight offices, shall be treated as outside agencies; the pay and expenses of the employees therein and the expenses of such offices shall be charged to this account.

Commissions for services pertaining to either freight or passenger business, except commissions paid in lieu of salaries to carrier's agents located upon the carrier's own line (which shall be charged to account No. 373, "Station employees"), shall be included in this account.

ITEMS OF EXPENSE.

(See special instructions, section 22.)

Bicycles.	Office supplies.
Books for office use.	Periodicals and newspapers.
Express charges.	Rent of offices.
Furniture repairs and renewals.	Repairs of rented offices.
Heating.	Telegraph service.
Lighting.	Telephone service.
Membership fees and dues in agency associations.	Traveling expenses.
Membership fees and dues in commercial clubs.	Water and ice.

353. ADVERTISING.

This account shall include the cost of advertising for the purpose of securing traffic; pay of advertising agents, their clerks and attendants; rent of offices, and the office, traveling, and other expenses of such employees; also donations to carnivals, local development associations, summer schools, and other gatherings, when made for the purpose of increasing traffic.

ITEMS OF ADVERTISING EXPENSE.

(See special instructions, section 22.)

Advertisements in newspapers.
Advertisements in periodicals.
Bulletin boards and cards.
Card cases.
Customs charges on advertising matter.
Display and other advertising cards.
Distributing folders.
Distributing general notices to shippers.
Distributing time-tables.
Dodgers.
Express charges.
Frames.
Handbills.
Maps used for advertising.
Pamphlets.
Photographs and views.
Postage.
Posters.
Publishing advertising matter.
Publishing folders.
Publishing notices to shippers.
Publishing time-tables.
Racks.

NOTE.—Advertising expenses of industrial and immigration bureaus shall be included in account No. 356, "Industrial and immigration bureaus."

354. TRAFFIC ASSOCIATIONS.

This account shall include the cost to the carrier of participation in traffic associations, including its proportion of the pay of officers and employees of such associations and of their office, stationery and printing, traveling, and other expenses.

LIST OF TRAFFIC ASSOCIATIONS.

(See special instructions, section 22.)

Boards of trade.
Classification bureaus.
Clergy bureaus.
Commercial associations.
Freight associations.
Mileage ticket bureaus.
Passenger associations.
Tariff bureaus.
Ticket validating agencies.

355. FAST FREIGHT LINES.

This account shall include the cost to the carrier of participation in fast freight or dispatch organizations, including its proportion of the pay of officers, soliciting agents, and employees of such organizations, and their office, stationery and printing, traveling, and other expenses.

356. INDUSTRIAL AND IMMIGRATION BUREAUS.

This account shall include the cost to the carrier of industrial and immigration bureaus, including the pay of industrial and immigration agents, and exhibit agents, their clerks and attendants and their office, stationery and printing, traveling, and other expenses.

ITEMS OF EXPENSE.

(See special instructions, section 22.)

Advertising.
Agricultural trains.
Dairy trains.
Donations to expositions.
Donations to fairs.
Donations to stock shows.
Exhibits.
Experimental farms.
Good roads trains.
Premiums to fairs.
Premiums to stock shows.

357. INSURANCE.

This account shall include premiums, except reinsurance premiums, for insuring the carrier against loss through injuries to persons or damage to or destruction or loss of property, whether caused by fire, accident, or other cause, when such loss to the carrier would be chargeable to Traffic; also premiums on fidelity bonds of employees whose pay is chargeable to Traffic. (See special instructions, section 2.)

NOTE.—The premiums paid by the carrier to its insurance fund shall be credited to an insurance reserve account, to which account the amount of all claims for injuries to persons and damages to the property covered by its insurance shall be charged. To such account shall also be charged all reinsurance premiums paid to insurance companies, and to it shall be credited all amounts recovered from insurance companies for damage to the property reinsured by them.

358. STATIONERY AND PRINTING.

This account shall include the cost of stationery and printing used in connection with securing traffic, including the cost of tariffs governing such traffic.

STATIONERY AND PRINTING ITEMS.

(See special instructions, section 22.)

Adding machines.
Arm rests.
Binders.
Blank books.
Blotters.
Blotting paper.
Bristol board.
Calculating machines.
Calendars.
Carbon paper.
Cardboard.
Cards, blank and printed.
Circulars.
Classifications.
Computing tables.
Copy (impression) books.
Copying brushes.
Copying presses.
Crayons.
Cyclostyles.
Dating stamps and ribbons.
Dictaphones.
Dictographs.
Division sheets.
Duplicators.
Electric pens.
Envelopes.
Erasers, rubber and steel.
Eyelet punches.
Eyelets.
File boxes, paper.
Flexotype machines.
Forms, blank and printed.
Freight classifications.
Glass pens.
Hectographs.
Indexes.
Ink for writing and drawing.
Inkstands.
Invoice books.
Legal cap paper.
Letter paper.
Manifold paper.
Manifold pens.
Mimeographs.
Mucilage.
Mucilage brushes.
Neostyles.
Note paper.
Notices.
Numbering stamps.
Oil paper.
Paper.
Paper baskets.
Paper clips.
Paper cutters.
Paper fasteners.
Paper files.
Paper weights.
Papyrographs.
Pencil sharpeners.
Pencils for writing and drawing.
Penholders.
Penracks.
Pens for writing and drawing.
Phonographs and records.
Pins.
Postage.
Punches (not conductors' or baggagemen's).
Rate sheets.
Rubber bands.
Rubber stamps.
Rulers.
Ruling pens.
Scrapbooks.
Sealing wax.
Seals.
Shears.
Shipping tags.
Shorthand notebooks.
Sponge cups.
Sponges.
Stamps, impression.
Stylographs.
Tablets, blank and printed.
Tape.
Tariffs, printed.
Telegraph blanks.
Tissue (impression) paper.
Typewriters and ribbons.
Wage tables.
Wastebaskets.
Water colors.
Water holders.
Wrapping paper
Wringers for copying presses.

NOTE A.—The cost of dictionaries, periodicals, technical books, etc., shall be included in the appropriate superintendence accounts.

NOTE B.—The cost of stationery and printing used by traffic associations, fast freight lines, and industrial and immigration bureaus shall be included in the accounts provided for the expenses of such organizations.

359. OTHER EXPENSES.

This account shall include all expenses in connection with traffic not properly chargeable to other traffic accounts.

IV. TRANSPORTATION—RAIL LINE.

The primary accounts included in this general account are designed to show expenses incurred for transporting persons and the property of others, including the expenses of station, train, yard, and terminal service; also the expense of transporting company material in transportation service trains.

371 SUPERINTENDENCE.

This account shall include:

PAY OF OFFICERS.—The pay of officers directly in charge of or engaged in conducting transportation.

LIST OF OFFICERS.

(See special instructions, section 22.)

Vice president.
Assistant to the vice president.
General manager.
Assistant general manager.
General superintendent of transportation.
Superintendent of transportation.
General superintendent.
Assistant general superintendent.
Superintendent.
Division superintendent.
Assistant division superintendent.
Superintendent of car service.
Chief special agent.
Members of examining boards.
Superintendent of mail service.
Traveling train and station inspectors.
Air-brake instructor.
Superintendent of agencies.
Superintendent of transfer stations.
Trainmaster.
Assistant trainmaster.
General road foreman of locomotives.
Road foreman of locomotives.
Traveling locomotive engineer.
Traveling locomotive fireman.

PAY OF CLERKS AND ATTENDANTS.—The pay of clerks and others employed in the offices and on business cars of officers whose pay is chargeable to this account.

LIST OF EMPLOYEES.

(See special instructions, section 22.)

Division clerk.
Chief clerk.
Clerks.
Special agents.
Detectives.
Stenographers.
Messengers.
Cooks.
Porters.

OFFICE AND OTHER EXPENSES.—Office expenses and other expenses of officers and employees whose pay is chargeable to this account; also the pay and expenses of employees attending investigations concerning the cause of or responsibility for accidents, and amounts paid detective agencies and others for work in connection with such investigations.

ITEMS OF EXPENSE AND SUPPLIES.

(See special instructions, section 22.)

Atlases and maps.
Barometers.
Books for office use.
Business car service.
Express charges.
Fees and dues in associations.
Furniture repairs and renewals.
Heating.
Lighting.
Official train service.
Periodicals and newspapers.
Power.
Provisions for business cars.
Rent of air-brake instruction cars.
Rent of offices.
Repairs of rented offices.
Telegraph service.
Telephone service.
Traveling expenses.
Water and ice.

NOTE A.—When officers designated above have supervision over more than one department, their salaries, the pay of their clerks and attendants, and their office and other expenses shall be apportioned equally among the departments over which they have jurisdiction.

NOTE B.—The cost of stationery purchased for transportation offices is chargeable to account No. 410, "Stationery and printing."

372. DISPATCHING TRAINS.

This account shall include the pay of chief and other train dispatchers, their clerks, copying operators, and attendants, and pay of operators on the line whose duties are confined to directing train movements; also the office, traveling, and other expenses of such employees.

NOTE.—Pay of operators who also perform station work shall be charged to account No. 373, "Station employees."

373. STATION EMPLOYEES.

This account shall include:

AGENTS, CLERKS, AND ATTENDANTS.—The pay of agents, clerks, and attendants in charge of, or engaged in, the operation of stations, wharves, and piers located on the carrier's line; also payments to such station or ticket agents in lieu of salaries.

Special payments to customs inspectors on account of opening and resealing cars under unusual conditions, and payments to produce-exchange inspectors for inspecting, measuring, and weighing grain shall be here included.

LIST OF EMPLOYEES.

(See special instructions, section 22.)

Accountants.
Assistant agents.
Assistant depot masters.
Assistant stationmasters.
Baggage agents at stations.
Baggagemen.
Car clerks.
Cashiers.
Chauffeurs.
Clerks.
Collectors.
Customs inspectors.
Depot masters.
Detectives.
Express agents.
Gatemen.
Information bureau employees.
Janitors.
Maids.
Matrons.
Messengers.
Package and parcel room employees.
Policemen.
Porters.
Relief agents.
Station agents.
Station foremen.
Station passenger agents.
Station freight agents.
Stationmasters.
Telegraph and telephone operators.
Ticket agents.
Ticket collectors.
Ticket examiners.
Train callers.
Ushers.
Watchmen.

LABOR AT STATIONS.—Station and other labor expended in handling freight, mail, baggage, and express at stations, wharves, and piers; in loading, unloading, feeding, and watering stock; in disinfecting stations, stockyards, and stock pens; in transferring, picking up, straightening, and reloading freight in the ordinary course of transportation; in miscellaneous station work, including (when done by station employees) cleaning station grounds, station platforms, walks, stockyards, and stock pens, and removing snow and ice therefrom; and in tending switch lamps not in yards and terminals.

Payments to elevator companies (when not made as division of rate) for transferring grain en route, and payments to other companies and individuals for loading and unloading commercial freight under contract or otherwise shall be included in this account.

LIST OF EMPLOYEES.

(See special instructions, section 22.)

Baggage storeroom employees.
Car sealers.
Checkmen.
Coal handlers.
Coopers.
Delivery men.
Electricians.
Freight callers.
Freight handlers.
Freight house foremen.
Freight loaders.
Freight unloaders.
Longshoremen.
Mail carriers.
Mail weighers.
Station cleaners.
Stationary engineers.
Stationary firemen.
Stevedores.
Stockpen laborers.
Tallymen.
Teamsters.
Truckmen.
Warehousemen.
Weighmasters.

NOTE A.—The cost of transferring freight, mail, baggage, and express on account of wrecks shall be included in account No. 415, "Clearing wrecks."

NOTE B.—This account shall not include the pay of telegraph and telephone operators provided for under accounts No. 372, "Dispatching trains," and No. 407, "Telegraph and telephone operation," or pay of employees provided for under account No. 375, "Coal and ore wharves."

374. WEIGHING, INSPECTION, AND DEMURRAGE BUREAUS.

This account shall include the cost to the carrier of its participation in joint weighing, inspection, demurrage, and car distribution bureaus and associations.

375. COAL AND ORE WHARVES.

This account shall include the cost of operating docks, and wharves, piers, and other marine, lake, or river landings, and the machinery located thereon, used in connection with the transportation of coal and ore.

LABOR AND EXPENSES.—The pay and the office, traveling, and other expenses of employees engaged in operating coal and ore wharves.

TOOLS AND SUPPLIES.—The cost of all tools and supplies used in the operation of coal and ore wharves.

ITEMS OF TOOLS AND SUPPLIES.

(See special instructions, section 22.)

Cylinder oil.	Lanterns.	Slice bars.
Fuel for stationary boilers.	Lubricating oil.	Waste.
Illuminating oil.	Picks.	Wicks.
Lantern parts.	Shovels.	

NOTE.—The cost of switching service in connection with coal and ore wharves shall not be included in this account.

376. STATION SUPPLIES AND EXPENSES.

This account shall include:

HEATING.—The cost of fuel (including cost of unloading), water, steam, and miscellaneous supplies used for heating stations, waiting rooms, freight and passenger offices, and other station buildings.

LIGHTING.—The cost of fuel, water, gas, oil, electricity, lamp globes, lamp chimneys, wicks, lamp carbons, incandescent lamps, and miscellaneous supplies used in lighting stations, waiting rooms, freight and passenger offices, other station buildings, street approaches thereto, and passenger footbridges and subways at stations.

OTHER EXPENSES.—The cost of miscellaneous station supplies and station expenses.

ITEMS OF EXPENSE.

(See special instructions, section 22.)

Cleaning privy vaults.	Rent of automatic weighing and recording devices.
Express charges.	Rent of scales.
Feeding and shoeing horses.	Rent of station buildings (not jointly used).
Furniture repairs and renewals.	Reports to agents of commercial standing.
Garage expenses.	Sprinkling station grounds.
Licenses for ticket agents.	Station employees' expenses.
Mail transfer by others than employees.	Telegraph service.
Membership fees and dues in agents' associations.	Telephone service.
Power for station machinery.	Warehouse charges for storage of freight.
	Washing towels.

ITEMS OF TOOLS AND SUPPLIES.

(See special instructions, section 22.)

Atlases and maps.	Check boxes.	Fire grenades.
Auto trucks.	Check racks.	Flags.
Awnings.	Checks.	Floor coverings.
Axes.	Clocks.	Gangplanks.
Badges.	Coal hods.	Gas.
Baggage checks.	Cold chisels.	Gasoline.
Barometers.	Cooperage material.	Hampers.
Baskets.	Copy-press stands.	Hatchets.
Bicycles.	Counter brushes.	Hoes.
Blocking.	Counter scales.	Hooks.
Brooms.	Cups.	Hose and couplings.
Brushes.	Curtains.	Ice.
Buckets.	Cuspidors.	Ice barrels.
Bulletin boards.	Desks.	Ice boxes.
Call bells.	Dippers.	Ice buckets.
Candles.	Directories.	Ice carts.
Car-seal presses.	Dusters.	Ice tongs.
Car seals.	Electric fans.	Keys.
Carpets.	Electric lamps.	Ladders.
Chains.	Electric-light supplies.	Lamp burners.
Chair cushions.	Feather dusters.	Lamp chimneys.
Chairs.	Feed for horses.	Lamp fittings.
Chalk.	Files, document.	Lamp globes.
Chamois skins.	Fire buckets.	Lamp mantles.

Lampblack.
Lamps (not permanently attached to buildings).
Lantern fittings.
Lantern globes.
Lanterns.
Letter boxes.
Mail bags.
Marking brushes.
Marking pots.
Marline.
Matches.
Measures.
Medical boxes.
Medical supplies.
Mirrors.
Money drawers.
Nails for boxing.
Newspapers.
Oil.
Oil cans.
Packing material.
Padlocks.
Pails.
Pinch bars.
Punches for baggagemen and gatemen.
Rakes.
Reflectors.
Rolling chairs for invalids.
Safes.
Sawdust.
Saws.
Scoops.
Scales, portable.
Scrubbing brushes.
Settees.
Shovels.
Sledges.
Soap.
Spades.
Sponges.
Sprinkling cans.
Stools.
Stove blacking.
Stoves and stovepipe.
Switch lamp supplies at points where regular switching service is not maintained.
Tables.
Tacks.
Tarpaulins (not for cars).
Thermometers.
Ticket cases.
Tongs.
Tool boxes.
Torpedoes.
Towels.
Trucks.
Twine.
Urinoirms.
Washbasins.
Waste.
Water.
Water barrels.
Water bowls.
Water cans.
Water coolers.
Water pails.
Wheelbarrows.
Whisk brooms.
Wicks.
Wrenches.

377. YARDMASTERS AND YARD CLERKS.

This account shall include the pay of general yardmaster, yardmaster, assistant yardmaster, general yard foreman, and yard clerks and attendants in yards where regular switching service is maintained and in terminal switching and transfer service, including employees engaged in calling yardmen and trainmen; also pay of policemen, watchmen, and detectives in yard service. (See account No. 389, "Yard supplies and expenses.")

378. YARD CONDUCTORS AND BRAKEMEN.

This account shall include the pay of yard conductors or foremen and yard brakemen or switchmen handling cars in passenger and freight yards where regular switching service is maintained and in terminal switching and transfer service, including pay while deadheading in connection with such service. (See account No. 389, "Yard supplies and expenses.")

NOTE.—When conductors and brakemen are engaged in both train and yard service their pay shall be apportioned between the train and yard accounts on the basis of service rendered. This does not apply to train switching service performed by train crews, the entire pay of whom shall be charged to account No. 401, "Trainmen."

379. YARD SWITCH AND SIGNAL TENDERS.

This account shall include the pay of employees in yards where regular switching service is maintained, who are engaged in the operation of yard switches and signals, including interlockers used solely or principally for the government of all movements of locomotives and trains between main and yard tracks, movements of locomotives between yard tracks and enginehouses, and yard switching movements. (See account No. 389, "Yard supplies and expenses.")

LIST OF EMPLOYEES.

(See special instructions, section 22.)

Battery men.
Interlocker oilers.
Lamp cleaners.
Lamp men.
Lamplighters.
Lever men.
Signalmen.
Switch oilers.
Switch tenders.
Tower men.

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.

380. YARD ENGINEMEN.

This account shall include the pay of yard engineers, and firemen while engaged in yards where regular switching service is maintained and in terminal switching and transfer service, including pay of such employees while deadheading in connection with yard service.

NOTE.—The pay of enginemen on locomotives engaged in more than one class of service shall be apportioned on the basis of service rendered. Pay of enginemen on train locomotives while engaged in train switching service shall be included in account No. 392, "Train enginemen." The pay of enginemen on locomotives engaged in work service shall be included in the cost of the work to which the service pertains.

381. YARD MOTORMEN.

This account shall include the pay of yard motormen while engaged in switching service in yards where regular switching service is maintained, and in terminal switching and transfer service, including pay of such employees while deadheading in connection with yard service.

NOTE.—The pay of motormen on locomotives engaged in more than one class of service shall be apportioned on the basis of service rendered. Pay of motormen on train locomotives while engaged in train switching service shall be included in account No. 393, "Train motormen." The pay of motormen on locomotives engaged in work service shall be included in the cost of the work to which the service pertains.

382. FUEL FOR YARD LOCOMOTIVES.

This account shall include the cost, delivered on locomotive tenders, of coal, coke, oil, wood, and other fuel consumed by locomotives in switching service in yards where regular switching service is maintained, and in terminal switching and transfer service, including a suitable proportion of the pay of fuel agents, fuel inspectors, fuel weighers, and clerks engaged in accounting for fuel at fuel stations; pay of foremen and other fuel-station employees; also a suitable proportion of the cost of tools, such as wheelbarrows, shovels, scoops, and picks used for handling fuel at such stations, and the cost of operating machinery at fuel stations.

NOTE A.—The cost of repairs and renewals of coal-chutes, buggies, pockets, air hoists, mechanical hoists, and mechanical conveyors at fuel stations shall be charged to account No. 233, "Fuel stations."

NOTE B.—The cost of supplies consumed by locomotives engaged in more than one class of service shall be apportioned upon the basis of service rendered. The entire cost of supplies consumed by train locomotives in train switching service shall be included in the accounts provided for train service. The supplies consumed by locomotives in work service shall be included in the cost of the work to which the service pertains.

383 YARD SWITCHING POWER PRODUCED.

This account shall include the cost of the production and distribution of electric power used in operating locomotives and cars in switching service in yards where regular switching service is maintained, and in terminal switching and transfer service.

EMPLOYEES.—The pay of employees engaged in operating electric-power stations and substations, such as engineers, firemen, electricians, dynamo men, oilers, cleaners, and coal passers.

FUEL.—The cost of coal, oil, gas, and other fuel, including the cost of labor unloading or stocking fuel.

WATER.—The cost of water used to produce steam or to operate water plants, including pumping, rent of ponds, streams, and pipe lines; also water tests, boiler compounds, and other like supplies and expenses.

OTHER SUPPLIES AND EXPENSES.—The cost of lubricants, such as oil and grease used in lubricating engines, shafting, dynamos, and pumps; cost of waste, carbon brushes, fuses, lamps, and other supplies; also the cost of heating and lighting

power plants, and other expenses not elsewhere specified in connection with operation of electric-power plants. (See special instructions, section 12.)

NOTE.—The cost of supplies consumed by locomotives engaged in more than one class of service shall be apportioned upon the basis of service rendered. The entire cost of supplies consumed by train locomotives in train switching service shall be included in the accounts provided for train service. The supplies consumed by locomotives in work service shall be included in the cost of the work to which the service pertains.

384. YARD SWITCHING POWER PURCHASED.

This account shall include the cost of electric power purchased for the propulsion of engines and cars in switching service in yards where regular switching service is maintained, and in terminal switching and transfer service.

NOTE.—The cost of supplies consumed by locomotives engaged in more than one class of service shall be apportioned upon the basis of service rendered. The entire cost of supplies consumed by train locomotives in train switching service shall be included in the accounts provided for train service. The supplies consumed by locomotives in work service shall be included in the cost of the work to which the service pertains.

385. WATER FOR YARD LOCOMOTIVES.

This account shall include the cost of water supplied to locomotives in switching service in yards where regular switching service is maintained, and in terminal switching and transfer service, including rent of ponds, lakes, other sources of water supply, and right of way for pipe lines; cost of water purchased, expenses of work trains while engaged in hauling water for locomotive supply, and cost of testing water; also cost of labor expended and cost of materials and supplies used in the operation of water stations and purifying plants.

The cost of operating boilers, engines, and pumps at water stations; heating and lighting water stations, breaking ice in water tanks, thawing out tank spouts and water cars, keeping fires in tanks and water cars to prevent freezing, shoveling snow into locomotive tanks; also temporary connections between water cars and locomotive tenders, compounds injected into locomotive boilers to decrease scale formation, and other expenses directly incident to the supplying of water to such locomotives, shall be included in this account.

An equitable proportion of the pay and the office, traveling, and other expenses of superintendent of water service engaged in connection with water supply for locomotives shall be included in this account.

ITEMS OF WATER STATION SUPPLIES.
(See special instructions, section 22.)

Axes.	Gasoline drums.	Slice bars.
Boiler compounds.	Hand tools.	Stove fixtures.
Chemicals.	Hose.	Stoves.
Coal.	Oil.	Waste.
Coal picks.	Rubber packing.	Wrenches.
Engine igniter batteries.	Shovels.	
Gasoline.	Siphons.	

NOTE.—The cost of supplies consumed by locomotives engaged in more than one class of service shall be apportioned upon the basis of service rendered. The entire cost of supplies consumed by train locomotives in train switching service shall be included in the accounts provided for train service. The supplies consumed by locomotives in work service shall be included in the cost of the work to which the service pertains.

386. LUBRICANTS FOR YARD LOCOMOTIVES.

This account shall include the cost of valve, engine, car, and other lubricating oils, grease, compounds, and waste used for lubrication of locomotives in switching service in yards where regular switching service is maintained and in terminal switching and transfer service.

NOTE.—The cost of supplies consumed by locomotives engaged in more than one class of service shall be apportioned upon the basis of service rendered. The entire cost of supplies consumed by train locomotives in train switching service shall be included in the accounts provided for train service. The supplies consumed by locomotives in work service shall be included in the cost of the work to which the service pertains.

387. OTHER SUPPLIES FOR YARD LOCOMOTIVES.

This account shall include the cost of supplies, other than fuel, water, and lubricants, used on locomotives in switching service in yards where regular switching service is maintained and in terminal switching and transfer service, including the cost of repairs and renewals of furniture, tools, and other movable articles required for use on locomotives in yard service.

The cost of sand charged to this account shall include the cost of material and supplies used in preparing and drying the sand for use, such as the cost of fuel, wheelbarrows, shovels, and sand screens.

ITEMS OF TOOLS AND SUPPLIES.

(See special instructions, section 22.)

Ash hoes.	Hatchets.	Sand.
Ash-pan rods.	Hose (not air-brake, air-signal, or steam).	Saws.
Axes.	Hose, thaw-out.	Scoops.
Bars, buggy.	Hose reels.	Shovels.
Bell cords.	Ice.	Signal lamps.
Boxes, portable.	Jacks.	Sledges.
Brooms.	Jackscrews.	Slice bars.
Brushes.	Lanterns and parts.	Soap.
Buckets.	Locks for portable boxes.	Switch chains.
Carbide for acetylene gas.	Matches.	Switch poles.
Carbons for electric lights.	Oil cans.	Switch ropes.
Chimneys for headlights.	Oil for headlights.	Tool boxes, portable.
Chimneys for signal lamps.	Oil for lanterns.	Torches.
Chisels.	Oil for signal lamps.	Torpedoes.
Clinker hooks.	Oil for torches.	Waste.
Crowbars.	Oilers.	Water buckets.
Files.	Packing hooks.	Water coolers.
First-aid boxes.	Packing spoons.	Wicks for headlights.
Flags.	Picks, coal.	Wicks for lanterns.
Globes for lanterns.	Pinch bars.	Wicks for signal lamps.
Grate shakers.	Plugging bars.	Wicks for torches.
Hammers.	Pokers.	Wrecking frogs.
Handsaws.		Wrenches.

NOTE A.—Where the quantity of sand used on locomotives engaged in yard service is relatively small as compared with the quantity used by locomotives engaged in train service, the entire cost of such material shall be included in account No. 399, "Other supplies for train locomotives." Where the quantity used in yard service is relatively large, the entire cost shall be included in this account.

NOTE B.—The cost of other supplies consumed by locomotives engaged in more than one class of service shall be apportioned upon the basis of service rendered. The entire cost of supplies consumed by train locomotives in train switching service shall be included in the accounts provided for train service. The supplies consumed by locomotives in work service shall be included in the cost of the work to which the service pertains.

388. ENGINEHOUSE EXPENSES—YARD.

This account shall include the expense of caring for and preparing locomotives for switching service in yards where regular switching service is maintained and in terminal switching and transfer service, including a proportion of such expenses as are common to train, yard switching, and work service.

ENGINEHOUSE MEN.—The pay of enginehouse employees engaged in wiping, cleaning, watching, and dispatching locomotives; keeping and preparing fires, dumping ashes, washing boilers, cleaning fire boxes, packing driving boxes and truck boxes; cleaning smokestacks, air-brake equipment, and front ends of locomotives; checking locomotive tool equipment, cleaning ash and cinder pits; operating turntables, drying sand, inspecting smokestacks and ash pans; calling enginemen; and moving locomotives around engine yards when operated by hostlers; also a proportion of the pay of enginehouse foremen and their clerks.

MISCELLANEOUS EXPENSES.—The cost of tools, supplies, and sundry expenses on account of caring for and preparing locomotives at enginehouses.

ITEMS OF MISCELLANEOUS EXPENSES.

(See special instructions, section 22.)

Boiled oil.
Compounds for cleaning and polishing.
Enginehouse cupboards.
Gas, oil, and electricity for lighting.
Heating enginehouses, including offices.
Lampblack.
Lanterns used by engidehouse men.
Lighting enginehouses, including offices.
Lubricating oil for enginehouse, ash pit, transfer table, and turntable machinery.
Lye.
Packing tools.
Paint for front ends of locomotives.
Power for operation of turntables and transfer tables.
Rent of roundhouse stalls.
Shovels.
Signal lights on transfer tables and turntables.
Waste.
Water for cinder pits.
Water for washing boilers.
Water hose.
Wheelbarrows.

NOTE A.—Enginehouse expenses of locomotives in work service shall be included in the cost of the work to which the service pertains.

NOTE B.—The pay of mechanics and laborers engaged in locomotive repair work in enginehouses shall be charged to the appropriate accounts for locomotive repairs.

389. YARD SUPPLIES AND EXPENSES.

This account shall include the cost of supplies (except locomotive supplies) used in yard service, yard signal and interlocker supplies, and miscellaneous yard expenses for yards where regular switching service is maintained; also office and other expenses of employees whose pay is chargeable to accounts Nos. 377, 378, and 379.

ITEMS OF YARD SUPPLIES.

(See special instructions, section 22.)

Electric-light carbons.
Electric-light globes.
Flags.
Fuel for heating.
Fuel for power.
Illuminating oil.
Lamp burners.
Lamp chimneys.
Lamp wicks.
Lantern globes.
Lantern wicks.
Lanterns.
Lubricants for machinery and switches.
Semaphore lamps.
Signal lamps.
Stoves.
Switch chains.
Switch lamps.
Switch ropes.
Waste.
Wrecking frogs.
Wrecking wedges.

ITEMS OF YARD EXPENSE.

(See special instructions, section 22.)

Electricity purchased for lighting yards and yard buildings.
Furniture repairs and renewals.
Gas purchased for lighting yards and yard buildings.
Power produced for operating switches and signals.
Power purchased for operating switches and signals.
Rent of telephones.
Rent of yard buildings (not jointly used).

390. OPERATING JOINT YARDS AND TERMINALS—DR.

This account shall include the carrier's proportion of the costs incurred by others in their operation of joint yards and terminals, including signals, interlockers, and other facilities at such joint yards and terminals.

NOTE A.—The purpose of this account is to show the amounts accruing against the carrier for its proportion of the cost of operating yards and terminals operated by others, and in the joint use of which the carrier participates. (See special instructions, section 9.)

NOTE B.—No proportions of items of expense chargeable by the operating carrier to accounts Nos. 392 to 402, inclusive, shall be included in this account.

391. OPERATING JOINT YARDS AND TERMINALS—CR.

This account shall include amounts chargeable to others as their proportions of the costs incurred by the carrier in the operation of joint yards and terminals.

including signals, interlockers, and other facilities at such joint yards and terminals.

NOTE A.—The purpose of this account is to show the amounts accruing in favor of the carrier and against others for their proportions of the cost of operating yards and terminals operated by the carrier and in the joint use of which others participate. (See special instructions, section 9.)

NOTE B.—No proportions of items of expense chargeable by the operating carrier to accounts Nos. 392 to 402, inclusive, shall be included in this account.

392. TRAIN ENGINEMEN.

This account shall include the pay of steam locomotive engineers and firemen while engaged in transportation train service or while deadheading in connection therewith and pay of such enginemen engaged in piloting trains over home lines; also the pay of employees while regularly engaged in shoveling coal forward on locomotive tenders.

NOTE.—The pay of enginemen on locomotives engaged in more than one class of service shall be apportioned on the basis of service rendered. Pay of enginemen on train locomotives while engaged in train switching service shall be included in this account. The pay of enginemen on locomotives engaged in work service shall be included in the cost of the work to which the service pertains.

393. TRAIN MOTORMEN.

This account shall include the pay of motormen while engaged in running other than steam locomotives and cars in transportation train service or while deadheading in connection therewith; also the pay and expenses of motormen while engaged in piloting trains or cars over home lines.

NOTE.—The pay of motormen on locomotives engaged in more than one class of service shall be apportioned on the basis of service rendered. Pay of motormen on train locomotives while engaged in train switching service shall be included in this account. The pay of motormen on locomotives engaged in work service shall be included in the cost of the work to which the service pertains.

394. FUEL FOR TRAIN LOCOMOTIVES.

This account shall include the cost, delivered on locomotive tenders, of coal, coke, oil, wood, and other fuel consumed by locomotives in transportation train service, including a suitable proportion of the pay of fuel agents, fuel inspectors, fuel weighers, and clerks engaged in accounting for fuel at fuel stations; pay of foremen and other fuel station employees; also a suitable proportion of the cost of tools, such as wheelbarrows, shovels, scoops, and picks, used for handling fuel at such stations, and the cost of operating machinery at fuel stations.

NOTE A.—The cost of repairs and renewals of coal chutes, buggies, pockets, air hoists, mechanical hoists, and mechanical conveyors shall be charged to account No. 233, "Fuel stations."

NOTE B.—The entire cost of supplies consumed by train locomotives in train switching service shall be included in the accounts provided for train service. The supplies consumed by locomotives in work service shall be included in the cost of the work to which the service pertains.

395. TRAIN POWER PRODUCED.

This account shall include the cost of producing and distributing electric power for the propulsion of electric locomotives and cars in transportation train service.

EMPLOYEES.—The pay of employees engaged in operating electric-power stations and substations, such as engineers, firemen, electricians, dynamo men, oilers, cleaners, and coal passers.

FUEL.—The cost of coal, oil, gas, and other fuel, including the cost of labor unloading or stocking fuel.

WATER.—The cost of water used to produce steam or to operate water plants, including pumping, rent of ponds, streams, and pipe lines; also water tests, boiler compounds, and other like supplies and expenses.

OTHER SUPPLIES AND EXPENSES.—The cost of lubricants, such as oil and grease, used in lubricating engines, shafting, dynamos, and pumps; cost of waste, carbon brushes, fuses, lamps, and other supplies; also cost of heating and lighting power

plants, and other expenses not elsewhere specified in connection with operation of electric-power plants. (See special instructions, section 12.)

NOTE.—The entire cost of supplies consumed by train locomotives in train switching service shall be included in the accounts provided for train service. The supplies consumed by locomotives in work service shall be included in the cost of the work to which the service pertains.

396. TRAIN POWER PURCHASED.

This account shall include the cost of electric power purchased for the propulsion of locomotives and cars in transportation train service.

NOTE.—The entire cost of supplies consumed by train locomotives in train switching service shall be included in the accounts provided for train service. The supplies consumed by locomotives in work service shall be included in the cost of the work to which the service pertains.

397. WATER FOR TRAIN LOCOMOTIVES.

This account shall include the cost of water supplied to locomotives in transportation train service, including rent of ponds, lakes, other sources of water supply, and right of way for pipe lines; cost of water purchased, expenses of supply trains while engaged in hauling water for locomotive supply, and cost of testing water; also cost of labor expended and cost of material and supplies used in the operation of water stations and purifying plants.

The cost of operating boilers, engines, and pumps at water stations, heating and lighting water stations, breaking ice in water tanks, thawing out tank spouts and water cars, keeping fires in tanks and water cars to prevent freezing, shoveling snow into locomotive tanks; also temporary connections between water cars and locomotive tenders, compounds injected into locomotive boilers to decrease scale formation, and other expenses directly incident to the supplying of water to such locomotives, shall be included in this account.

An equitable proportion of the pay and the office, traveling, and other expenses of superintendent of water service, engaged in connection with water supply for locomotives, shall be included in this account.

ITEMS OF WATER STATION SUPPLIES.

(See special instructions, section 22.)

Axes.	Gasoline drums.	Slice bars.
Boiler compounds.	Hand tools.	Stove fixtures.
Chemicals.	Hose.	Stoves.
Coal.	Oil.	Waste.
Coal picks.	Rubber packing.	Wrenches.
Engine ' niter batteries.	Shovels.	
Gasoline.	Siphons.	

NOTE.—The entire cost of supplies consumed by train locomotives in train switching service shall be included in the accounts provided for train service. The supplies consumed by locomotives in work service shall be included in the cost of the work to which the service pertains.

398. LUBRICANTS FOR TRAIN LOCOMOTIVES.

This account shall include the cost of valve, engine, car, and other lubricating oils, grease, compounds, and waste used for lubrication of locomotives in transportation train service.

NOTE.—The entire cost of supplies consumed by train locomotives in train switching service shall be included in the accounts provided for train service. The supplies consumed by locomotives in work service shall be included in the cost of the work to which the service pertains.

399. OTHER SUPPLIES FOR TRAIN LOCOMOTIVES.

This account shall include the cost of supplies other than fuel, water, and lubricants, including the cost of repairs and renewals of furniture, tools, and other movable articles required for use on locomotives in transportation train service.

The cost of sand charged to this account shall include the cost of material and supplies used in preparing and drying the sand for use, such as the cost of fuel, wheelbarrows, shovels, and sand screens.

ITEMS OF TOOLS AND SUPPLIES.
(See special instructions, section 22.)

Ash hoes.
Ash-pan rods.
Axes.
Bars, buggy.
Bell cords.
Boxes, portable.
Brooms.
Brushes.
Buckets.
Carbide for acetylene gas.
Carbons for electric lights.
Chimneys for headlights.
Chimneys for signal lamps.
Chisels.
Clinker hooks.
Crowbars.
Files.
First-aid boxes.
Flags.
Globes for lanterns.
Grate shakers.
Hammers.
Handsaws.
Hatchets.
Hose (not air-brake, air-signal, or steam).
Hose, thaw-out.
Hose reels.
Ice.
Jacks.
Jackscrews.
Lanterns and parts.
Locks for portable boxes.
Matches.
Oil cans.
Oil for headlights.
Oil for lanterns.
Oil for signal lamps.
Oil for torches.
Oilers.
Packing, fiber.
Packing, rubber.
Packing hooks.
Packing spoons.
Picks, coal.
Pinch bars.
Plugging bars.
Pokers.
Sand.
Saws.
Scoops.
Shovels.
Signal lamps.
Sledges.
Slice bars.
Soap.
Switch chains.
Switch poles.
Switch ropes.
Tool boxes, portable.
Torches.
Torpedoes.
Waste.
Water buckets.
Water coolers.
Wicks for headlights.
Wicks for lanterns.
Wicks for signal lamps.
Wicks for torches.
Wrecking frogs.
Wrenches.

NOTE A.—Where the quantity of sand used on locomotives engaged in train service is relatively small as compared with the quantity used by locomotives engaged in yard service, the entire cost of such material shall be included in account No. 387, "Other supplies for yard locomotives." Where the quantity used in train service is relatively large, the entire cost shall be included in this account.

NOTE B.—The entire cost of supplies consumed by train locomotives in train switching service shall be included in the accounts provided for train service. The supplies consumed by locomotives in work service shall be included in the cost of the work to which the service pertains.

400. ENGINEHOUSE EXPENSES—TRAIN.

This account shall include the expense of caring for and preparing locomotives for transportation train service, including a proportion of such expenses as are common to train, yard switching, and work service.

ENGINEHOUSE MEN.—The pay of enginehouse employees engaged in wiping, cleaning, watching, and dispatching locomotives; preparing and keeping fires, dumping ashes, washing boilers, cleaning fire boxes, packing driving boxes and truck boxes; cleaning smokestacks, air-brake equipment, and front ends of locomotives; checking locomotive tool equipment, cleaning ash and cinder pits; operating turntables, drying sand, inspecting smokestacks and ash pans; and moving locomotives around engine yards when operated by hostlers; also a proportion of the pay of enginehouse foremen and their clerks.

MISCELLANEOUS EXPENSES.—The cost of tools and supplies and sundry expenses on account of caring for and preparing locomotives at enginehouses.

ITEMS OF MISCELLANEOUS EXPENSES.
(See special instructions, section 22.)

Boiled oil.
Compounds for cleaning and polishing.
Gas, oil, and electricity for lighting.
Heating enginehouses, including offices.
Lampblack.
Lanterns used by enginehouse men.
Lighting enginehouses, including offices.
Lubricating oil.
Lye.
Packing tools.
Paint for front ends of locomotives.
Power for operation of turntables and transfer tables.
Rent of roundhouse stalls.
Shovels.
Signal lights on transfer tables and turntables.
Waste.
Water for cinder pits.
Water for washing boilers.
Water hose.
Wheelbarrows.

NOTE A.—Enginehouse expenses of locomotives in work service shall be included in the cost of the work to which the service pertains.

NOTE B.—The pay of mechanics and laborers engaged in locomotive repair work in enginehouses shall be charged to the appropriate accounts for locomotive repairs.

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.

401. TRAINMEN.

This account shall include the pay of conductors; of train auditors, ticket collectors, and others engaged in lifting or examining authorities for transportation; and of baggagemen, brakemen, flagmen, train porters, train guards, train stenographers, maids, and other train employees while engaged in transportation train service or while deadheading in connection therewith; also the pay of trainmen while engaged in piloting trains over home lines.

NOTE.—The pay of trainmen while engaged in work-train service shall be included in the cost of the work to which the service pertains.

402. TRAIN SUPPLIES AND EXPENSES.

This account shall include miscellaneous expenses of transportation service trains and the cost of all supplies other than locomotive supplies.

CLEANING CARS.—The cost of cleaning and disinfecting passenger and freight cars in transportation train service, including cost of removing from freight-train cars such refuse material as sawdust, hay, and straw.

ITEMS OF SERVICE AND SUPPLIES.

(See special instructions, section 22.)

Brooms.	Disinfecting machines.	Soap.
Brushes.	Fuel for heating water.	Sponges.
Cleaning compounds.	Hose and fixtures.	Water.
Compressed air.	Labor of employees.	
Disinfectants.	Polishing compounds.	

HEATING CARS.—The cost of heating cars in transportation train service, including cost of operating steam-heating plants for car heating at stations and yards.

ITEMS OF SERVICE AND SUPPLIES.

(See special instructions, section 22.)

Connections between steam heating lines and cars.	Labor of employees.
Fuel.	Removal of ashes from car stoves.
	Stoves temporarily in freight cars.

LIGHTING CARS.—The cost of lighting cars in transportation train service, including the cost of filling and cleaning lamps and of operating plants for supplying gas or electricity for lighting purposes.

ITEMS OF SERVICE AND SUPPLIES.

(See special instructions, section 22.)

Battery renewals.	Gas mantles.	Lamp carbons.
Candles.	Globes.	Oil.
Chimneys.	Hose and connections.	Shades.
Electricity.	Incandescent lamp bulbs.	Wicks.
Gas.	Labor of employees.	

NOTE.—Repairs of gas lighting and electric lighting plants shall be included in the proper maintenance accounts. Repairs and renewals of electric lighting equipment of cars, except supplies as above provided, shall be included in the appropriate car-repair account.

LUBRICATING CARS.—The cost of lubricating cars in transportation train service, including cost of inspecting, repacking, and oiling car journal boxes and air brake equipment.

ITEMS OF SERVICE AND SUPPLIES.

(See special instructions, section 22.)

Cotton waste.	Oil, grease, and other lubricants.	Packing irons.
Grease buckets.	Packing buckets.	Packing, miscellaneous.
Labor of employees.	Packing hooks.	Wool waste.
Oil cans.		

ICING AND WATERING CARS.—The cost of icing and watering cars in transportation train service, including icing cars for refrigeration purposes. Credits shall be made to this account for refrigeration charges collected from other companies and individuals.

ITEMS OF SERVICE AND SUPPLIES.

(See special instructions, section 22.)

Buckets.	Ice tools.	Salt.
Hose and fixtures.	Labor of employees.	Water.
Ice.	Ladders.	

DETOURING TRAINS.—The compensation for temporary use of tracks of other carriers, including the cost of pilot service, on account of wrecks, washouts, landslides, snow blockades, and other defects of the tracks, bridges, or tunnels on the carrier's line.

TRAIN SUPPLIES.—The cost of supplies furnished for use on cars in transportation train service.

ITEMS OF TRAIN SUPPLIES.

(See special instructions, section 22.)

Axes.	Hammers.	Shovels.
Badges.	Hatchets.	Signal boxes.
Beds.	Jacks.	Signal lamps (rear).
Bell cords.	Lamp-boards.	Sledges.
Boxes for trainmen.	Lamp sticks.	Soap.
Brooms.	Lantern globes.	Switch chains.
Brushes.	Lantern parts.	Switch ropes.
Chains.	Lanterns.	Toilet paper.
Chairs for cabooses (not permanently attached).	Matches.	Torpedoes.
	Medical boxes.	Towels.
Cold chisels.	Oil for lanterns.	Train tool boxes.
Combs.	Order hoops.	Uniform trimmings.
Conductors' punches.	Padlocks.	Uniforms.
Cuspidors.	Pails.	Ventilator sticks.
Drinking cups and glasses.	Punches.	Waste.
Fire buckets.	Sawdust.	Water buckets.
Flags.	Saws.	Wrecking frogs.
Fuses.	Scoops.	Wrenches.

OTHER EXPENSES.—The cost of miscellaneous supplies required to equip trains for transportation service and miscellaneous expenses incident to operation of such trains.

ITEMS OF EXPENSE ON ACCOUNT OF EMPLOYEES.

(See special instructions, section 22.)

Apparatus for testing the sight and hearing of enginemen and trainmen.
Employees' reading and bunk room expense, including pay of attendants and supplies furnished.
Laundry work.
Physicians' fees for examination of train employees.
Wages paid to superintendents and secretaries of reading rooms.

ITEMS OF EXPENSE ON ACCOUNT OF TRANSPORTATION.

(See special instructions, section 22.)

Bedding for stock cars.
Boarding and slatting box and stock cars for carrying coal, coke, and other freight
Boards for flooring fruit cars.
Chains for securing loads.
Cleaning, trimming, and filling trainmen's lanterns and rear signal lamps.
Coupling and uncoupling cars at terminals.
Disinfecting cars.
Dunnage used in loading cars or fitting cars for freight shipments.
Feed for live stock in snow-bound or otherwise delayed trains.
Flowers and plants for cars.
Laundry for revenue service cars other than for dining and buffet service and sleeping car service.
Occasional turning of engines on Y of other carriers.
Oil and other supplies for locomotives hauled as freight.
Periodicals for use of passengers on trains.

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.

Planking cars for billet shipments and other material.
Provisions, supplies, or board for passengers in delayed trains.
Removing advertisements from cars.
Rent of fare registers in cars.
Safety chains for use between twin and triple cars.
Supplies for parlor and chair cars.
Supplies furnished cars for the purpose of protection against accidents and fires.
Temporary grain doors.
Temporary lining of cars for freight shipments and stoves and heaters to prevent freezing.
Temporary openings in cars for freight shipments.
Temporary racking of cars for handling sugar-cane, corn, bark, or cordwood.
Transferring passengers, express matter, baggage, mail, and freight on account of defective tracks, bridges, or tunnels.

NOTE.—The expenses of operating sleeping, dining, and buffet car features of train service shall be included in the account No. 403, "Operating sleeping cars," or in account No. 441, "Dining and buffet service," as may be appropriate.

403. OPERATING SLEEPING CARS.

This account shall include the cost of operating sleeping car service on trains.

SUPERINTENDENCE.—The pay of officers directly in charge of operating sleeping car service; the pay of their clerks and office attendants; also the office, traveling, and other expenses of such officers and employees.

STATION EMPLOYEES.—The pay and expenses of local agents, ticket agents, cashiers, clerks, and attendants; also the office and other expenses of such employees.

STATION EXPENSES.—The expenses of fuel, water, steam, and supplies used in heating station offices; gas, oil, electric current, and other supplies for lighting; repairs and renewals of station furniture, and all other station expenses connected with sleeping car service when separable from the station expenses chargeable to account No. 376, "Station supplies and expenses."

CONDUCTORS.—The pay of conductors employed on sleeping cars.

PORTERS AND MAIDS.—The pay of porters and maids employed on sleeping cars.

CAR SUPPLIES.—The cost of miscellaneous supplies used on sleeping cars, such as combs, brushes, brooms, and toilet paper; also uniforms, caps, and service stripes for employees.

LAUNDRY.—Expenses for laundry work, such as laundering sheets, pillow-cases, towels, blankets, etc.

OTHER EXPENSES.—The cost of flowers and plants, heating cars, cleaning the interior of cars, and of supplies used in interior cleaning, rent and cost of supplies for rooms furnished for sleeping car service employees, and such other expenses in connection with the operation of sleeping cars as are not provided for elsewhere.

NOTE.—When officers have immediate supervision over sleeping car service and other operations their pay, office, and other expenses, as also the pay, office, and other expenses of their assistants, clerks, and office attendants, shall be equitably apportioned to the accounts appropriate to the operations over which they have supervision.

404. SIGNAL AND INTERLOCKER OPERATION.

This account shall include the cost of operating signals and interlockers other than those solely or principally used for governing all movements of locomotives and trains between main and yard tracks, movements of locomotives between yard tracks and enginehouses, and yard switching movements.

LABOR.—The wages of employees engaged in operating signals and interlockers or power producing plants in connection therewith, such as switch tenders, signalmen other than telegraph operators, lever men, switch and signal oilers, battery men, lamp men, lamp cleaners, and lamplighters; gatemen at crossings of other railroads, engineers and others operating plants furnishing compressed air for signals and interlockers; engineers, electricians, and others operating plants furnishing electric power for signals and interlockers.

SUPPLIES.—The cost of supplies used in operating signals and interlockers or in signal offices, such as gasoline, vitriol, battery zincs, battery coppers, lubricating oils, fuel for heating, fuel for power purposes, produced and purchased power used in operating switches and signals, furniture repairs and renewals, water, and light.

NOTE.—The cost of operating signals and interlockers solely or principally used for governing the movement of yard locomotives and trains shall be included in the appropriate yard expense accounts.

405. CROSSING PROTECTION.

This account shall include the pay of street and highway crossing gatekeepers and flagmen, the cost of supplies used by them, the cost of lights at street and highway crossings not a part of the lighting outfit at stations or in yards, and the cost of compressed air for operating gates.

406. DRAWBRIDGE OPERATION.

This account shall include the cost of operating drawbridges.

LABOR.—The wages of employees engaged in operating drawbridges, such as bridge engineers, tenders, and watchmen.

SUPPLIES.—The cost of produced and purchased power and of supplies, such as fuel, oil, lanterns, water, waste, boats, stoves, chairs, brooms, and pails used in drawbridge operation.

407. TELEGRAPH AND TELEPHONE OPERATION.

This account shall include the cost of telegraph and telephone operation not provided for elsewhere.

SUPERINTENDENCE—TELEGRAPH.—The pay of superintendents of telegraph, telegraph censors, their clerks, and attendants.

TELEGRAPH OPERATORS AND MESSENGERS.—The pay of telegraph operators, block inspectors, and messengers in telegraph and relay offices other than those employed in dispatching trains and those located in general offices or at stations.

OTHER TELEGRAPH EXPENSES.—Office, traveling, and incidental expenses, including office rent, of employees whose pay is chargeable to this account; rent of telegraph conduits, lines, and poles; cost of battery renewals and supplies, bicycles for messengers, and electric current for telegraph purposes; also excess payments to telegraph companies when in connection with telegraph service and not provided for elsewhere.

NOTE A.—The pay, rent, other office expenses, and traveling expenses of superintendents of telegraph, their assistants, clerks, and attendants, when engaged both in maintaining and operating telegraph lines, shall be apportioned equally between this account and account No. 247, "Telegraph and telephone lines."

SUPERINTENDENCE—TELEPHONE.—The pay of superintendents of telephone, their clerks, and attendants.

TELEPHONE OPERATORS AND MESSENGERS.—The pay of telephone operators and messengers in telephone offices other than those employed in dispatching trains and those located in general offices or at stations.

OTHER TELEPHONE EXPENSES.—Office, traveling, and incidental expenses, including office rent, of employees whose pay is chargeable to this account; rent of telephone conduits, lines, and poles; cost of battery renewals and supplies, bicycles for messengers, and electric current for telephone purposes; also excess payments to telephone companies when in connection with telephone service and not provided for elsewhere.

NOTE B.—The pay, rent, other office expenses, and traveling expenses of superintendents of telephone, their assistants, clerks, and attendants, when engaged both in maintaining and operating telephone lines, shall be apportioned equally between this account and account No. 247, "Telegraph and telephone lines."

408. OPERATING FLOATING EQUIPMENT.

This account shall include the cost of operating floating equipment in water transfer service (ferriage, lighterage, and floatage). (See general instructions, section 1.)

SUPERINTENDENCE.—The pay of vice presidents and other officers directly in charge of or engaged in the operation of boats; the pay of their assistants, clerks, and attendants; also the office, traveling, and other expenses of such officers and their employees.

WAGES OF CREWS.—The pay of captains, pilots, chief officers, mates, sailors, wireless telegraph operators, and other employees of the deck department; engineers, assistant engineers, electricians, oilers, firemen, coal passers, and all other employees of the engineer's department; and pursers, porters, and all other employees in the steward's department, except when engaged in dining and buffet service.

FUEL.—The cost, on board boats (including the cost of trimming) of coal, oil, wood, and other fuel used for generating power, heat, or light.

LUBRICATION.—The cost of oil, grease, tallow, graphite, and other material furnished for lubricating purposes.

OTHER SUPPLIES AND DEPARTMENTAL EXPENSES.—The cost of supplies furnished to deck department; the incidental expenses of deck department employees; supplies other than fuel and lubricants, furnished the engineer's department; water furnished to boats; incidental expenses of engineer's department employees; supplies (other than dining and buffet supplies) furnished to the steward's department; laundry for boats; and incidental expenses of steward's department employees.

ITEMS OF SUPPLIES.

(See special instructions, section 22.)

Axes.	Hose.	Ropes.
Brooms.	Ice.	Shovels.
Brushes.	Lamps.	Soap.
Commissarial supplies.	Laundry.	Tallow.
Flags.	Lines.	Tools, miscellaneous.
Gas.	Mops.	Trucks.
Globes.	Oil.	Waste.
Grease.	Pails.	Water.
Handspikes.	Planks.	Wicks.
Hatchets.	Provisions.	Wrenches.

OTHER EXPENSES.—Expenses incident to the operation of floating equipment not otherwise provided for in this account.

ITEMS OF EXPENSE.

(See special instructions, section 22.)

Customhouse fees.	Raising sunken boats.
License fees.	Transferring passengers in case of accidents.
Pumping out boats laid up.	Wharfage.

ELEVATION AND LONGSHORE LABOR.—The cost of shore labor in connection with loading and unloading lighterage freight at wharves and piers, such as labor of bridgemen at transfer bridges and of watchmen, longshoremen, stevedores, and other wharf men.

ELEVATION AND SHORE EXPENSES.—Shore expenses in connection with loading and unloading lighterage freight, such as the cost of steam and electricity for power, heating, and lighting; power and supplies used for transfer or float bridges; supplies used in connection with operating wharves and piers and not chargeable to account No. 376, "Station supplies and expenses."

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.

ITEMS OF SUPPLIES.

(See special instructions, section 22.)

Brooms.
Carbons.
Chalk.
Coal hods.
Coal shovels.
Cold chisels.
Crowbars.
Gas.
Hammers.
Hatchets.
Ice.
Ice tongs.
Incandescent lights.
Lamps, reflector.
Lanterns.
Marline.
Matches.
Oil.
Oil cans.
Pails.
Pinch bars.
Ropes.
Salt.
Scoops.
Shovels.
Soap.
Tacks.
Tallow.
Torches.
Towels.
Twine.
Waste.
Water.
Water coolers.
Wheelbarrows.

NOTE A.—When the compensation for the use of floating equipment used in water transfer service includes rent, maintenance, and operation, the portion covering rent shall be charged to income account No. 539, "Rent for floating equipment;" the portion covering maintenance shall be charged to the appropriate account for maintenance of equipment, and the portion covering operation shall be included in this account.

NOTE B.—The cost of labor expended in transferring freight between cars and boats shall be distributed in such manner as to include in account No. 373, "Station employees," the expense of handling between the cars and the string piece of the wharf or rail of the boat, and to include in this account the expense of handling upon the boats.

409. EXPRESS SERVICE.

This account shall include the cost of operating express service.

DRIVERS AND MESSENGERS.—Pay of express messengers, drivers, and helpers, and cost of their uniforms, uniform trimmings, and badges; and pay of baggage-masters handling express.

OTHER EXPENSES.—Pay of stablemen in express service, rent of stables, and expense of feeding and shoeing horses.

410. STATIONERY AND PRINTING.

This account shall include the cost of stationery and printing used in connection with rail line transportation, including operation of floating equipment.

STATIONERY AND PRINTING ITEMS.

(See special instructions, section 22.)

Adding machines.
Addressographs and supplies.
Arm rests.
Baggage checks, printed.
Baggage scrip.
Baggage storage checks.
Bills of lading.
Binders.
Blank books.
Blotters.
Blotting paper.
Bristol board.
Calculating machines.
Calendars.
Carbon paper.
Cardboard.
Cards, blank and printed.
Circulars.
Computing tables.
Conductors' hat checks.
Copy (impression) books.
Copying brushes.
Copying presses.
Crayons.
Cross-section books.
Cross-section paper.
Cyclostyles.
Dating stamps and ribbons.
Delivery tickets.
Dictaphones.
Dictographs.
Drawing paper.
Duplicators.
Electric pens.
Envelopes.
Erasers, rubber and steel.
Eyelet punches.
Eyelets.
File boxes, paper.
Forms, blank and printed.
Fuel tickets.
Glass pens.
Hectographs.
Indexes.
Ink for writing and drawing.
Inkstands.
Invoice books.
Legal cap paper.
Letter paper.
Manifold paper.
Manifold pens.
Mileage books.
Mimeographs.
Mucilage.
Mucilage brushes.
Neostyles.
Note paper.
Notices.
Numbering stamps.
Oil paper.
Paper.
Paper baskets.
Paper clips.
Paper cutters.
Paper fasteners.
Paper files.
Paper weights.
Papyrographs.
Parchment paper.
Pencil sharpeners.
Pencils for writing and drawing.
Penholders.
Penracks.
Pens for writing and drawing.
Phonographs and records.

Pins.
Postage.
Punches (not conductors' or baggagemen's).
Rubber bands.
Rubber stamps.
Rulers.
Ruling pens.
Scrapbooks.
Sealing wax.
Seals.
Shears.
Shipping orders.
Shipping tags.
Shorthand notebooks.
Sponge cups.
Sponges.
Stamps, impression.
Stylographs.
Tablets, blank and printed.
Tape.
Telegraph blanks.
Ticket stamps.
Tickets.
Time-tables (employees).
Tissue (impression) paper.
Tracing cloth.
Tracing paper.
Twine.
Typewriters and ribbons.
Wage tables.
Wastebaskets.
Water colors.
Water holders.
Waybills.
Wrapping paper.
Wringers for copying presses.

NOTE.—The cost of dictionaries, periodicals, technical books, etc., shall be included in appropriate superintendence accounts, and city directories and books of reference used by station agents shall be charged to account No. 376, "Station supplies and expenses."

411. OTHER EXPENSES.

This account shall include all expenses in connection with rail line transportation not properly chargeable to other transportation accounts.

ITEMS OF EXPENSE.

(See special instructions, section 22.)

Amounts paid for switching empty cars otherwise than in connection with loaded movements or with the repairs to the equipment.
Amounts paid on account of bills of lading issued on fraudulent receipts.
Amounts paid to suspended transportation department employees covering periods of suspension.
Compensation for property loss incident to failure to stop at station to pick up passengers.
Demurrage accruing on a foreign line by reason of error of carrier's agent.
Extra drayage due to agent's error in routing interline shipment.
Fees paid arbitrators in wage disputes of transportation department employees.
Loss of station funds by burglary, when not covered by insurance.
Loss of train collections in holdup.
Overcharges paid foreign lines on account of error of the carrier's agent in routing and billing.
Pay and expenses of transportation department employees attending conferences with officers in connection with wage disputes.
Payments for switching on account of cars not passing inspection at junction points.
Penalties imposed under reciprocal demurrage laws for failure to furnish cars.
"Penalty switching" payments on account of improper delivery of cars to other carriers.

412. OPERATING JOINT TRACKS AND FACILITIES—DR.

This account shall include the carrier's proportion of the transportation expenses incurred by others in the operation of joint tracks, interlockers, and other facilities which are not provided for in account No. 390, "Operating joint yards and terminals—Dr."

NOTE A.—The purpose of this account is to show the amount accruing against the carrier for its proportion of the cost of operating tracks and facilities (other than at joint yards and terminals) operated by others and in the joint use of which the carrier participates. (See special instructions, section 9.)

NOTE B.—No proportions of items of expense chargeable by the operating carrier to accounts Nos. 392 to 402, inclusive, shall be included in this account.

413. OPERATING JOINT TRACKS AND FACILITIES—CR.

This account shall include amounts chargeable to others as their proportions of transportation expenses incurred by the carrier in the operation of joint tracks, interlockers, and other facilities which are not provided for in account No. 391, "Operating joint yards and terminals—Cr."

NOTE A.—The purpose of this account is to show the amounts accruing in favor of the carrier and against others for their proportions of the cost of operating tracks and facilities (other than at joint yards and terminals) operated by the carrier and in the joint use of which others participate. (See special instructions, section 9.)

NOTE B.—No proportions of items of expense chargeable by the operating carrier to accounts Nos. 392 to 402, inclusive, shall be included in this account.

414. INSURANCE.

This account shall include premiums, except reinsurance premiums, for insuring the carrier against loss through injuries to persons or damage to or destruction or loss of property, whether caused by fire, accident, or other cause, when such loss to the carrier would be chargeable to Transportation—Rail Line; also premiums on fidelity bonds of employees whose pay is chargeable to Transportation—Rail Line. (See special instructions, section 18.)

NOTE.—The premiums paid by the carrier to its insurance fund shall be credited to an insurance reserve account, to which account shall be charged the amount of all claims for injuries to persons and damages to the property covered by its insurance. To such account shall also be charged all reinsurance premiums paid to insurance companies, and to it shall be credited all amounts recovered from insurance companies for damage to property reinsured by them.

415. CLEARING WRECKS.

This account shall include the cost of clearing wrecks other than wrecks of work trains.

LABOR.—The wages of employees while engaged in connection with wrecking service, loading, and transferring contents of wrecked cars, building temporary tracks around wrecks, and removing such tracks.

TRAIN SERVICE.—The cost of train service in connection with replacing wrecked equipment upon the tracks and transporting such equipment to shops for repairs, including amounts paid to other companies for service of locomotives, derricks, and other equipment and for wages of crews in wrecking service.

OTHER SUPPLIES AND EXPENSES.—Payments for reloading or transferring freight, express, baggage, and mail; transferring passengers, and cost of provisions or board for men clearing up or watching at wrecks.

NOTE A.—Expenses of clearing wrecks of work trains shall be included in the cost of the work in connection with which the wrecked train was engaged.

NOTE B.—The cost of restoring roadbed and tracks to original condition after wrecks and the cost of repairing equipment damaged or destroyed by wrecks shall be charged to the appropriate accounts for maintenance of way and structures and maintenance of equipment.

NOTE C.—That proportion of payments to other companies for use of locomotives, derricks, and other equipment in wrecking service which represents rent shall be included in the income accounts.

416. DAMAGE TO PROPERTY.

This account shall include payments and expenses on account of damages to the property of others, whether by fire, collision, flood, or other cause, with the exception of payments and expenses on account of damage to property intrusted to the carrier for transportation, and for damage to stock on right of way. It shall include also fines or compensation paid for interference with the business of others, as by detention of vessels at drawbridges, or by blocking streets.

This account shall include also the pay, office rent, and office, traveling, and other expenses of employees and others engaged as claim adjusters or as witnesses in lawsuits in connection with damage to property cases, or engaged in detection of thieves; notarial fees paid in connection with such cases; and payments for or repairs of damage to equipment of other carriers, or to property contained therein, such carriers having trackage rights upon or grade crossings over the carrier's tracks.

NOTE A.—Damage to live stock on right of way, and damage to freight and baggage intrusted for transportation, are provided for under accounts No. 417, "Damage to live stock on right of way"; No. 418, "Loss and damage—Freight"; and No. 419, "Loss and damage—Baggage."

NOTE B.—Expenses incident to suits growing out of damage to property claims, not otherwise provided for, shall be included in account No. 454, "Law expenses."

NOTE C.—The pay, office rent, and the traveling, office, and other expenses of claim adjusters, claim clerks, and others engaged in claim matters when not accurately assignable to a distinct class of claims, shall be apportioned equally among the several classes of claims over which they have jurisdiction or in connection with which they are engaged. This provision does not apply to the pay and expenses of general officers or general office employees whose pay is includible in general account VII, General.

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.

417. DAMAGE TO LIVE STOCK ON RIGHT OF WAY.

This account shall include payments on account of cattle and other live stock killed or injured while crossing or trespassing on the right of way, including cost of removing and burying the same.

There shall be included in this account also the pay and the traveling, office, and other expenses of employees and others engaged as live-stock claim adjusters or engaged as witnesses in lawsuits in connection with damage to live stock on right of way; also notarial fees in connection with claims for damage to live stock on right of way.

NOTE A.—Expenses incident to suits growing out of live-stock claims, not otherwise provided for, shall be included in account No. 454, "Law expenses."

NOTE B.—The pay, office rent, and the traveling, office, and other expenses of claim adjusters, claim clerks, and others engaged in claim matters when not accurately assignable to a distinct class of claims, shall be apportioned equally among the several classes of claims over which they have jurisdiction or in connection with which they are engaged. This provision does not apply to the pay and expenses of general officers or general office employees whose pay is includible in general account VII, General.

418. LOSS AND DAMAGE—*FREIGHT*.

This account shall include payments and expenses on account of loss, destruction, damage, or delays to revenue freight shipments, including locomotives and cars transported as freight, express matter, milk shipments, and live stock, and expenses incurred on account of such payments; also expenses on account of loss, destruction, or damage to shipments of company material.

This account shall also include the cost of repacking and boxing damaged freight shipments; notarial fees in connection with freight claims; freight charges paid other carriers on lost, destroyed, or damaged shipments; pay, traveling, office, and other expenses of employees or others engaged as freight-claim adjusters, as witnesses in lawsuits in connection with freight-claim cases, in selling damaged and unclaimed shipments, or in detecting thieves; rent of warehouses used for storage of damaged and astray freight shipments, payments for storage of such shipments in public warehouses, and interest and penalties assessed for nonpayment of freight claims.

Amounts received from the sale of astray and damaged freight shall be credited to this account.

NOTE A.—Expenses incident to suits growing out of loss and damage (freight) claims, not otherwise provided for, shall be included in account No. 454, "Law expenses."

NOTE B.—The pay, office rent, and traveling, office, and other expenses of claim adjusters, claim clerks, and others engaged in claim matters when not accurately assignable to a distinct class of claims, shall be apportioned equally among the several classes of claims over which they have jurisdiction or in connection with which they are engaged. This provision does not apply to the pay and expenses of general officers or general office employees whose pay is includible in general account VII, General.

419. LOSS AND DAMAGE—BAGGAGE.

This account shall include payments for loss, destruction, damage, or delays to baggage and other personal property carried as baggage, and damage to personal apparel; also expenses on account of such loss or damage.

This account shall also include the cost of repacking and boxing damaged baggage; notarial fees in connection with baggage claims; baggage claim payments made to other carriers on lost, destroyed, damaged, or delayed shipments; pay, traveling, office, and other expenses of employees or others engaged as baggage claim adjusters, as witnesses in lawsuits in connection with baggage claim cases, in selling damaged and unclaimed baggage, or in detecting thieves; rent of warehouses used exclusively for storage of damaged and unclaimed baggage, payments for storage of such shipments in public warehouses, and interest and penalties assessed for nonpayment of claims.

Amounts received from the sale of astray and damaged baggage shall b
ited to this account.

NOTE A.—Expenses incident to suits growing out of loss and damage (baggage) clai
otherwise provided for, shall be included in account No. 454, "Law expenses."

NOTE B.—The pay, office rent, and traveling, office, and other expenses of claim adjuste
clerks, and others engaged in claim matters when not accurately assignable to a distinct class
shall be apportioned equally among the several classes of claims over which they have juri
or in connection with which they are engaged. This provision does not apply to the pay and e
of general officers or general office employees whose pay is includible in general account VII,

NOTE C.—When a payment on account of injuries to passengers includes allowance for
to personal apparel the damage allowance shall be included in this account when separable; o
in the appropriate personal injury account.

420. INJURIES TO PERSONS.

This account shall include expenses on account of injuries to persons
occur directly in connection with transportation service, including dama
ejectment of passengers.

Services of employees and others called in consultation in relation to
adjustments; pay and expenses of employees while engaged as witnesses
quests and lawsuits, and a suitable proportion of donations made to hos
shall be included in this account.

ITEMS OF EXPENSE.

(See special instructions, section 22.)

Artificial limbs.
Carriage fees.
Claim adjusters' and clerks' services.
Claim adjusters' office expenses.
Compensation for injuries or death.
Final judgments, including plaintiffs' court costs.
Funeral expenses.
Hospital attendance.
Medical and surgical services.
Medical and surgical supplies.
Notarial fees.
Nursing.
Railway transportation.
Undertakers' services.
Undertakers' supplies.
Witnesses' fees and expenses at inque
lawsuits.

NOTE A.—Expenses incident to personal injury suits, not otherwise provided for, shal
cluded in account No. 454, "Law expenses."

NOTE B.—Amounts donated by a carrier to hospitals shall be distributed, 25 per cent to
No. 274, "Injuries to persons"; 25 per cent to account No. 332, "Injuries to persons"; and 50
to account No. 420, "Injuries to persons."

NOTE C.—The pay, office rent, and traveling, office, and other expenses of claim ad
claim clerks, and others engaged in claim matters, when not accurately assignable to a distin
of claims, shall be apportioned equally among the several classes of claims over which th
jurisdiction or in connection with which they are engaged. This provision does not appl
pay and expenses of general officers or general office employees whose pay is includible in
account VII, General.

NOTE D.—When a payment on account of injuries to persons includes allowance for da
personal apparel, the damage allowance shall be included in account No. 419, "Loss and da
Baggage," when separable; otherwise the entire payment shall be included in this account.

V. TRANSPORTATION—WATER LINE.

The primary accounts included in this general account are designed to
the expenses incurred in transporting persons and property by water lines

When the compensation for the use of floating equipment used in wat
operations includes rent, maintenance, and operation, the portion coverin
shall be charged to income account No. 539, "Rent for floating equipm
the portion covering maintenance shall be charged to the appropriate ac
for maintenance of equipment, and the portion covering operation sh
distributed to the primary accounts in this account. (See general instru
section 1.)

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTION

431. OPERATION OF VESSELS.

This account shall include the cost of operating vessels in water-line service. It shall include:

SUPERINTENDENCE.—The pay of vice presidents and other officers directly in charge of or engaged in the operation of vessels; the pay of their assistants, clerks, and attendants; also the office, traveling, and other expenses of such officers and their employees.

WAGES OF CREWS.—The pay of captains, pilots, chief officers, mates, sailors, wireless telegraph operators, and other employees of the deck department; engineers, assistant engineers, electricians, oilers, firemen, coal passers, and all other employees of the engineer's department; and pursers, stewards, stewardesses, cooks, pantrymen, waiters, porters, and all other employees in the steward's department.

FUEL.—The cost, on board vessels (including the cost of trimming), of coal, oil, wood, and other fuel used for generating power, heat, or light.

LUBRICATION.—The cost of oil, grease, tallow, graphite, and other material furnished for lubricating purposes.

STATIONERY AND PRINTING.—The cost of stationery and printing used in connection with the operation of vessels. (For stationery and printing items, see expense account No. 410.)

FOOD SUPPLIES.—The cost of all food supplies furnished to the steward's department.

BAR SUPPLIES.—The cost of all wines, liquors, beers, ales, mineral waters, cigars, cigarettes, tobacco, and other bar supplies.

OTHER SUPPLIES AND DEPARTMENTAL EXPENSES.—The cost of supplies furnished to deck department; the incidental expenses of deck department employees; supplies, other than fuel and lubricants, furnished the engineer's department; water furnished to ships; and incidental expenses of engineer's department employees; supplies (other than food and bar) furnished to the steward's department; laundry for ships; and incidental expenses of steward's department employees.

LAY-UP EXPENSES.—The pay of crews and all other transportation expenses incurred on account of floating equipment when laid up and not undergoing repairs or betterment.

OTHER EXPENSES.—Expenses incident to the operation of vessels not otherwise provided for in this account.

NOTE A.—When officers enumerated above have supervision over other departments also, their pay, office and other expenses, as also the pay, office and other expenses of their assistants, clerks, and attendants, shall be equitably apportioned among the departments over which they have jurisdiction.

NOTE B.—The rent for offices and other structures of minor importance used in the operation of vessels shall be included in this account. The rent for such property of major importance, which is ordinarily leased for a period of years, shall be included in Income.

432. OPERATION OF TERMINALS.

This account shall include the expenses of the operation of terminals devoted to water-line operations. It shall include:

SUPERINTENDENCE.—The pay of vice presidents and other officers in charge of or engaged in the operation of terminals; the pay of their assistants, clerks, and attendants; also the office, traveling, and other expenses of such officers and their employees; the salaries of agents, clerks, and attendants; the pay of port or station agents and their employees; the pay of wharf employees (except stevedores and other laborers provided for in the subheading "Stevedore and

wharf labor"); agency and office expenses; expenses of telegraph and telephone service; postage, heat, light, power, water, ice, furniture, and other supplies (except stationery and printing); and incidental office and traveling expenses of port or station agents, their clerks, and attendants.

STATIONERY AND PRINTING.—The cost of stationery and printing used in connection with the operation of terminals. (For stationery and printing items see expense account No. 410.)

STEVEDORE AND WHARF LABOR.—The pay of stevedores, foremen, and longshoremen when engaged directly in loading and unloading vessels; payments for labor in connection with handling, trimming, and stowing cargoes in vessels, including payments to companies and individuals engaged to handle cargoes by contract; and the pay of laborers on wharves when engaged in piling, tiering, and handling freight, and in unloading and loading baggage.

TUGS AND LIGHTERS—OPERATION.—Expenses in connection with the operation of tugs, lighters, and other floating equipment employed in terminal operations, including superintendence, wages, fuel, water, lubricants, food supplies, wharfage, and laborers engaged in handling lightered cargoes (except directly to or from ships).

SWITCHING, LIGHTERAGE, AND OTHER TRANSFERS.—Payments made to other companies or individuals for lightering, switching, or transferring freight; teaming; operating team transfers owned by the carrier; and other expenses in connection with the transfer of freight not provided for in the foregoing paragraph or in revenue account No. 121, "Freight."

LIGHT, HEAT, POWER, AND WATER.—The expenses of light, heat, power, and water used in the operation of terminals (except in agents' or superintendents' offices); both when purchased and when produced by the carrier.

WHARF SUPPLIES AND EXPENSES.—The cost of supplies used by and expenses of wharf employees, such as meals furnished, advertising for wharf employees, cost or rent of equipment for watchmen, firemen, and police; uniforms for wharf employees; supplies for coopering, marking, and tagging freight; car standards, binders, etc.; and expenses not chargeable as repair items incident to keeping wharves in proper condition.

OTHER EXPENSES.—Expenses incident to the operation of terminals not otherwise provided for in this account, including harbor master's fees, quarantine expenses, customhouse and other port charges.

NOTE A.—When officers enumerated above have supervision over other departments also, their pay, office and other expenses, as also the pay, office and other expenses of their assistants, clerks, and attendants, shall be equitably apportioned among the departments over which they have jurisdiction.

NOTE B.—The rent for offices and other structures of minor importance used in the operation of terminals shall be included in this account. The rent for such property of major importance, which is ordinarily leased for a period of years, shall be included in Income.

433. INCIDENTAL.

This account shall include incidental transportation expenses in connection with water-line operations. It shall include:

LOSS AND DAMAGE—FREIGHT.—Payments and expenses for loss, damage, delays, or destruction of freight (including company material); uncollectible freight charges paid other carriers on misrouted, lost, damaged, or destroyed shipments; cost of repacking and boxing damaged merchandise; pay and expenses of employees and others engaged as adjusters and in detecting thieves; and the pay and expenses of employees and others engaged as witnesses in lawsuits in connection with loss and damage cases. The net amount received from the sale of astray and damaged freight shall be credited to this account.

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.

LOSS AND DAMAGE—BAGGAGE.—Payments and expenses for loss, damage, delays, or destruction of baggage or other personal property carried as baggage, and damage to personal apparel; the cost of repacking and boxing damaged baggage; and the pay and expenses of employees or others while engaged as adjusters and witnesses in lawsuits in cases involving loss or damage to baggage. The net amount received from the sale of astray and damaged baggage shall be credited to this account.

DAMAGE TO PROPERTY.—Payments and expenses on account of damages to or destruction of property of others, whether by fire, collision, or other cause, with the exception of payments and expenses on account of damage to property intrusted to the carrier for transportation; and pay and expenses of employees and others while engaged as adjusters and as witnesses in lawsuits arising out of damage to property.

INJURIES TO PERSONS.—Compensation and expenses incident to injuries to persons occurring directly in connection with the transportation operations of water lines; a proportion of the pay and expenses of physicians and surgeons; of claim adjusters and clerks; expenses of nurses and hospital attendants; medical and surgical supplies; artificial limbs; funeral expenses; railway, boat, and carriage fares for conveying injured persons and attendants; donations or contributions to hospitals in which employees are cared for; pay and expenses of employees and others while attending coroners' inquests, while engaged as witnesses in lawsuits in connection with personal injury cases, or when called in consultation in relation to personal injury claims.

INSURANCE.—Premiums paid, except reinsurance premiums, for insuring the carrier against loss through injuries to persons, or damage to or destruction or loss of property, whether caused by fire, accident, or other cause, when such loss to the carrier would be chargeable to Transportation—Water Line; also premiums on fidelity bonds of employees whose pay is chargeable to that account. (See special instructions, section 18.)

NOTE A.—The premiums paid by the carrier to its insurance fund shall be credited to an insurance reserve account, to which account shall be charged the amount of all claims for injuries to persons and damages to the property covered by its insurance. To such account shall also be charged all reinsurance premiums paid to insurance companies, and to it shall be credited all amounts recovered from insurance companies for damage to property reinsured by them.

NOTE B.—Expenses not otherwise provided for in connection with the conduct of loss, damage, and personal injury suits shall be charged to account No. 454, "Law expenses," but the amount of final judgments, including plaintiff's court costs, shall be included in this account.

NOTE C.—The pay, office rent, and traveling, office, and other expenses of claim adjusters, claim clerks, and others engaged in claim matters when not directly assignable to a distinct class of claims, shall be apportioned equally among the several classes of claims over which they have jurisdiction or in connection with which they are engaged.

VI. MISCELLANEOUS OPERATIONS

The primary accounts included in this general account are designed to show the expenses incurred in miscellaneous operations. (See general instructions, section 4.)

441. DINING AND BUFFET SERVICE.

This account shall include the cost of operating dining and buffet service on trains and transfer boats. It shall include:

SUPERINTENDENCE.—The pay of officers directly in charge of operating dining and buffet service; the pay of their assistants, clerks, and office attendants; also the office, traveling, and other expenses of such officers and their employees.

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.

COMMISSARIAL EMPLOYEES.—The pay of storekeepers, assistant storekeepers, clerks, porters, and other employees in commissarial supply depots and storehouses.

STEWARDS.—The pay of stewards or conductors employed on dining and buffet cars and transfer boats.

COOKS AND WAITERS.—The pay of cooks, waiters, and assistants on dining and buffet cars and transfer boats

FUEL AND SUPPLIES.—The cost of fuel for cooking purposes; of provisions, such as meats, groceries, vegetables, fish, table waters, ice, etc.; bar supplies, such as wines, liquors, beers, ales, etc.; cost of licenses; and cost of cigars, cigarettes, and tobacco.

LAUNDRY.—Expenses for laundry work, such as laundering tablecloths, napkins, aprons, etc.

STATIONERY AND PRINTING.—The cost of stationery and printing used in connection with dining and buffet service.

OTHER EXPENSES.—The cost of flowers and plants; cleaning the interior of cars; rent and cost of supplies for rooms furnished for dining and buffet service employees; and such other expenses in connection with the operation of dining and buffet service as are not provided for elsewhere.

NOTE.—When officers have immediate supervision over dining and buffet service and other operations their pay, office and other expenses, as also the pay, office and other expenses of their assistants, clerks, and office attendants, shall be equitably apportioned to the accounts appropriate to the operations over which they have supervision.

442. HOTELS AND RESTAURANTS.

This account shall include the cost of operating hotels, restaurants, and lunch counters when the cost of the operated property is includible in the road and equipment accounts. It shall include:

SUPERINTENDENCE.—The pay of officers directly in charge of operating hotels, restaurants, and lunch counters; pay of their clerks and office attendants; also the office, traveling, and other expenses of such officers.

EMPLOYEES.—The pay of stewards, hotel keepers, storekeepers, checkers, linen clerks, butchers, chefs, cooks, kitchen help, maids, porters, elevator men, call boys, hat and cloak attendants, waiters, waitresses, laundresses, engineers, firemen, and other employees engaged in operating hotels, restaurants, and lunch counters.

FUEL AND SUPPLIES.—The cost of fuel for cooking and heating purposes; provisions, such as meats, groceries, vegetables, fish, table waters, ice, etc.; bar supplies, such as wines, liquors, beers, ales, etc.; the cost of liquor licenses; the cost of tobacco, cigars, cigarettes, etc.; and miscellaneous supplies for operating the service.

STATIONERY AND PRINTING.—The cost of stationery and printing used in connection with the operation of hotels and restaurants.

OTHER EXPENSES.—The cost of lighting, and other items of expense not otherwise provided for in this account.

NOTE.—When officers have immediate supervision over hotels, restaurants, and lunch counters and other operations their pay, office, and other expenses, as also the pay, office, and other expenses of their assistants, clerks, and office attendants, shall be equitably apportioned to the accounts appropriate to the operations over which they have supervision.

443. GRAIN ELEVATORS.

This account shall include the cost of operating grain elevators other than small elevators which are classed as station facilities. It shall include:

SUPERINTENDENCE.—The pay of officers directly in charge of grain-elevator service; the pay of their assistants, clerks, and office attendants; also the office, traveling, and other expenses of such officers and their employees.

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.

EMPLOYEES.—The pay of engineers, firemen, foremen, machine men, oilers, millwrights, carpenters, trimmers, weighers, spout men, sweepers, laborers, watchmen, and all other employees engaged in operating grain elevators.

FUEL AND SUPPLIES.—The cost of fuel for power, heating, and lighting plants; power for heating, lighting, and operating machinery; and water, ice, oil, waste, and other supplies for operating such property.

STATIONERY AND PRINTING.—The cost of stationery and printing used in connection with the operation of grain elevators.

OTHER EXPENSES.—The cost of grain used to make up shortage in elevators; stationery and printing; rent for and repairs of rented offices; and other operating expenses not otherwise provided for in this account.

NOTE.—When officers have immediate supervision over grain elevators and other operations their pay, office, and other expenses, as also the pay, office, and other expenses of their assistants, clerks, and office attendants, shall be equitably apportioned to the accounts appropriate to the operations over which they have supervision.

444. STOCKYARDS.

This account shall include the cost of operating stockyards other than small stockyards or stock pens at stations, which are classed as station facilities. It shall include:

SUPERINTENDENCE.—The pay of officers directly in charge of stockyard operations; the pay of their assistants, clerks, and office attendants; also the office, traveling, and other expenses of such officers and employees.

EMPLOYEES.—The pay of foremen, subforemen, yardmen, tallymen, weighmasters, stock loaders, drovers, drivers, engineers, firemen, shovelers, watchmen, policemen, and other stockyard employees.

FUEL AND SUPPLIES.—The cost of fuel, gas, electric current, water; hay, grain, oats, and other feed for stock; straw and other bedding material; and other stockyard supplies.

STATIONERY AND PRINTING.—The cost of stationery and printing used in connection with the operation of stockyards.

OTHER EXPENSES.—Payments for loss or damage to live stock, and other expenses not otherwise provided for in this account.

NOTE.—When officers have immediate supervision over stockyard service and other operations their pay, office, and other expenses, as also the pay, office, and other expenses of their assistants, clerks, and office attendants, shall be equitably apportioned to the accounts appropriate to the operations over which they have supervision.

445. PRODUCING POWER SOLD.

This account shall include the cost of operating power plants, substations, transmission systems and distribution systems, for the production of power sold.

The proportion of the cost assignable to the production of the power sold only shall be included in this account. (See special instructions, sections 12, 13, and 14.)

This account shall include:

SUPERINTENDENCE.—The pay of officers directly in charge of power plants, substations, transmission systems and distribution systems; pay of their clerks and office attendants; also the office, traveling, and other expenses of such officers and employees.

EMPLOYEES.—The pay of foremen, subforemen, engineers, firemen, electricians, system operators or load dispatchers, dynamo tenders, foremen regulators, regulators and assistants, switchboard men, brush men, oilers, wipers, wiremen, and others engaged in the operation of power plant and substation apparatus and devices.

FUEL.—The cost of fuel used in the production of power and for heating power plants.

OTHER SUPPLIES.—The cost of water, lubricants, and other power plant and substation supplies.

STATIONERY AND PRINTING.—The cost of stationery and printing used in connection with producing power sold.

OTHER EXPENSES.—The items of expense not otherwise provided for in this account.

NOTE.—When officers have immediate supervision over producing power sold and other operations, their pay, office, and other expenses, as also the pay, office, and other expenses of their assistants, clerks, and office attendants, shall be equitably apportioned to the accounts appropriate to the operations over which they have supervision.

446. OTHER MISCELLANEOUS OPERATIONS.

This account shall include the operations of facilities such as cold-storage plants; coal-storage plants; cotton-compress plants; wood-preserving plants; ice-supply plants, etc., when the cost of the facilities is includible in the road and equipment accounts and they are operated for the benefit of the carrier and others. The proportion assignable to the commercial operations only shall be included in this account.

NOTE.—When officers have immediate supervision over other miscellaneous service and other operations, their pay, office, and other expenses, as also the pay, office and other expenses of their assistants, clerks, and office attendants, shall be equitably apportioned to the accounts appropriate to the operations over which they have supervision.

VII. GENERAL.

The primary accounts included in this general account are designed to show the expenses incurred of a general character not chargeable to the preceding general accounts, such as those for general administration and accounting, and those of the financial, law, real estate, tax, and claim departments.

The accounts for general expenses shall be kept in such manner as to show separately, by primary accounts, the expenses directly assignable to water-line operations.

NOTE.—Directly assignable organization and administration expenses incident to investments in leased or nonoperating physical property, and in stocks, bonds, and other securities, are chargeable to income account No. 549, "Maintenance of investment organization."

451. SALARIES AND EXPENSES OF GENERAL OFFICERS.

This account shall include:

SALARIES.—The pay of all general officers not otherwise provided for, including salaries and fees of receivers and commissions paid to general officers in lieu of salaries.

LIST OF OFFICERS.

(See special instructions, section 22.)

Chairman of the board.
President.
Assistant to president.
Vice president.
Assistant to vice president.
Secretary.
Assistant secretary.
Transfer agent.
Treasurer.
Assistant treasurer.
Local treasurer.
Comptroller.
Assistant comptroller.
General auditor.
Auditors.
Assistant auditor.
Auditor of revenues.
Auditor of passenger accounts.
Assistant auditor of passenger accounts.
Auditor of freight accounts.
Assistant auditor of freight accounts.
Auditor of station accounts.
Auditor of disbursements.
Assistant auditor of disbursements.
Auditor of miscellaneous accounts.
Assistant auditor of miscellaneous accounts.
Auditor of coal and coke accounts.
Freight claim agent.
Assistant freight claim agent.
General accountant.
Real-estate agent.
Assistant real-estate agent.
Tax commissioner.

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.

EXPENSES.—The traveling and other expenses of officers whose pay is included in this account, including supplies for business cars used by them, cost of running official trains for them, and cost of membership fees and dues in railway and other associations.

NOTE A.—When officers' duties are restricted to a single department, their salaries and expenses shall be charged to that department in the accounts for superintendence or for law expenses, as may be appropriate. When officers have immediate supervision over more than one operating department, their salaries and expenses shall be apportioned equally among the departments over which they have jurisdiction.

NOTE B.—The pay and expenses of the purchasing agent, assistant purchasing agent, assistant to purchasing agent, general storekeeper, division storekeeper, their clerks and attendants, shall be charged through clearing accounts "Material store expenses" and "Stationery store expenses," or material account "Fuel," as may be appropriate.

452. SALARIES AND EXPENSES OF CLERKS AND ATTENDANTS.

This account shall include the pay and expenses of clerks and attendants of the officers whose salaries are includible in account No. 451, "Salaries and expenses of general officers."

PAY OF CLERKS.—The pay of persons employed in accounting and clerical service.

LIST OF EMPLOYEES.

(See special instructions, section 22.)

Cashiers.	Mail clerks.	Stenographers.
Chief accountants.	Paymasters.	Ticket receivers.
Chief clerks.	Postmasters.	Traveling accountants.
Clerks.	Route agents.	Traveling auditors.
Inspectors.	Special agents.	

PAY OF ATTENDANTS.—The pay of persons employed in attendance at general offices and on business cars.

LIST OF EMPLOYEES.

(See special instructions, section 22.)

Bank messengers.	Janitors.	Telephone operators.
Chauffeurs.	Messengers.	Ushers.
Cleaners.	Porters.	Waiters.
Cooks.	Pump men.	Watchmen.
Drivers of service wagons.	Stablemen.	
Elevator operators.	Superintendent of general office building.	
Engineers.		
Firemen.	Telegraph operators.	

EXPENSES.—The traveling and other expenses of employees designated above, including the cost of supplies for business cars and cost of running official trains for them.

453. GENERAL OFFICE SUPPLIES AND EXPENSES.

This account shall include the office expenses of officers designated in account No. 451, "Salaries and expenses of general officers."

ITEMS OF EXPENSE AND SUPPLIES.

(See special instructions, section 22.)

Alterations of partitions and fixtures in general offices.	Furniture repairs and renewals.	Rent of tabulating machines.
Atlases and maps.	Heating.	Repairs of rented general offices.
Books for office use.	Horse keep.	Reports of commercial standings
Cable tolls.	Lighting.	Service of automobiles.
Cleaning.	Local messenger service.	Telegraph service.
Express charges.	Periodicals and newspapers.	Telephone service.
	Rent of general offices.	Watchmen service.

NOTE.—The proportion of general office expenses occasioned by the law department shall be included in account No. 454, "Law expenses."

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.

454. LAW EXPENSES.

This account shall include the pay and the office and other expenses, when provided for elsewhere, of officers and employees of the law department, the of suits, and the payments of special law fees.

LIST OF OFFICERS AND EMPLOYEES.

(See special instructions, section 22.)

General counsel.
General solicitor.
Assistant counsel.
Solicitor.
Commerce counsel.
Commerce agent.
Special counsel.
Statutory attorney.
Attorney.
Counsel.
Law agent.
Clerks.
Office attendants.

ITEMS OF EXPENSE AND SUPPLIES.

(See special instructions, section 22.)

Arbitrators' services in settlement of disputed questions.
Cost of taking depositions.
Cost of testimony.
Cost of suits.
Court bonds.
Court expenses.
Drawing and recording agreements as to trackage rights, etc.
Express charges.
Fees and retainers of attorneys (not regular employees).
Law books.
Legal forms.
Legal reports.
Membership fees and dues in association protect carriers against litigation in respe patents.
Membership fees and dues in law associati
Notarial fees not provided for elsewhere.
Office expenses.
Printing of briefs, testimony, and reports.
Proportion of general office expenses.
Rent of offices.
Special fees.
Telegraph service.
Telephone service.
Traveling expenses.
Witness fees not provided for elsewhere.

455. INSURANCE.

This account shall include premiums, except reinsurance premiums, for insur the carrier against loss, through injuries to persons or damage to or destructio loss of property, whether caused by fire, accident, or other cause, when such to the carrier would be chargeable to general account VII, General; also p miums on fidelity bonds of officers and employees whose pay is chargeable to g eral account VII, General. (See special instructions, section 18.)

NOTE.—The premiums paid by the carrier to its insurance fund shall be credited to an insur account, to which account shall be charged the amount of all claims for injuries to persons and d ages to the property covered by its insurance. To such account shall also be charged all reinsur premiums paid to insurance companies, and to it shall be credited all amounts recovered from in ance companies for damage to the property reinsured by them.

456. RELIEF DEPARTMENT EXPENSES.

This account shall include salaries and expenses incurred in connection w conducting relief departments; also contributions to such departments.

457. PENSIONS.

This account shall include pensions or gratuities paid out of the carrier's fu to retired employees or their heirs and the expenses solely in connection the with.

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.

458. STATIONERY AND PRINTING.

This account shall include the cost of stationery and printing used in general offices and not chargeable to other accounts, including the cost of printing annual reports, contracts, leases, stock certificates, and passes.

STATIONERY AND PRINTING ITEMS.

(See special instructions, section 22.)

Adding machines.
Addressographs and supplies.
Arm rests.
Binders.
Blank books.
Blotters.
Blotting paper.
Bristol board.
Calculating machines.
Calendars.
Carbon paper.
Cardboard.
Cards, blank and printed.
Circulars.
Computing tables.
Copy (impression) books.
Copying brushes.
Copying presses.
Crayons.
Cyclostyles.
Dating stamps and ribbons.
Dictaphones.
Dictographs.
Drawing paper.
Duplicators.
Electric pens.
Envelopes.
Erasers, rubber and steel.
Eyelet punches.
Eyelets.
File boxes, paper.
Forms, blank and printed.
Glass pens.
Hectographs.
Indexes.
Ink for writing and drawing.
Inkstands.
Invoice books.
Legal cap paper.
Letter paper.
Manifold paper.
Manifold pens.
Mimeographs.
Mucilage.
Mucilage brushes.
Neostyles.
Note paper.
Notices.
Numbering stamps.
Oil paper.
Paper.
Paper baskets.
Paper clips.
Paper cutters.
Paper fasteners.
Paper files.
Paper weights.
Papyrographs.
Parchment paper.
Passes.
Pay checks.
Pencil sharpeners.
Pencils for writing and drawing.
Penholders.
Penracks.
Pens for writing and drawing.
Phonographs and records.
Pins.
Postage.
Punches (not conductors' or baggagemen's).
Rubber bands.
Rubber stamps.
Rulers.
Ruling pens.
Scrapbooks.
Sealing wax.
Seals.
Shears.
Shipping tags.
Shorthand notebooks.
Sponge cups.
Sponges.
Stamps.
Stamps, impression.
Stylographs.
Tablets, blank and printed.
Tape.
Telegraph blanks.
Tissue (impression) paper.
Tracing cloth.
Tracing paper.
Twine.
Typewriters and ribbons.
Wage tables.
Wastebaskets.
Water colors.
Water holders.
Wrapping paper.
Wringers for copying presses.

NOTE A.—The cost of printing briefs, legal forms, testimony, reports, etc., for the law department is chargeable to account No. 454, "Law expenses."

NOTE B.—The cost of printing bonds, etc., in connection with the carrier's funded debt shall be included in balance-sheet account No. 725, "Discount on funded debt."

459. VALUATION EXPENSES.

This account shall include expenses incident to the ascertainment (in accordance with the Act to Regulate Commerce as amended March 1, 1913, or with other Federal or State requirements) of the value of property owned or used by the carrier, such expenses including pay, and office, traveling, and other expenses of officers specially employed or assigned to such work, and of their assistants, clerks, and attendants, and the cost of stationery and printing, and of engineering supplies consumed.

NOTE.—No charge shall be made to this account for the salaries of officers or of their clerks and attendants for incidental services in connection with valuation work; but special office, clerical, traveling, and incidental expenses incurred by these officers on account of such work shall be included as a part of the cost of the work.

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.

460. OTHER EXPENSES.

This account shall include incidental general expenses which are not properly chargeable to any of the foregoing accounts.

ITEMS OF EXPENSE.

(See special instructions, section 22.)

Cost of draping buildings.
Cost of publishing annual reports in newspapers, and other corporate and financial notices of general character.
Cost of publishing notices of stockholders' meetings and of election of directors.
Donations on account of catastrophes, epidemics, etc.
Donations to local fire departments.
Donations to Y. M. C. A., and similar institutions.
Exchange on checks cashed or deposited.
Exchange on drafts bought.
Fees and expenses paid to directors and trustees.
Loss through payment of wages to a wrong person.
Penalties assessed for nonpayment of claims for overcharges.

461. GENERAL JOINT FACILITIES—DR.

This account shall include the carrier's proportions of general expenses incurred by others incident to maintaining and operating tracks, yards, terminals, and other facilities used jointly.

NOTE.—The purpose of this account is to show the amount accruing against the carrier for its proportion of the expense of general administration of tracks, yards, terminals, and other facilities administered by others, and in the joint use of which the carrier participates. (See special instructions, section 9.)

462. GENERAL JOINT FACILITIES—CR.

This account shall include amounts chargeable to others as their proportions of general expenses incurred by the carrier incident to maintaining and operating tracks, yards, terminals, and other facilities used jointly.

NOTE.—The purpose of this account is to show the amounts accruing in favor of the carrier and against others for their proportions of the expense of general administration of tracks, yards, terminals, and other facilities administered by the carrier, and in the joint use of which others participate. (See special instructions, section 9.)

VIII. TRANSPORTATION FOR INVESTMENT—CR.

This account shall include fair allowances representing the expense to the carrier of transporting, on transportation trains, men engaged in and material for construction.

Amounts credited to this account shall be concurrently charged to the appropriate property investment accounts.

NOTE CAREFULLY THE GENERAL AND SPECIAL INSTRUCTIONS.

INTERSTATE COMMERCE COMMISSION.
WASHINGTON

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 4, held at its office in Washington, D. C., on the 2d day of June, A. D. 1924

The matter of a uniform system of accounts to be kept by steam roads being under consideration:

It is ordered, That section 19 of the special instructions in the Classification of Operating Revenues and Operating Expenses of Steam Roads, Issue of 1914, as prescribed by the order of the commission of April 26, 1921, be and is hereby canceled and the following is prescribed as section 19 of the special instructions:

19. EQUALIZATION OF EXPENSES.-(a) When carriers adopt a budget or estimate of expenditures for maintenance of fixed improvements or equipment for the year, such authorized estimates may be equalized by division into 12 equal parts, if for a full year, or into a number of equal parts corresponding to the number of months remaining in the year after the adoption of the maintenance program. If advantage is taken of the optional accounting prescribed in this section, the appropriate primary accounts chargeable with the accrued liabilities and the equalization account combined shall contain, each month, amounts aggregating one of such equal parts.

bined shall contain, each month, amounts aggregating one of such equal parts.

(b) Adequate records shall be kept to fully support the estimates for expenditures for maintenance which form the basis of entries to accounts 280, "Equalization--Way and structures," and 338, "Equalization--Equipment," and these records shall be filed in such manner as to be readily accessible for examination by representatives of the Interstate Commerce Commission. The equalization accounts are provided in order that their use may show, for each month, the adjustment necessary between accrued liabilities included in the other primary accounts and the equal monthly proportion of the authorized estimate of maintenance expenses for the period.

(c) If the accrued liabilities chargeable to the primary accounts do not aggregate a sum equivalent to the equal monthly proportion of the estimated cost of maintaining such way and structures and equipment as are provided for in the budget, and amount sufficient to make up the difference shall be charged to the appropriate equalization account. If amounts chargeable to the primary accounts are more than the equal monthly proportion of the budget, the difference shall be credited to the equalization account.

(d) Estimates of expenses, other than under general accounts I and II, on account of personal injury or loss and damage liability, for stationery and printing, and for advertising, may be equalized in the monthly accounts for the year by use of the regular primary accounts.

(e) Amounts charged or credited to operating expenses under general accounts I and II for equalization purposes shall be credited or charged to reserve accounts styled "Equalization reserve--Way and structures," or "Equalization reserve--Equipment." Balances in such accounts and in equalization reserve accounts created under the provisions of paragraph (d) herein shall be carried, during the year, prior to clearance at the close of the fiscal period, in account 774, "Operating reserves."

(f) All equalization reserve accounts shall be cleared at the close of the year through the accounts used in creating the reserves.

(g) Estimates to cover unaudited items of accrued revenue, expense, and income shall be accounted for through accounts 727, "Other unadjusted debits," and 778, "Other unadjusted credits," as directed in section 2 of general instructions in the Classification of Operating Revenues and Operating Expenses and in the order of the commission of June 2, 1924, interpreting those instructions.

It is further ordered, That accounts 280, "Equalization--Way and structures," and 338, "Equalization--Equipment," with the texts pertaining thereto, as follows, be prescribed as a part of the Classification of Operating Revenues and Operating Expenses of Steam Roads, Issue of 1914:

Account 280, "Equalization--Way and Structures"

Account 280, "Equalization--Way and Structures"

This account, the use of which is optional, shall include an adjustment of the monthly proportion of the estimated or authorized maintenance expenses for the year, as provided for in section 19 of the special instructions, the amount included herein being the difference between actual expenditures as reflected in other primary accounts under this general account, and the equal monthly proportion of the estimate for the period. Concurrently, a credit, or debit, as may be appropriate, shall be made to a ledger account styled, "Equalization reserve--Way and structures."

Account 338, "Equalization--Equipment"

This account, the use of which is optional, shall include an adjustment of the monthly proportion of the estimated or authorized maintenance expenses for the year, as provided for in section 19 of the special instructions, the amount included herein being the difference between actual expenditures as reflected in other primary accounts under this general account, and the equal monthly proportion of the estimate for the period. Concurrently, a credit, or debit, as may be appropriate, shall be made to a ledger account styled, "Equalization reserve--Equipment."

It is further ordered, That section 20 of special instructions on page 38 of the Classification of Operating Revenues and Operating Expenses of Steam Roads, Issue of 1914, be and is hereby canceled.

It is further ordered, That this order shall become effective on January 1, 1924.

By the commission, division 4.

GEORGE B. McGINTY,

Secretary.

(SEAL.)

INTERSTATE COMMERCE COMMISSION

WASHINGTON

In the Matter of a Uniform System of Accounts to be Kept by Steam Roads

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At a session of the INTERSTATE COMMERCE COMMISSION, Division 4, held at its office in Washington, D. C., on the 25th day of July, A. D. 1925.

In the matter of providing a uniform system of accounts for steam railroads for accounting and reporting the operation of train service for the joint benefit of two or more carriers.

It is ordered, That Notes B to accounts 151, "Joint facility—Cr.," 152, "Joint facility—Dr.," 390, "Operating joint yards and terminals—Dr.," and 391, "Operating joint yards and terminals—Cr.," be and are hereby cancelled.

It is further ordered, That Note D to account 101, "Freight," and Note C to account 102, "Passenger," be and are hereby amended by the addition of the following:

The accounting in connection with transportation service trains operated for the joint benefit of two or more carriers shall be as provided by paragraph 2 of section 9 of the special instructions of the Classification of Operating Expenses.

It is further ordered, That Notes B to accounts 412, "Operating joint tracks and facilities—Dr.," and 413, "Operating joint tracks and facilities—Cr.," be and are hereby amended to read as follows:

No proportions of items of expense chargeable by the operating carrier to accounts Nos. 392 to 402, inclusive, shall be included in this account except such expenses pertaining to the operation of transportation train service for the joint benefit of two or more carriers.

It is further ordered, That paragraph 2 of section 9 of the special instructions of the Classification of Operating Expenses be and is hereby amended to read as follows:

Train service operated for the joint benefit of two or more carriers in connection with line haul of traffic shall be considered a joint facility operation and the settlement between carriers of revenues and expenses thereof shall be included in the appropriate joint facility accounts. When transportation train service of several carriers is pooled each carrier shall include in the

appropriate primary revenue and expense accounts the revenues and expenses pertaining to the trains operated by it. The difference between such revenues and expenses and its proportion of the total pooled revenues and expenses shall be adjusted through the appropriate joint facility operating revenue and operating expense accounts.

It is further ordered, That the names and texts of accounts 336 and 337 be and are hereby amended to read as follows:

336. MAINTAINING JOINT EQUIPMENT—DR.—This account shall include the carrier's proportion of expenses incurred by others in maintaining equipment used in the operation of trains for joint benefit, in the operation of joint terminals, and in the maintenance of jointly used tracks, yards, and other facilities, including the carrier's proportion of expenses of repairing equipment made necessary by accidents in such service when such expenses are participated in by more than one party to the joint arrangement.

NOTE.—The purpose of this account is to show the amount accruing against the carrier for its proportion of the expense of maintaining equipment which is maintained by others and in the joint use of which the carrier participates.

337. MAINTAINING JOINT EQUIPMENT—CR.—This account shall include amounts chargeable to others as their proportions of expenses incurred by the carrier in maintaining equipment used in the operation of trains for joint benefit, in the operation of joint terminals, and in the maintenance of jointly used tracks, yards, and other facilities, including the proportion recoverable from others of the expenses of repairing equipment made necessary by accidents in such service, when such expenses are participated in by more than one party to the joint arrangement.

NOTE.—The purpose of this account is to show the amounts accruing in favor of the carrier and against others for their proportions of the expense of maintaining equipment which is maintained by the carrier and in the joint use of which others participate.

It is further ordered, That this order shall become effective on August 1, 1925.

By the commission, division 4.

[SEAL.] GEORGE B. MCGINTY,
Secretary.

INTERSTATE COMMERCE COMMISSION

WASHINGTON

ORDER

In the Matter of a Uniform System of Accounts to be Kept by Steam Roads.

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 4, held at its office in Washington, D. C. on the 18th day of April, A. D. 1928.

The matter of accounting for rents chargeable to Operating Expenses for property used in transportation service being under consideration.

It is Ordered, That there shall be added to the Special Instructions in the Classification of Operating Expenses, Issue of 1914, the following instruction:

> 23. There shall not be included in these accounts rents paid for property (used in transportation service) which has been listed in the basic valuation inventory as carrier property used but not owned. The rents for such property (otherwise chargeable to these accounts) shall be charged to account 543, "Miscellaneous rents."

It is Further Ordered, That this order shall become effective on January 1, 1928.

By the Commission, Division 4.

(SEAL)

GEORGE B. McGINTY,
Secretary.

INTERSTATE COMMERCE COMMISSION

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WASHINGTON

In the Matter of a Uniform System of Accounts to be Kept by Steam Roads

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At a Session of the INTERSTATE COMMERCE COMMISSION, Division 4, held at its office in Washington, D. C., on the 23rd day of November, 1928.

The matter of charges to operating expenses to provide for the contractual payment of pensions to employees regularly retired for superannuation or disability being under consideration:

IT IS ORDERED, That the following instructions are hereby prescribed as a note following the text under account 457, "Pensions":

Note. If the carrier has definitely undertaken by contract to pay pensions to employees when regularly retired for superannuation and/or disability and has established a fund to be held in trust for such pension purposes, it shall charge to this account monthly amounts determined through the application of equitable actuarial factors to the current payrolls, which, together with interest accruals on the trust funds, will as nearly as may be, provide for the payment of such pensions, or for the purchase of annuities corresponding thereto. The amounts so charged shall be concurrently credited to a reserve account under account 769, "Liability for provident funds". The amounts accrued in each year shall correspond to the aggregate of the amounts paid into the trust fund and expended directly by the carrier for pensions or annuities during the year. The carrier shall maintain a complete record of the actuarial computations through which the accrual each month of its pension liabilities is established.

Upon the adoption of the accrual plan of accounting, pension payments to employees retired before the adoption of such plan shall be charged to an existing pension reserve or to profit and loss.

Before adopting the accrual plan of accounting for pensions the carrier shall inform the Commission of the details of its pension plan giving full statement of the

facts which in its judgment establishes a contractual obligation for pension payments together with the actuarial formula under which it proposes to create its pension trust fund, and also a copy of the declaration of trust under which the fund is established.

No charge to this account shall be made in anticipation of discretionary pension payments in the future.

IT IS FURTHER ORDERED, That the accounting authorized by this order shall be made effective as of the date, not earlier than January 1, 1928, on which the carrier makes effective its definite contractual obligation to pay such pensions.

By the Commission, Division 4.

GEORGE B. McGINTY

Secretary.

(SEAL)

INTERSTATE COMMERCE COMMISSION
WASHINGTON

In the Matter of the Recovery and Payment of Excess Net Railway Operating Income Under the Provisions of Section 15a of the Interstate Commerce Act

At a session of the INTERSTATE COMMERCE COMMISSION, Division 4, held at its office in Washington, D. C., on the 2d day of June, A. D. 1924

The commission having under consideration the requirements of its orders dated January 16, 1922, March 16, 1922, March 21, 1923, and March 17, 1924, in the above-entitled matter, and in order to procure the proper accounting results from the provisions of section 2 of general instructions in the Classification of Operating Revenues and Operating Expenses; to provide rules for similar accounting for items affecting income accounts; and to prescribe accounting procedure that will assist the commission in administering the recapture provisions of the act; said section 2 of the accounting instructions reading as follows:

2. UNAUDITED ITEMS AFFECTING OPERATING ACCOUNTS.—When for any cause the amount of any item affecting operating revenues or operating expenses can not be accurately determined in time for inclusion in the accounts of the month in which the transaction occurs, the amount of the item shall be estimated and in such form charged or credited to operating accounts and credited to balance-sheet account No. 778, "Other unadjusted credits," or charged to balance-sheet account No. 727, "Other unadjusted debits," as may be appropriate, the necessary adjustments being made later when the item is audited. The carrier is not required to anticipate minor items which would not appreciably affect the operating accounts.

It is ordered:

1. In determining the amount of recapturable income the commission will exercise the power to determine the reasonableness of estimates included in the accounts to represent unaudited items and will initiate charges or credits in the returns for this purpose where necessary to correct a deficiency on the part of the carrier.

2. Estimates included in the accounts by the carrier to represent unaudited items shall be on a basis determined to be equitable from

the carrier's experience and best sources of information. Maintenance work not performed shall not be considered an unaudited item. The records shall indicate in detail the facts upon which such estimates are based, and the details shall be preserved in the files permanently unless their destruction shall be authorized subsequently by the commission.

3. Accounting on the foregoing basis is prescribed for items affecting income accounts embraced in the Classification of Income, Profit and Loss, and General Balance Sheet Accounts for Steam Roads, effective July 1, 1914, in order to give definite effect, for the accounting purposes here under consideration, to section 1 of special instructions on page 13 of that classification reading as follows:

> 1. INCOME ACCOUNTS DEFINED.—Income accounts are those designed to show, as nearly as practicable, for each fiscal period, the total amount of money that a carrier becomes entitled to receive for services rendered, the returns accrued upon investments, the accrued costs paid or payable for the services rendered by it, the losses sustained by it, the amounts accrued for taxes, for use of moneys and for use of properties of others, and the appropriations made from income during the period. The net balance of income (or loss) shall be carried to Profit and Loss.

4. Balances in accounts 727, "Other unadjusted debits," and 778, "Other unadjusted credits," representing unaudited items shall be analyzed and explained according to the primary accounts used in creating the suspense items. Balances for each year shall be kept separate.

5. Where errors are discovered affecting net railway operating income, whether or not corrected by the carrier in a year subsequent to that in which the error was made, the commission reserves the right to correct the return for the purposes of section 15a, for the year or years affected thereby, and to require such adjustments in current accounts as may be necessary.

It is further ordered, That for the accomplishment of the purposes set forth herein the effective date of this order will be March 1, 1920.

By the commission, division 4:

[SEAL.]

GEORGE B. MCGINTY,
Secretary.

U. S. GOVERNMENT PRINTING OFFICE: 1930

[fol. 239] PLAINTIFF'S EXHIBIT 5

INTERSTATE COMMERCE COMMISSION, WASHINGTON

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached is true copy of order of the Commission entered December 17, 1917, Interpretations of Accounting Classifications, prescribed by the Interstate Commerce Commission for Steam Roads, in accordance with Section 20 of the Act to Regulate Commerce, effective January 1, 1918, the original of which is now on file and of record in the office of this Commission.

In witness whereof I have hereunto set my hand and affixed the Seal of said Commission this 6th day of September, A. D. 1932. George B. McGinty, Secretary of the Interstate Commerce Commission. (Seal Interstate Commerce Commission. 1887.)

INTERSTATE COMMERCE COMMISSION
WASHINGTON

ORDER

In the Matter of a Uniform System of Accounts to be Kept by Steam Roads.

At a Session of the INTERSTATE COMMERCE COMMISSION Division 4, held at its office in Washington, D. C. on the 15th day of November, A.D., 1929.

The matter of accounting for taxes on rented property being under consideration:

It is Ordered: That Accounting Bulletin No.15, Interpretations of Accounting Classifications, prescribed by the Interstate Commerce Commission, for Steam Roads effective January 1, 1918, be and is hereby amended by the addition of the following:

CASE 294

Query:

To what account shall be charged taxes on railway property the rents from which are includable in account 510, "Miscellaneous rent income."

rent income."

(a) When paid and assumed by the lessor?

(b) When assumed by the lessee either through direct payment of the taxes or through reimbursement of the lessor?

Answer:

To account 532, "Railway tax accruals."

(a) By the lessor

(b) By the lessee.

By the Commission, Division 4.

(SEAL)

GEORGE B. McGINTY
Secretary.

Accounting Bulletin No. 15

INTERPRETATIONS

OF

ACCOUNTING CLASSIFICATIONS

PRESCRIBED BY THE

INTERSTATE COMMERCE COMMISSION

FOR

STEAM ROADS

IN ACCORDANCE WITH SECTION 20 OF THE
ACT TO REGULATE COMMERCE

Effective on January 1, 1918

(Supersedes Accounting Bulletin No. 10)

WASHINGTON
GOVERNMENT PRINTING OFFICE
1918

THE INTERSTATE COMMERCE COMMISSION.

HENRY C. HALL, *Chairman.*

EDGAR E. CLARK.	WINTHROP M. DANIELS.
JAMES S. HARLAN.	CLYDE B. AITCHISON.
CHARLES C. MCCHORD.	ROBERT W. WOOLLEY.
BALTHASAR H. MEYER.	GEORGE W. ANDERSON.

GEORGE B. MCGINTY, *Secretary.*

(2)

ORDER.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 17th day of December, A. D. 1917.

The subject of a Uniform System of Accounts to be prescribed for and kept by carriers being under consideration, the following order was entered:

It is ordered, That the interpretations of the accounting classifications for steam roads, prepared under the direction of this Commission and embodied in printed form to be hereafter known as Accounting Bulletin No. 15, a copy of which is now before this Commission, be, and the same is hereby, approved; that a copy thereof, duly authenticated by the Secretary of the Commission, be filed in its archives, and a second copy thereof, in like manner authenticated, in the office of the Bureau of Carriers' Accounts; and that each of said copies so authenticated and filed shall be deemed an original record thereof.

It is further ordered, That the accounting methods directed in the interpretations contained in the said Accounting Bulletin No. 15 be, and they are hereby, prescribed for the use of steam roads subject to the provisions of the Act to Regulate Commerce, as amended, in the keeping and recording of their accounts.

It is further ordered, That January 1, 1918, be, and it is hereby, fixed as the date on which the said Accounting Bulletin No. 15 shall become effective.

By the Commission.

[SEAL.]

GEORGE B. MCGINTY,
Secretary.

INTERSTATE COMMERCE COMMISSION,
BUREAU OF CARRIERS' ACCOUNTS,
Washington, D. C., January 8, 1918.

TO ACCOUNTING OFFICERS OF STEAM RAILWAYS:

In this accounting bulletin is presented a reissue of Cases 1 to 203, inclusive, as formerly stated in Accounting Bulletin No. 10, except for the correction of misplaced terms in Case 176. To these previously published cases are now added a supplementary series embodied in Cases 204 to 293, inclusive.

The cases now given their initial publication have been submitted in tentative form to the Association of American Railway Accounting Officers.

FRED W. SWENEY,
Chief Examiner of Accounts.

INTERSTATE COMMERCE COMMISSION ACCOUNTING BULLETIN NO. 15.

INTERPRETATIONS OF ACCOUNTING CLASSIFICATIONS--STEAM ROADS.

CASE 1.

Query. Is it essential that books be written up monthly?

Answer. Accounts shall be written up monthly.

CASE 2.

Query. In adjusting material accounts to the basis of inventory, what account or accounts shall be credited or debited?

Answer. Determined differences in accounting for important classes of material are ordinarily assignable to discrepancies in charges to particular accounts since the last inventory and shall be adjusted accordingly. Other differences shall be apportioned among the primary expense accounts on the basis of the material charges to them since the last inventory. (*See Case 74.*)

CASE 3.

Query. Road A grants separately to Road B and Road C the right to operate over its tracks which it maintains but over which it does not itself operate. The lessees each pay a proportion of a fixed rent, and reimburse Road A proportionately for taxes on and maintenance of the leased tracks. What is the proper accounting for these items by the carriers interested?

Answer. Road A shall charge the taxes to account No. 532, "Railway tax accruals." The amounts payable by Roads B and C representing rent and taxes shall be credited by Road A to account No. 508, "Joint facility rent income," and shall be charged by Roads B and C to account No. 541, "Joint facility rents." The amounts payable by Roads B and C representing the cost of maintenance shall be accounted for in the appropriate joint facility accounts in Operating Expenses. (*See Case 28.*)

CASE 4.

Query. To what account shall be charged damages for overflows caused by inadequate waterways?

Answer. To appropriate accounts in Maintenance of Way and Structures when the property damaged is the carrier's own; to account No. 416, "Damage to property," when it is the property of others and not held by the carrier under lease. If, however, the damage is directly connected with projects the cost of which is chargeable to road and equipment accounts, the amount of the damage shall be included in the cost of the work.

CASE 5.

Query. What is the proper accounting for the proportions of pay and expenses of joint car inspectors which carriers pay to foreign roads?

Answer. They shall be charged to the appropriate equipment repair accounts. They are not joint facility items.

CASE 6.

Query. The text of the clearing account "Material store expenses" provides that the account shall be closed out at the end of the year. Shall not a balance representing cost of handling material in stock at the end of the year be carried over to the next year?

Answer. Such balance shall not be carried over to the next year.

CASE 7.

Query. To what account shall be charged expenses of hauling loads from mines to points of concentration and distributing empties to mines?

Answer. If the mines are located within the switching limits of the concentration station, such expenses shall be charged to the appropriate yard-service accounts. If not so located, and the freight is billed from the mines, the entire service shall be classed as train service.

The expenses and the statistics of locomotive-miles, car-miles, train-miles, ton-miles, etc., shall be treated accordingly. (*See Case 97.*)

CASE 8.

Query. To what account shall be charged the wages of motormen and the expenses of operating gasoline motor cars used in revenue train service?

Answer. Wages of motormen are provided for in account No. 393, "Train motormen." The expense for gasoline and other fuel, lubricants, and other supplies, including enginehouse expenses, if any, shall be charged to account No. 402, "Train supplies and expenses." The carrier's records shall be kept in such manner as to show separately the cost of gasoline or other fuel consumed in the operation of such cars.

CASE 9.

Query. Road A turns Road B's locomotive. A charges B for turning the locomotive and for use of the tracks. What is the correct accounting by both roads?

Answer. If the use of the facilities is not in connection with the joint use regularly of other facilities, the compensation for turning the locomotive and for use of the tracks shall be credited by A to revenue account No. 143, "Miscellaneous," and charged by B to expense account No. 402, "Train supplies and expenses." If, however, the use of these facilities is under a joint facility arrangement, the accounting by each road shall be in accordance with the rules prescribed for joint facility accounts.

CASE 10.

Query. When the president of a carrier company is directly in charge of the operating departments, how shall the salaries and expenses of that officer and his clerks be distributed?

Answer. If the president is immediately in charge of the departments usually supervised by officers named in the accounts "Superintendence" under Maintenance of Way and Structures, Maintenance of Equipment, Traffic, and Transportation, his salary and expenses and those of his clerks and assistants shall be apportioned in accordance with Note A under expense account No. 451, "Salaries and expenses of general officers." If the president has, as is usual, only general supervision over the various departments, his salary and expenses shall be charged to expense account No. 451, "Salaries and expenses of general officers."

CASE 11.

Query. Road B is required, under agreement with Road A, to provide equipment to replace that destroyed or sold, or to pay an equivalent in cash to Road A. Is it per-

missible for B to keep a dismantled-equipment account wherein to show the exact amount due A because of dismantled and sold equipment?

Answer. Such an account may be kept. The credit balance in such account shall be included in balance-sheet account No. 778, "Other unadjusted credits."

CASE 12.

Query. In what account shall be included the cost of coal, wood, and oil for use in firing up locomotives for service?

Answer. In the appropriate account "Fuel for locomotives."

CASE 13.

Query. To what account shall a carrier credit amounts received for the privilege of placing a telephone line over its tracks? The right is reserved to revoke the privilege at pleasure.

Answer. The privilege given is merely a license, and the receipts therefrom shall be credited to income account No. 519, "Miscellaneous income."

CASE 14.

Query. To what accounts shall be credited amounts charged to other roads for transferring the lading of cars? These transfers are made necessary through fault of the other roads, and the charges include the cost of transferring the lading, per diem or car hire accruing upon the cars, and a charge per car for switching.

Answer. The portions of such charges covering per diem or car hire accruing on cars at the time of transfer shall be credited to the account "Hire of freight cars." The portions of the charges covering the cost of transferring the contents of cars shall be credited to the account to which the cost of the transfer service is charged. The charges per car for switching such cars shall be credited to revenue account No. 110, "Switching."

CASE 15.

Query. A railroad operates some of its station restaurants and leases others at a nominal rent, the lessee receiving all revenues and paying all expenses except as to coal and ice, which are furnished without charge by the railroad. To what account shall the railroad charge the cost of the coal and the ice thus furnished for use in the leased restaurants?

Answer. Such cost shall be charged to operating expense account No. 376, "Station supplies and expenses."

CASE 16.

Query. A railroad purchased a building, apart from its right of way, for use as a dwelling by a superintendent, taking the title thereto in the name of a vice president, who filed with the railroad a declaration of trust. How shall this expenditure be classified?

Answer. Such expenditure shall be included in balance-sheet account No. 705, "Miscellaneous physical property."

CASE 17.

Query. What accounts shall be charged with the loss on obsolete material which is taken out of stock and sold as scrap?

Answer. Such loss shall be charged to the operating expense accounts to which the material ordinarily would be charged if issued for use.

CASE 18.

Query. Road A and Road B operate their trains over a portion of A's tracks. A charges B rent based on the valuation of the property. B maintains and operates these tracks and is reimbursed by A for a portion of the expenses, reckoned upon a wheelage basis. What is the correct accounting?

Answer. Both roads shall include the rent in joint facility rent accounts in Income. The cost of maintenance and operation shall be included in B's primary accounts; the proportion of such cost paid by A shall be included by both roads in the appropriate joint facility expense accounts. (*See Case 28.*)

CASE 19.

Query. To what account shall be charged expenses and settlement payments on account of injuries to a prospective passenger caused by a maintenance-of-way work train?

Answer. The class of train causing the injury determines the distribution of the charge. Therefore such expenses and settlements shall be charged to maintenance expense account No. 274, "Injuries to persons." (*See Case 119.*)

CASE 20.

Query. Road A makes all repairs to Road B's equipment and charges B the actual cost thereof. For the purpose of determining accurately the cost of these repairs is it permissible that the operations of A's shops be treated through a clearing account?

Answer. It is.

CASE 21.

Query. How shall a carrier dispose of amounts allowed for loyal service of certain employees during a strike?

Answer. Such allowances shall be distributed to the accounts to which the pay of the employees is chargeable.

CASE 22.

Query. In what accounts shall be included the pay and expenses of—

(*a*) An auditor who acts as general bookkeeper?

(*b*) A general superintendent who is immediately responsible for the whole local management of the road?

(*c*) A general agent who acts as clerk to the general superintendent and as local agent at the only station where there is an agent?

Answer. Such expenses shall be included as follows:

(*a*) Expense account No. 451, "Salaries and expenses of general officers."

(*b*) Shall be apportioned as directed in Note A under account No. 371, "Superintendence."

(*c*) The proportion covering services as clerk shall be apportioned in accordance with Note A under account No. 371, "Superintendence," and the remainder shall be included in account No. 373, "Station employees."

CASE 23.

Query. The tracks, station buildings, and other facilities between X and Y, owned by Road A, are used jointly by A and Road B. For the use of these facilities B pays A a specified rent upon a valuation basis, proportion of cost of maintenance upon a wheelage basis, and agreed proportion of the cost of station service (principally train telegraph service).

B's trains handle A's local freight and passenger business between these points in consideration of a stipulated percentage of revenue. What is the correct accounting by each railroad?

Answer. The specified rent shall be included in the joint facility rent accounts in Income. Proportion of cost of maintenance and operation shall be included in the appropriate joint facility operating expense accounts.

The proportion of the cost of maintaining and operating these tracks being provided for in a distinct arrangement, the percentage of revenue upon the local business retained by A shall be considered as additional rent and included by each carrier in the appropriate joint facility accounts in Income.

Road B shall include in its revenues the entire receipts from the local freight and passenger traffic between X and Y which is transported upon its trains and shall account for such traffic in its statistics.

CASE 24.

Query. How shall the revenues be classified when a carrier furnishes picnic trains at rates based on the number of cars in the trains, regardless of the number of people carried?

Answer. They shall be included in account No. 111, "Special service train."

CASE 25.

Query. To what account shall be credited the slight profits accruing from percentages added to bills against other companies and individuals to cover superintendence, use of tools, etc.?

Answer. Such profits shall be credited to Operating Expenses. (*See Cases 61 and 79.*)

CASE 26.

Query. Shall per diem reclaims be treated as a matter of hire of equipment?

Answer. They shall be so treated. (*See Case 29.*)

CASE 27.

Query. To what account shall be credited the amounts received upon the basis of a rate per car for switching express cars from one railroad to another as a part of a regular transportation movement?

Answer. Amounts received for such services shall be credited to revenue account No. 110, "Switching."

CASE 28.

Query. Road B has trackage rights over the line of Road A between two points, the consideration for these rights being based on a toll per loaded car. How shall the payments for these trackage rights be accounted for when A maintains the tracks between the two points?

Answer. Road A shall charge the expenses of maintenance, operation, etc., to its primary operating expense accounts. The charges against B shall be fairly apportioned by A among the joint facility operating expense and income accounts. The amount apportioned to maintenance shall be credited by A to account No. 279, "Maintaining joint tracks, yards, and other facilities—Cr."; that to operation, to account No. 391, "Operating joint yards and terminals—Cr.", or to account No. 413, "Operating joint tracks and facilities—Cr.", according to location of facilities; and that to income for interest on valuation or rent, to account No. 508, "Joint facility rent income." Road B shall charge the corresponding joint facility operating expense and income accounts.

In case considerable general expenses are involved in operations of the joint facilities, amounts shall be apportioned to cover such general expenses, which amounts shall be included in accounts "General joint facilities."

CASE 29.

Query. How shall per diem charges paid and reclaims received be accounted for by a switching railroad whose cars seldom leave its own line?

Answer. The per diem shall be charged and the reclaims shall be credited to income account "Hire of freight cars." (*See Case 26.*)

CASE 30.

Query. A railroad company sends out a locomotive and crew to pick up lumber lost off a freight train belonging to another company. To what account shall the wages of the crew and the compensation for the use of the locomotive be charged, and to what accounts credited?

Answer. The wages of the crew and expenses of the locomotive shall be charged by the company responsible for the loss of the lumber to expense account No. 418, "Loss and damage—Freight," and the creditor shall credit these items to the accounts to which they were originally charged. If a charge is made for rent of the locomotive, the amount thereof shall be included by both companies in the appropriate locomotive rent account in Income.

CASE 31.

Query. Road A pays all the expenses of a train service operated from an intermediate point on its lines to an intermediate point on Road B's line and charges B upon basis of train mileage the cost of the service while upon B's tracks. Each road receives the revenue accruing upon its own line. What is the proper accounting for the expense of the service?

Answer. The expenses shall be included by each railroad in the primary expense accounts other than joint facility accounts. This is not a joint facility. If any portion of the charge for the train service is for hire of equipment, the amount thereof shall be included in the appropriate equipment rent accounts in Income.

CASE 32.

Query. It is provided in account No. 418, "Loss and damage—Freight," that interest and penalties assessed for nonpayment of freight claims shall be included in this account. Is this provision intended to include interest and penalties on overcharge claims?

Answer. Interest and penalties on loss and damage claims shall be included in account No. 418, "Loss and damage—Freight." Interest on overcharge claims shall be included in account No. 547, "Interest on unfunded debt." Penalties on overcharge claims shall be included in account No. 460, "Other expenses."

CASE 33.

Query. In what account shall be included the rents paid by one carrier to another carrier for the exclusive use of yards and tracks—

(*a*) When upon the basis of a specified amount per month?

(*b*) When upon the basis of the number of cars handled over such tracks?

All expenses of maintenance are paid by the lessee. The taxes are paid by the lessor.

Answer. The rents, under either of the conditions stated, shall be included in the lease-of-road accounts in Income.

CASE 34.

Query. A company keeps a separate or independent fund from which pensions are disbursed. A certain amount per month, making an annual total 12 times as great, is appropriated through the Income Account and credited directly to an open account, which is closed annually when the amount is paid over. The pension fund is invested in interest-bearing securities. Whenever pensions are paid the amounts are debited to an open account and about every quarter collected from the trustee of the fund. There are no administration or other expenses in connection therewith. What is the proper accounting?

Answer. Amounts thus appropriated shall be charged to account No. 552, "Income applied to sinking and other reserve funds," and shall be concurrently credited to account No. 782, "Miscellaneous fund reserves." When such funds have been paid into the hands of trustees, the amount thereof shall be charged to balance-sheet account No. 721, "Insurance and other funds." The amount of pensions accrued shall be charged to account No. 457, "Pensions," and when paid shall be credited to account No. 721, "Insurance and other funds." Concurrently account No. 782, "Miscellaneous fund reserves," shall be charged, and Profit and Loss credited with an equal amount.

CASE 35.

Query. To what account shall be credited the difference between the value of special-admission amusement coupons issued in connection with transportation and the amount paid on the basis of actual collection?

Answer. The difference shall be credited to revenue account No. 143, "Miscellaneous."

CASE 36.

Query. To what account shall be charged the expense of removal of brasses from cars to prevent the loss of the brasses by theft when the cars are stored in hazardous locations?

Answer. Such expense shall be charged to the appropriate car repair account.

CASE 37.

Query. To what account shall be charged the amount of a judgment, including court costs, in an action of the United States against a carrier on account of defective appliances on cars?

Answer. It shall be charged to profit and loss account No. 621, "Miscellaneous debits." (*See Cases 38 and 90.*)

CASE 38.

Query. What account shall be charged with United States Government fines imposed by the collector of customs for the delivery of freight in bond directly to the consignee, instead of to the collector of the port, the offense being due to the failure of the delivery clerk at a freight yard to notify the customhouse inspector at the point of delivery?

Answer. They shall be charged to profit and loss account No. 621, "Miscellaneous debits." (*See Cases 37 and 90.*)

CASE 39.

Query. To what account shall be charged premiums paid to procure currency needed to pay the wages of employees?

Answer. They shall be charged to expense account No. 460, "Other expenses."

CASE 40.

Query. Two box cars which were carried in the carrier's account at the salvage value only are condemned, the bodies taken for use as bunk houses for track laborers, and the trucks put into service for wrecking purposes. What is the correct accounting?

Answer. Assuming that the equipment had been regularly written down to the amount of the salvage value, this amount shall be credited to road and equipment account No. 53, "Freight-train cars"; the proportion of this value represented by the salvage contained in the bodies of the cars, together with the cost of fitting up bodies as bunk houses, shall be charged to road and equipment account No. 17, "Roadway buildings." If the houses are used by laborers engaged in construction work, their cost shall be included in the accounts in which also is included the labor of the men who use them, and when such work is completed the accounts thus charged shall be credited with the depreciated value of the bunk houses.

The value of the salvage in the trucks shall be charged to the appropriate material account.

CASE 41.

Query. Road A has a drawbridge over a bayou, for the operation of which it employs bridgemen, the expense being prorated among four railroads. How shall amounts received by A be credited?

Answer. If the bridge is in a yard, credit expense account No. 391, "Operating joint yards and terminals—Cr." if on road, credit expense account No. 413, "Operating joint tracks and facilities—Cr."

CASE 42.

Query. A carrier has an arrangement with other carriers whereby, for trackage rights within a certain district on its line, it receives as compensation a fixed allowance per car. This allowance is apportioned to joint maintenance, operating, and income accounts, the division being based upon estimates and available statistics for previous years.

What account shall be credited for an amount billed against one of these tenants for an accident damaging the carrier's tracks and some of the equipment of other carriers resting upon those tracks, and also an amount paid to one of the carrier's employees in settlement of a personal injury claim occasioned by such accident, the understanding being that the railroad causing the accident shall pay the expenses incident thereto, in addition to the amount it pays for trackage?

Answer. The carrier incurring the expenses, which under the contract belong solely to another carrier, shall, so far as practicable, charge the amounts of such expenses directly to account No. 715, "Miscellaneous accounts receivable," and credit pay roll, voucher, or material accounts, as the case may be.

The carrier responsible shall charge the expenses to its primary operating expense accounts other than joint facility accounts. (*See Cases 63, 66, and 132.*)

CASE 43.

Query. To what accounts shall interest paid on material bills be charged and cash and trade discounts be credited?

Answer. Interest shall be included in Income. All discount realized on bills for material purchased shall be credited to the account to which is charged the original invoice.

CASE 44.

Query. Amounts paid by Road A for hire of equipment used in joint-yard operations are prorated among three tenant lines upon basis of number of cars handled for each. How shall the payments and receipts be included in A's accounts?

Answer. They shall be included in the appropriate equipment rent accounts in Income.

CASE 45.

Query. Road A distributes the amount charged Road B upon a lump-sum basis for the joint use by B of A's terminal, as follows:

	Per cent.
"Maintaining joint tracks, yards, and other facilities—Cr."	10
"Operating joint yards and terminals—Cr."	25
"Joint facility rent income"	65

Is it proper to apportion any part of such charges to rent?

Answer. If A owns the property operated jointly, the amount in excess of the proportionate expense of maintenance and operation shall be included by each railroad in the joint facility rent accounts in Income.

CASE 46.

Query. Road B uses Road A's tracks between two points, paying therefor a rent based upon valuation and also a proportion of maintenance and operating expenses based upon wheelage.

(*a*) A pays B a per cent of the value of A's tickets honored on B's trains.

(*b*) B pays A a per cent of cash fares on B's trains between the two points.

(*c*) B pays A full local rate on tickets sold by B honored on A's trains.

How shall each road take the above items into its accounts?

Answer. The accounting shall be as follows:

(*a*) B shall credit full value of tickets to revenue account No. 102, "Passenger." The amount of this revenue less the amount paid by A to B shall be charged by B to income account No. 541, "Joint facility rents," and shall be credited by A to income account No. 508, "Joint facility rent income."

(*b*) B shall charge amount paid and A shall credit amount received to joint facility rent account in Income.

(*c*) A shall credit and B shall charge the full value of the tickets to revenue account No. 102, "Passenger."

CASE 47.

Query. To what account shall be credited the amount received by a carrier for the surrender of an unexpired lease for offices occupied by it?

Answer. It shall be credited to profit and loss account No. 607, "Miscellaneous credits."

CASE 48.

Query. Owing to certain freight yards of a carrier becoming congested it is found necessary to deliver cars at another point temporarily. The delivery involves special movements a distance of 1 to 3 miles. Shall the movements be included with freight-train miles or considered switching or yard movements of which no wheelage report would be made other than for the locomotive?

Answer. Mileage shall be considered merely as of switching or yard movements.

CASE 49.

Query. A lumber company's log train uses a carrier's line between its logging camp and mill. The equipment is owned by the lumber company and is operated by its employees, although, while on the carrier's line, the trains are under orders of the carrier's dispatcher. The carrier is compensated on a mileage basis. Shall this mileage be included in the carrier's statistics?

Answer. It shall not be so included.

CASE 50.

Query. May the distribution of the cost of fuel, stores, and other supplies for yard locomotives and for work-train service, be made upon the basis of the mileage of yard and work locomotives for the month preceding that in which the expense is incurred?

Answer. The distribution of each month's operating expenses shall be based upon the operation for that month.

CASE 51.

Query. On account of Road A owning no equipment, Road B supplies the necessary equipment and maintains and operates A's road. B charges A the cost of maintenance and operation, with exception of the maintenance of equipment and the cost of engine and train service. B receives all revenues and pays A agreed proportions of the revenues upon through traffic only. What is the correct accounting?

Answer. All revenue and expenses incident to the operation of A's road shall be included in B's accounts. All mileage statistics, including passenger, ton, train, car, locomotive, etc., shall be included in B's records and reports. The difference between the proportion of the revenue due to A and the proportion of operating expenses payable by A to B constitutes A's compensation for the use of its road and shall be charged by B to income account No. 542, "Rent for leased roads."

In case the result is a loss to A, the amount of the deficit shall be credited by B to account No. 542, "Rent for leased roads," and charged by A to account No. 509, "Income from lease of road." B shall include the cost of maintenance and operation in its primary operating expense accounts.

CASE 52.

Query. Road A operates its yard for the joint benefit of its own service and that of Road B. In an enginehouse at this point A's train locomotives, B's train locomotives, and the locomotives used in operating the joint yard are prepared. What is the correct accounting for the expense of preparing these locomotives in this enginehouse?

Answer. The expense of preparing the joint-yard locomotives shall be included by A in account No. 388, "Enginehouse expenses—Yard," and the amount of such expense chargeable to B shall be credited by A and charged by B to the appropriate account "Operating joint yards and terminals." A has the option of clearing the cost of preparing B's train locomotives through account No. 400, "Enginehouse expenses—Train," or of crediting the amount of such cost to its payroll and material accounts. A shall charge the cost of preparing its train locomotives to account No. 400, "Enginehouse expenses—Train," and B shall include in the same account the cost of preparing its train locomotives.

CASE 53.

Query. Road A cleans Road B's cars and supplies them with oil and gas for lighting, and with water, ice, and coal, and with oil and waste for lubrication, upon the basis of the actual cost of the labor and supplies. What is the proper accounting by each company for these expenses?

Answer. A shall distribute these expenses from its labor and material accounts directly against B. B shall charge its proportion of the expenses to the appropriate operating expense primary accounts other than joint facility accounts. (*See Case 161.*)

CASE 54.

Query. Road A operates one of its yards for the joint benefit of its own service and that of Road B. Each road furnishes its own coal, delivered in cars at this yard. The coal used by the locomotives at this point is handled through the coal bins owned by Road A, separate bins being provided for the coal used upon B's locomotives. The cost of operating this fuel station is apportioned by A between its own train service, B's train service, and the service of the joint yard (which is operated by A) upon the basis of quantity of coal supplied. The proportion charged to the joint yard is divided between the two railroads upon the basis used for division of other joint-yard expenses. How shall these fuel station expenses be treated in the accounts of the two companies?

Answer. A shall include the entire cost of the operation of the fuel station in an appropriate clearing account and shall clear such expenses through the following charges. The proportion of the cost of handling fuel for B's train locomotives shall be charged directly to B. The proportion of the cost of handling fuel assignable to A's train locomotive service shall be charged by A to account No. 394, "Fuel for train locomotives." The proportion of the cost of handling the fuel assignable to the joint-yard service shall be charged by A to account No. 392, "Fuel for yard locomotives." B shall charge the cost of handling the fuel for its train locomotives to account No. 394, "Fuel for train locomotives." A shall credit and B shall charge the appropriate accounts for operating joint yards and terminals, with B's proportion of the cost of handling the fuel used in the joint-yard service.

CASE 55.

Query. The contract between Road B and Road A under which B uses the terminals of A at Y provides for the furnishing from A's storehouse of certain materials and supplies (including materials and supplies for locomotive and train use) for use in the operation of B's line south of Y. A's storehouse is not included in the schedule as a joint structure. How shall the charges covering the materials and supplies be treated in the accounts?

Answer. The amounts charged B for materials and supplies shall be credited by A to the material and supplies account and charged by B to the appropriate primary expense accounts other than joint facility accounts.

CASE 56.

Query. A carrier operates two freight houses at a terminal and furnishes all the facilities and labor for handling merchandise shipments for tenant lines. It charges them for this service a rate per ton. To what account shall be credited the amounts collected?

Answer. The portion of the charges representing maintenance and operation shall be credited to the appropriate joint facility accounts in Operating Expenses; that portion representing payments for the use of capital and for taxes shall be credited to income account No. 508, "Joint facility rent income." (*See Case 23.*)

CASE 57.

Query. When is a road under construction required to commence keeping accounts for operating revenues and operating expenses?

Answer. Accounts of operating revenues and operating expenses shall be kept as soon as the road begins the operation of transportation service trains.

CASE 58.

Query. A carrier participates in the operation of a through dining-car line, the equipment of which is owned by another carrier. How shall its proportion of loss be handled?

Answer. Each carrier shall include its proportion of the revenues in account No. 131, "Dining and buffet," and its proportion of the expenses in the appropriate operating expense primary accounts other than joint facility accounts. The operating carrier shall credit the rents of equipment to account No. 505, "Rent from passenger-train cars," and the participating carrier shall charge them to account No. 538, "Rent for passenger-train cars."

CASE 59.

Query. In 1906 a carrier acquired and charged to equipment account a box car costing $640. This car was destroyed in 1910 upon a foreign line. The trucks were repaired and returned. The value of these trucks was $175. The carrier rendered bill against the foreign line for $344, this being the value under Master Car Builders' Association rules of the body of the car at the time it was destroyed. The carrier had charged $60 to Operating Expenses and credited the same amount to balance-sheet account No. 776, "Accrued depreciation—Equipment," to cover depreciation of the car from July 1, 1907, to the date of its retirement. The depreciation accruing previous to July 1, 1907, amounted to $20. What entries are necessary for a proper accounting for the retirement of this car?

Answer. The text of road and equipment general account II, Equipment, quite fully describes the proper accounting for equipment retired. The following statement of this particular case, in journal entry form, may prove an additional aid in determining the correct accounting:

No. 776, "Accrued depreciation—Equipment", (an amount equal to the amount previously credited thereto with respect to this car)	$60	
No. 715, "Miscellaneous accounts receivable" (amount charged foreign line)	344	
No. 716, "Material and supplies" (value of trucks)	175	
No. 619, "Loss on retired road and equipment" (depreciation to July 1, 1907)	20	
No. 316, "Freight-train cars—Retirements"	41	
No. 53, "Freight-train cars" (cost of car)		$640

CASE 60.

Query. To what account shall be charged the cost of options upon lands for terminals and approaches of a bridge, the plans for construction of which were postponed?

Answer. The amount paid for options on property which it was proposed to use in the construction of terminal and bridge-approach improvements shall be carried in a suspense account until the proper disposition has been finally determined. If, later, the plan is definitely abandoned, and the amount expended is lost, the loss sustained shall be charged to Profit and Loss.

CASE 61.

Query. To what account shall freight charges over the line owning tracks be credited when they are added to the cost of maintenance material charged against joint users of the tracks?

To what account shall be credited percentage added to joint-track bills for superintendence and store expenses?

Answer. Amounts included in joint facility bills representing freight charges shall be credited to revenue account No. 101, "Freight," and amounts representing superintendence and store expenses shall be credited by the operating company to Oper-

ating Expenses through the joint facility accounts. It is not intended that minor profits from percentages added to such bills shall be credited to the revenue accounts. (*See Cases 25 and 79.*)

CASE 62.

Query. A bridge was damaged by a wreck. Although it was possible to repair the bridge where it stood, the railroad management considered it economy to remove the bridge to the shops for repairs. Pending the repairs, a temporary pile structure was installed. To what account shall the cost of the temporary bridge be charged?

Answer. The cost (less salvage) of the temporary bridge shall be charged to expense account No. 208, "Bridges, trestles, and culverts."

CASE 63.

Query. Road B is responsible for the damage done by one of its locomotives to Road A's interlocking plant. This plant is a joint facility of the two railroads. In what account shall B include the expense of repairs?

Answer. The expense of such repairs shall be included in expense account No. 416, "Damage to property."

CASE 64.

Query. To what account shall be charged the pay of timekeepers engaged in construction work, and the cost of tents, bunks, and materials used by them?

Answer. Such expenditures shall be distributed to the cost of the specific work to which the timekeepers are assigned.

CASE 65.

Query. Two houses on carrier's right of way are occupied by roadway employees, rent free. Is it proper to credit an amount representing a fair rent for the houses to revenue account No. 142, "Rents of buildings and other property," and debit the repairs to expense account No. 229, "Roadway buildings"?

Answer. It is not intended that amounts which do not represent revenue actually earned shall be credited to the revenue accounts; neither is it intended that amounts which do not represent actual expenses shall be charged to the expense accounts. No credit shall be made to the revenue accounts for rent of houses on right of way occupied by employees, rent free. The cost of repairing the houses is a proper charge to expense account No. 229, "Roadway buildings."

CASE 66.

Query. Shall the distribution of extraordinary expenses for injuries to persons and damage to property, the result of casualties in connection with the operation of joint facilities, be made through the joint facility accounts or through the other primary accounts?

Answer. All such expenses incurred in the operation of joint facilities, in which the parties to the contracts for such operation jointly participate, shall be handled through the appropriate joint facility accounts. (*See Cases 42 and 132.*)

CASE 67.

Query. To what accounts shall bills be distributed when rendered against other companies for their proportions of wages of crossing flagmen stationed where there are no towers or gates?

Answer. If the crossing flagmen are employed at road crossings where the tracks of two or more companies are parallel and there are no tracks used jointly, the proportions billed against other companies shall be credited by the billing road to expense account No. 405, "Crossing protection," and taken up in the same account by the paying road. If, on the contrary, the flagmen are located at street or road crossings in joint yards, such bills shall be included in the account "Operating joint yards and termi-

nals," and if on joint tracks outside of yards, in the account "Operating joint tracks and facilities."

CASE 68.

Query. Road B runs its trains for a distance over Road A's tracks, paying a fixed rent per year for the privilege. These trains are operated by B's crews. Which road shall report the train-miles of B's trains while on A's tracks?

Answer. B shall include in its statistics the train-miles, car-miles, etc., for its trains operated on A's tracks.

CASE 69.

Query. In April, 1902, a carrier completed a spur track, the cost of which was charged to Operating Expenses. The larger part of the material used was second-hand. In December, 1908, the track was taken up and not replaced. In view of the fact that the cost of the track was included in operating expenses, shall not the salvage, if any, be charged to a material account and surplus credited with a similar amount?

Answer. The salvage shall be charged to a material account and Profit and Loss credited with a similar amount. Expenses incident to the retirement of the track shall be charged to Profit and Loss.

CASE 70.

Query. To what account shall a railroad credit rent received from a telephone company for joint use of its trolley poles?

Answer. Such rent shall be included in revenue account No. 142, "Rents of buildings and other property."

CASE 71.

Query. To what accounts shall a carrier credit the value of scrap which recently has been gathered and sold, and charge the cost of gathering same for sale? This scrap has been scattered along the road for years, and it is now impossible to say to what equipment or structures it originally belonged. It has never been carried in any material account.

Answer. The receipts from the sale of this scrap, less the cost of assorting it, shall be credited to material accounts and cleared from these accounts to Operating Expenses. The cost of gathering the scrap shall be charged to expense account No. 202, "Roadway maintenance."

CASE 72.

Query. At various terminals on a section of Road A's line, which is jointly operated with Road B, switching locomotives are furnished by B. How shall the compensation for the use of these locomotives, which includes rent and the cost of repairs, be accounted for?

Answer. The proportion of compensation which covers the cost of repairs to and depreciation of the locomotives shall be cleared through accounts "Maintaining joint equipment at terminals." The remainder, representing return on capital invested in the locomotives, shall be credited by B and charged by A to the appropriate locomotive rent accounts in Income.

CASE 73.

Query. Road A loans a locomotive and three coaches to Road B for excursion service, and charges B for trackage and wages of employees delivering the equipment. How shall these charges be treated?

Answer. The charge for trackage shall be credited to account No. 143, "Miscellaneous." The charge for wages of employees shall be credited to the pay roll account to which the wages of employees have been charged. The carrier has the option of clearing the wages through the appropriate operating expense accounts. (*See Case 174.*)

CASE 74.

Query. May the adjustment of material accounts to the basis of inventories be deferred to a period subsequent to the year in which the inventories are taken?

Answer. Such adjustments shall be made in the accounts of the year in which the inventories are taken. (*See Case 2.*)

CASE 75.

Query. A company handles logs and ores extensively and to get this freight is obliged to build temporary tracks into the woods and to the mines. Is it permissible, instead of charging the entire cost of these tracks to the road and equipment accounts, to charge the material, such as rails, angle bars, and switches, to these accounts, and to include in Operating Expenses the cost of the ties, bolts, and grading? In this way the irrecoverable portion of these tracks is disposed of during the time revenue from them is being received and not after the revenue is all in.

Answer. The entire first cost of the sidings and spur tracks shall be charged to the road and equipment accounts. The classifications permit the carrier to include the depreciation upon these tracks in operating expenses during the period they are in use.

CASE 76.

Query. How may a carrier make adjustment of the differences, due to insufficient charges for depreciation, between the value of equipment as carried in its property account and the actual value of the equipment as ascertained by an inventory appraisal?

Answer. If a carrier's equipment accounts prior to July 1, 1907 (the effective date of the depreciation accounts in Operating Expenses) show insufficient charges for depreciation, and a carrier elects to make an adjustment so that the property account Equipment shall in fact reflect the cost of equipment in service and the depreciation accounts reflect the full amount of depreciation accrued on such equipment from the beginning of its life, such adjustment for depreciation prior to July 1, 1907, shall be made through Profit and Loss.

Advice as to the proper disposition of differences due to insufficient charges for depreciation after July 1, 1907, will be given by the Commission upon receipt of particulars of such discrepancies.

CASE 77.

Query. Road B, as agent for Road A, furnishes the necessary equipment and operates passenger trains a distance over Road A's tracks. A pays B a rate per train-mile for the service and receives all local revenue and proportion of revenue for through traffic in trains while on these tracks. What is the proper accounting for these revenues and expenses?

Answer. Road A shall credit the revenue of the trains to the primary revenue accounts under Transportation and shall report all passenger and mileage statistics of the trains.

The amount paid for the train service shall be divided, upon a basis agreed to between the two roads, into two parts; one part, representing the rent of the equipment, shall be included by each road in the appropriate equipment rent accounts in Income, the other part, representing the expenses of operation, shall be charged by A under general accounts Maintenance of Equipment and Transportation to the primary accounts other than joint facility accounts, and shall be credited by B to the same accounts.

CASE 78.

Query. A railroad is constructed at a cost equal to the amount realized from the proceeds of a bond issue. Capital stock is issued gratuitously to stockholders. What entries shall be made in the balance-sheet accounts on account of the issue of this stock?

Answer. The par value of the stock issued shall be credited to account No. 751, "Capital stock," and shall be debited to accounts covering discount and premium on capital stock. The cost of road and equipment as stated in the property investment accounts shall be their actual net cost in cash.

CASE 79.

Query. A carrier realized a profit of $2,000 in one month upon coal which it furnished, under a temporary arrangement, to another carrier. If this profit is credited as provided in Case 25, it will unduly distort its operating expenses. In what account shall the profit be included?

Answer. Case 25 has reference to small profits arising from work done or supplies furnished under conditions which make it difficult to separate costs and profits.

In the case mentioned, the profit arising shall be credited to revenue account No. 143, "Miscellaneous." In arriving at the profit, proper allowance shall be made to cover transportation charges. (*See Cases 25 and 61.*)

CASE 80.

Query. A road sells notes because the money market does not warrant the sale of bonds, which are deposited as collateral for the notes. Is it permissible to spread the discount on the notes over the life of the bonds, treating the sale and retirement of both notes and bonds as one transaction?

Answer. The sale and retirement of the notes shall be separately accounted for, and the discount suffered shall be treated as provided in account No. 547, "Interest on unfunded debt," if the notes are for a term not exceeding one year. If for a longer term, the discount shall be included in account No. 725, "Discount on funded debt" and extinguished during the life of the notes.

CASE 81.

Query. To what account shall be charged a contribution to cover the deficit of a "Chautauqua"? This contribution was guaranteed for the purpose of securing traffic.

Answer. The amount shall be charged to account No. 353, "Advertising."

CASE 82.

Query. A bridge company owns, maintains, operates, and pays the taxes upon a bridge over which a single railroad, in consideration of a fixed annual rent, enjoys the right to operate its trains. In what accounts shall this rent be included?

Answer. The bridge company shall credit the rent to income account No. 509, "Income from lease of road"; shall charge the cost of maintaining and operating the bridge to the same account; and shall charge the taxes to account No. 532, "Railway tax accruals."

The railroad shall charge the proportion of the rent representing the expenses of maintenance and operation to the appropriate operating expense primary accounts, and the remainder to income account No. 542, "Rent for leased roads." As this is the only railroad operating trains over the bridge, it is not a joint facility.

CASE 83.

Query. County scrip, which will be accepted at face value in payment of taxes, is purchased at a discount. How shall it be carried in the balance sheet, and in what accounts shall the profit be included when the scrip is used?

Answer. The scrip shall be carried at cost. When it is used in the payment of taxes the profit shall be credited to profit and loss account No. 607, "Miscellaneous credits."

CASE 84.

Query. At certain points on the border freight-train cars are held by the custom-house authorities a considerable length of time. Is the per diem accrued during the detention of the cars chargeable to equipment rent account or to transportation expense account No. 411, "Other expenses"?

Answer. The per diem charges assessed in accordance with the per diem rules of the carrier shall be charged to income account "Hire of freight cars."

CASE 85.

Query. To what account shall be charged the expense of cleaning the exterior of sleeping and dining cars?

Answer. The cost of exterior cleaning of such cars shall be charged to expense account No. 402, "Train supplies and expenses."

CASE 86.

Query. Through error a duplicate refund was made of an overcharge, and the amount was determined to be irrecoverable. To what account shall be charged the duplicate refund?

Answer. The amount of the duplicate refund, when discovered, shall be credited to the account previously charged, and when found to be irrecoverable shall be charged to account No. 533, "Uncollectible railway revenues." This case shall not be construed to relieve the carrier from its responsibility for collecting and retaining the lawfully established charges.

CASE 87.

Query. To what account shall be credited amounts received from anonymous sources which are ordinarily designated as "Conscience money"?

Answer. Unless the remittances indicate that the payments are assignable to the revenue, expense, or income accounts, such payments shall be credited to account No. 607, "Miscellaneous credits."

CASE 88.

Query. To what account shall be charged witness fees in a suit for damages growing out of the false arrest of a person suspected of setting fire to a shop building of a carrier; also, to what account shall be charged the judgment, if any, secured in such a suit?

Answer. Both fees and judgment shall be charged to expense account No. 277, "Other expenses."

CASE 89.

Query. Recently a carrier's shops and some equipment were burned. After deducting insurance there remains a loss on both shops and equipment. Is it proper to charge the loss on the building to Profit and Loss?

Answer. The cost of the shops shall be credited to the appropriate road and equipment accounts. If it is intended to replace the burned property, its cost, less insurance and depreciation accrued, if any, and salvage recovered, shall be charged to the appropriate operating expense accounts. If the shops are not to be rebuilt, the cost, less insurance and depreciation accrued, if any, and salvage recovered, shall be charged to profit and loss account No. 619, "Loss on retired road and equipment." The loss on equipment shall be handled in accordance with the provisions in the text of road and equipment general account II, Equipment.

CASE 90.

Query. To what account shall be charged penalties paid to public authorities for violation of the 28-hour stock law?

Answer. They shall be charged to profit and loss account No. 621, "Miscellaneous debits." (*See Cases 37 and 38.*)

CASE 91.

Query. A carrier frequently pays charges for cleaning its ice houses. Shall the expense be charged to "Train supplies and expenses," or shall it be divided between that account and "Station employees"?

Answer. The cost of cleaning ice houses is considered a part of the cost of storing. It shall be added to the cost of the ice and, with the latter, apportioned to the accounts to which the ice is charged.

CASE 92.

Query. Railway A rents a portion of its tracks to Railway C at a flat rate per annum, the amount of which is credited to rent, maintenance, and operation. This track is a part of that operated jointly by A and B. Under the contract for the joint operation, B is entitled to its proportion of the amounts received by A from C. What is the proper distribution of the amount paid by A to B as its share of the amounts collected from C?

Answer. The amount paid by C to A shall be divided into two parts; one representing maintenance and operation; the other, rent. The first part shall be credited by A to its appropriate joint facility operating expense accounts and the other to the joint facility rent account under Income. The proportion of these credits which is allowed in settlement with B shall be deducted from B's proportion of the charge for rent, maintenance, and operation of the whole joint facility, and the remainder, which is collected from B, shall be credited by A to its appropriate joint facility operating expense accounts and joint facility rent account under Income.

CASE 93.

Query. There is a connecting line between the tracks of the A company and those of the B company, each company owning the one-half of the track next to its own line. The two companies alternate in performing the interchange switching over this track in periods of six months, rendering bills alternately for proportions of service performed. How shall the payments be charged and credited?

Answer. It is assumed that the bills for the service performed cover the cost of switching service only. The amounts of such charges shall be included in the appropriate operating expense primary accounts other than joint facility accounts. If the charges for hire of equipment are included in these bills, such charges shall be included by both companies in the appropriate equipment rent account in Income.

CASE 94.

Query. A carrier has a joint facility arrangement with another carrier which does not report to the Commission. Shall it handle through its joint facility accounts the amounts received for the use of these facilities?

Answer. It shall. Amounts received from a carrier, whether it reports to the Commission or not, for the joint use of property operated by a carrier reporting to the Commission, shall be divided by the operating carrier into two parts. One, representing the cost of maintenance and operation, shall be credited by the operating carrier to the joint facility expense accounts affected; the other shall be credited to income account No. 508, "Joint facility rent income." In case the facilities used jointly are of minor importance, and the amounts received for the use of them are small, the credits shall be to revenue account No. 142, "Rents of buildings and other property."

CASE 95.

Query. A terminal company has a contract with four railroads which jointly own its capital stock, under which it handles all freight and passenger business over its terminals for these companies. These railroads reimburse the terminal company for all expenses of operation, interest on the bonds, and other fixed charges of the terminal company and, in addition, pay a small percentage on first-mortgage bonds to be used as a sinking fund for retiring the bonds. How shall these various payments be treated in the terminal company's accounts?

Answer. The switching or terminal company shall include the expenses of operation in its primary expense accounts and shall credit the charges pertaining to the joint benefit service to the appropriate joint facility expense accounts. It shall include the interest on bonds, other fixed charges, and contributions to its sinking fund in income account No. 508, "Joint facility rent income."

CASE 96.

Query. A locomotive assigned to yard switching service is taken to the shops a number of miles distant for repairs and is relieved by a locomotive from the shops. To what account shall be charged the expense of running the relief locomotive from the shops to the point where it is to be put in service? How shall the mileage of the locomotives be classified?

Answer. The expenses shall be charged to the proper yard accounts under Transportation—Rail line. The mileage of the locomotives shall be classed as yard switching locomotive-miles.

CASE 97.

Query. A and B are 10 miles apart, and the freight destined to B passes through A. The freight trains are divided in the yard at A, and through freight destined to B is taken to B by a transfer crew. The line between A and B is a part of the carrier's main line. Shall the service of the transfer crew between these points be considered train service or yard service?

Answer. It shall be considered train service and the expenses and the statistics of train-miles, locomotive-miles, car-miles, etc., shall be treated accordingly. (*See Case 7.*)

CASE 98.

Query. To what account shall a carrier charge commissions paid to brokers for the purchase of the securities of other companies?

Answer. The amount of such commissions shall be considered as a part of the cost of the securities purchased.

CASE 99.

Query. A carrier obtains a franchise which permits it to operate with steam motive power within the limits of a city for a period of 20 years. To what account shall the cost of this franchise be charged?

Answer. The cost shall be included in a convenient suspense account under balance-sheet account No. 727, "Other unadjusted debits," and amortized during the life of the franchise through equal annual charges to income account No. 551, "Miscellaneous income charges."

CASE 100.

Query. In the construction of undergrade and overhead highway crossings a carrier purchases sufficient land for slopes outside of its right of way instead of building retaining walls. To what account shall the cost of this land be charged?

Answer. It shall be charged to road and equipment account No. 2, "Land for transportation purposes." (*See Case 186.*)

CASE 101.

Query. In connection with the construction of an extension to its line a carrier relocates a short section of an electric road's tracks for the purpose of avoiding grade crossings. To what account shall the cost of the work be charged?

Answer It shall be charged to road and equipment account No. 2, "Land for transportation purposes."

CASE 102.

Query. A carrier sells to another carrier an undivided third interest in a part of its line. How shall the proceeds of the sale be credited?

Answer. One-third of the ledger cost of the line shall be credited to the primary road and equipment accounts to which the property had previously been charged. The difference between the total amount thus credited and the amount received for the proportion sold shall be included in Profit and Loss.

CASE 103.

Query. A carrier company sells a part of its line. To what account shall be credited a lump sum received for the property?

Answer. The primary road and equipment accounts shall be credited with amounts equal to the net amounts previously charged thereto with respect to the property sold. The difference between the total amount thus credited and the amount received shall be included in Profit and Loss.

CASE 104.

Query. Real estate purchased in the names of individuals is used by a carrier as right of way and for other operating purposes. How shall its cost be accounted for?

Answer. Under the assumption that the individuals in whose names the property has been purchased are in fact the agents of the carrier, the cost of the real estate shall be included in the carrier's property investment accounts.

CASE 105.

Query. On account of its line crossing a stream at a point on a section line a railroad purchases land for the purpose of constructing a county road at one side of the section line at this point, thus permitting separate bridges to be built for use of the railroad and the highway. The title of the land purchased is conveyed to the county, while the county surrenders its title to that portion of the land upon which the railway is constructed and which was originally occupied by the highway. To what account shall the cost of the land be charged?

Answer. It shall be charged to road and equipment account No. 2, "Land for transportation purposes."

CASE 106.

Query. To what account shall be credited amounts collected from contractors as penalties for failure to complete the construction of a portion of a line at a specified time?

Answer. Such forfeiture shall be considered as an abatement in the cost of the work covered in the contract and shall be credited to the account to which the cost of the work is charged.

CASE 107.

Query. To what account shall the cost of the equipment of cabooses with telegraphones be charged; also the cost of repairs of these instruments? They are for use in case of accident or trouble upon the line.

Answer. The cost of the installation as an initial equipment shall be charged to road and equipment account No. 26, "Telegraph and telephone lines," and the cost of maintenance to expense account No. 247, "Telegraph and telephone lines."

CASE 108.

Query. In the construction of new freight cars some second-hand material is used. At what prices shall this material be included in the cost of the new equipment?

Answer. The prices of the second-hand material shall be determined by deducting fair allowances for depreciation from the current prices of the material as new.

CASE 109.

Query. Under the provisions of the forfeiture clause in a lease a carrier secured title to a building which had been erected by the lessee upon the carrier's property at a cost of $3,000. At the time of the foreclosure the lessee owed $300 for rent. Shall the charges to the carrier's property account to cover the building be based upon the original cost or upon the amount of the rent due?

Answer. The charge to the property account shall be based upon the actual cost of the property to the carrier.

CASE 110.

Query. A wrecking crane, which was being used in removing old piles in connection with the repairs and additions and betterments to a wharf, fell through the wharf. The engineer of the crane was injured. To what account shall be charged the payments on account of these injuries?

Answer. The accident having occurred in connection with the removal of the old structure as a preliminary to the construction of improved wharf facilities, the payments shall be charged to expense account No. 274, "Injuries to persons."

CASE 111.

Query. In connection with the application of an improved device to equipment, to what account shall be charged the cost of removing the old and of applying the new device?

Answer. The cost of removing the old and of applying the new device shall be charged to the appropriate repair account.

CASE 112.

Query. To what account shall be charged the cost of a motor applied to a locomotive turntable?

Answer. The cost shall be charged to road and equipment account No. 20, "Shops and enginehouses." The cost of the motor removed, if any, shall be credited to the same account.

CASE 113.

Query. In the division of through passenger rates between Road A and Road B, Road B was allowed an arbitrary per passenger for ferry service at its terminal. Subsequently the ferry service was extended and improved, and Road B was then allowed, in addition to the arbitrary, a stated amount per year, irrespective of the number of passengers. To what accounts shall the additional payments be debited and credited by A and B, respectively?

Answer. They shall be debited and credited to the accounts to which the payments based upon the arbitrary per passenger are debited and credited.

CASE 114.

Query. A terminal railway company has no station agents, its station service being performed by the superintendent of transportation and his clerks. To what account shall the pay of these employees while thus engaged be charged?

Answer. To expense account No. 373, "Station employees."

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CASE 115.

Query. At a joint terminal the lading of cars is transferred on account of t being in bad order. The cost of the work is charged against the road respons the condition of the cars. In what account shall be included the amount charges?

Answer. It shall be charged to expense account No. 373, "Station empl Under the conditions stated this is not a joint facility expense.

CASE 116.

Query. A railroad which does not permit its own equipment to leave i receives freight cars from one connection on a per diem basis and from another demurrage basis. Shall the amounts paid as demurrage be charged as hire of ment?

Answer. They shall be so charged.

CASE 117.

Query. The fuel used by a carrier is transported upon the basis of throug from mines located upon a foreign line. To what account shall be credited rier's proportion of the through rate on this material?

Answer. If the freight charges on the fuel upon the basis of through rate are to the carrier's fuel account, the carrier's proportion of the freight charges s credited to the same account.

CASE 118.

Query. A large part of the freight-car equipment used by a carrier in its ope is held under a lease from the industrial owner. To what account shall be amounts paid to the owner of the equipment? These payments represent r depreciation.

Answer. The rent shall be charged to income account, "Hire of freight cars the depreciation charged to expense account No. 315, "Freight-train cars— ciation."

CASE 119.

Query. A dining-car waiter left his car when a stop was made on account of ing accident. In attempting to reenter the train he fell and was injured. Sh expenses on account of such injuries be included in the accounts for rail ope or in those for miscellaneous operations?

Answer. They shall be charged to rail operating expense account No. 420, "I to persons." (*See Case 19.*)

CASE 120.

Query. To what account shall be charged a carrier's expenses on account ciations of transportation and car accounting officers?

Answer. They shall be charged to the accounts which are charged with the of the officers who represent the carrier as members of the associations.

CASE 121.

Query. To what account shall be charged the cost of running a special train purpose of promoting industries along a carrier's lines?

Answer. It shall be charged to expense account No. 356, "Industrial and gratica bureaus."

CASE 122.

Query. Is it permissible to charge to expense account No. 372, "Dispatching a portion of the salaries of telegraph operators who are located in towers and w dentally receive and deliver train orders?

Answer. It is not. No charges shall be made to this account for incidental in receiving and delivering train orders.

CASE 123.

Query. Is it proper to credit income account "Hire of freight cars," and to charge Operating Expenses upon a per diem basis for the rent of cars used in transporting company fuel used for operating purposes?

Answer. No charges shall be made to Operating Expenses for the rent of cars used in transporting company fuel.

CASE 124.

Query. The fuel used by a carrier in its operations is delivered to its line by schooner. At the point of delivery it is unloaded into bins. From these bins it is loaded and transferred to other bins along the line and as needed is removed to coal chutes. Is the cost of the coal delivered to the line properly considered the cost of the fuel, or shall the cost of handling and transporting over the carrier's line be included?

Answer. The cost of the fuel shall include its cost delivered to the carrier plus the handling (loading and unloading) expenses up to and including delivery at the chutes. No charges for transportation over the carrier's own line shall be included.

CASE 125.

Query. To what account shall be charged the expenses connected with gathering and replacing on the tracks freight equipment wrecked by an extensive flood caused by the bursting of an industrial company's dam?

Answer. They shall be charged to expense account No. 415, "Clearing wrecks."

CASE 126.

Query. To what account shall be charged the expenses of the cold storage of freight which can not be delivered at the time it is unloaded?

Answer. The carrier's expenses on account of such storage shall be charged to expense account No. 376, "Station supplies and expenses."

CASE 127.

Query. An agent received a summons garnishing the wages of an employee. On account of delay incident to notifying the legal department the employee succeeded in drawing his pay. The carrier was obliged to make good the amount of the claim. To what account shall the loss be charged?

Answer. The loss shall be charged to expense account No. 460, "Other expenses."

CASE 128.

Query. To what account shall be charged the cost of foundry patterns?

Answer. It shall be charged to the accounts to which is chargeable the cost of the castings manufactured from the patterns.

CASE 129.

Query. A storehouse containing maintenance-of-equipment material is destroyed by fire. To what account shall be charged the loss of the material?

Answer. If the net loss is relatively small, it shall be distributed to the account to which the material would have been charged had the fire not occurred. If the loss is so large that its inclusion in the maintenance-of-equipment accounts would impair the significance of the statistics prepared from such accounts, the loss shall be included in account No. 621, "Miscellaneous debits."

CASE 130.

Query. A carrier pays the salaries of the employees and all other expenses of a joint outside ticket agency, and charges each tenant company for a proportion of these expenses, based upon the ticket sales. In what accounts shall these charges be included?

Answer. Carriers have the option, according to their convenience in accounting, of crediting the proportions of the expenses of joint traffic offices charged to other carriers directly to their pay roll and voucher accounts, or of including all charges on account of service in the primary operating expense accounts and crediting foreign lines' proportions to the same accounts. Joint traffic expenses are usually readily assignable to the primary accounts, and joint facility traffic accounts are therefore deemed to be unnecessary.

CASE 131.

Query. To what account shall be charged the cost of twist drills, taps, dies, etc., used in general machine work, when for the replacement of worn-out tools?

Answer. If such articles are for use as appurtenances of power machine tools, their cost shall be charged to expense account No. 302, "Shop machinery." If they are for use as hand tool equipment, they shall be charged to clearing account "Shop expenses."

CASE 132.

Query. The equipment used for the operation of a joint terminal is damaged, one of the carriers using the terminal being responsible for the repairs as the damage occurred through the fault of its employees. How shall the terminal company, which makes the repairs, clear the cost of the work in its accounts?

Answer. The cost shall be credited directly to the payroll and material accounts, or cleared through the appropriate primary accounts for repairs of equipment. This is not a joint facility item. (*See Cases 42 and 66.*)

CASE 133.

Query. To what account shall be charged the cost of oil used in lubricating air-brake cylinders on cars?

Answer. It shall be charged to expense account No. 402, "Train supplies and expenses."

CASE 134.

Query. To what account shall be charged the cost of preparing and recording an agreement with another carrier covering trackage rights?

Answer. Specific fees paid to attorneys for such services shall be charged to expense account No. 454, "Law expenses." It is not intended that charges shall be made to this account for the incidental services of officers whose pay is regularly chargeable to other accounts.

CASE 135.

Query. Locomotives are leased to a lumber company, the lessor furnishing fuel and other supplies for the locomotives and the lessee paying a lump sum for the supplies and for use of the equipment. To what account shall be credited the amount received?

Answer. They shall be equitably apportioned between account No. 504, "Rent from locomotives," and the accounts originally charged with the cost of the supplies. (See section 2 of the general instructions for the Classification of Income, Profit and Loss, and General Balance Sheet Accounts.)

CASE 136.

Query. When land is rented in connection with addition and betterment projects, pending an actual purchase of the property, is the amount of such rent properly chargeable to the cost of additions and betterments? To what account shall be credited rents received from subtenants of such property?

Answer. Provided the primary object in the renting of property is to facilitate the addition and betterment work and the property is actually purchased for addition and betterment purposes, the rents paid shall be included in the road and equipment accounts, and the rents received credited to the same accounts.

CASE 137.

Query. The coupons on certain equipment-trust obligations contain a stipulation that if not paid on date of maturity the coupons shall bear interest from that date. To what account shall the interest on the coupons be charged?

Answer. It shall be charged to income account No. 547, "Interest on unfunded debt."

CASE 138.

Query. The expenses of a State railway commission are borne by the railways, the apportionment among them being based partly on net earnings and partly on mileage. To what accounts shall be charged a carrier's proportion of such expenses?

Answer. It shall be charged to income account No. 532, "Railway tax accruals."

CASE 139.

Query. A company acquires the exclusive use of tracks for a term of 10 years, paying a fixed rate per car and in addition advancing funds to the lessor for the construction of spur tracks, which are the property of the lessor. It is provided that in case of the termination of the lease before the completion of the full term, the lessor will refund to the lessee the amount advanced, less 10 per cent per annum from the date of the lease. What is the proper accounting for the advances for construction?

Answer. The lessee shall carry the advances in account No. 706, "Investments in affiliated companies," or in account No. 722, "Other deferred assets," as may be appropriate, charging one-tenth of the sum to Income each year as rents paid for lease of track. The lessor shall correspondingly credit the advances to account No. 757, "Nonnegotiable debt to affiliated companies," or to account No. 770, "Other deferred liabilities," as may be appropriate, crediting one-tenth of the sum to Income each year as rents received.

CASE 140.

Query. In what account shall be included a carrier's investment in tableware and tables, silverware, linen, and kitchen utensils in dining cars?

Answer. In account No. 54, "Passenger-train cars." (*See Case 164.*)

CASE 141.

Query. What is the correct accounting for the cost of adding, calculating, and typewriting machines purchased by a road during its construction period?

Answer. The cost when purchased shall be charged to account No. 74, "Stationery and printing;" and if the machines are retained for use during the operating period the residual value of the property shall be credited to this account and charged to the property accounts to which is chargeable the cost of the buildings of the class in which the machines are used.

CASE 142.

Query. To what account shall be charged a carrier's investment in an experimental farm which is conducted for the purpose of increasing traffic?

Answer. The cost of lands shall be charged to account No. 2, "Land for transportation purposes," and cost of buildings to account No. 35, "Miscellaneous structures."

CASE 143.

Query. A carrier includes in the price of material sold by it the tariff charges for transportation over its line. To what account shall these charges be credited?

Answer. To account No. 101, "Freight."

CASE 144.

Query. To what account shall be credited the revenue derived from the transportation of packages, articles, etc., other than milk, on passenger trains?

Answer. If the rates charged for the transportation service are applicable only when the property is transported incident to transportation of passengers and the weight of the property is included in the determination of excess weight of baggage over free allowance, the credit shall be to account No. 103, "Excess baggage." Otherwise the revenue shall be credited to account No. 101, "Freight," if based upon freight tariffs, and to account No. 108, "Other passenger-train," when on other bases.

CASE 145.

Query. In what account shall be included the pay and traveling, office, and other expenses of officers, claim adjusters, clerks, and attendants who constitute the organizations for the handling of claim matters, including personal injury, loss and damage, overcharge, live stock, and damage to property claims?

Answer. These expenses shall be charged to accounts Nos. 451, 452, 453, or 458, as may be appropriate.

CASE 146.

Query. A carrier operates regularly over its line a train for the transportation of passengers. It receives for the transportation of through passengers a rate per train-mile from connecting lines. It concurs in the tariffs under which through passengers are transported, but does not share in the prorate of the revenue therefrom. What is the proper accounting for the amount thus received from the connecting lines?

Answer. The carrier shall include the statistics for such transportation in its own accounts, and shall credit the amount received to revenue account No. 102, "Passenger." The connecting lines shall correspondingly charge their respective proportions of the payments to the same account.

CASE 147.

Query. To what account shall be credited the revenue derived from the weighing of cars at tariff rates? The service performed is principally switching service. The expense of recording the weights of the cars is relatively small.

Answer. To account No. 143, "Miscellaneous."

CASE 148.

Query. When lighterage service is provided for under the tariff rate under which freight moves over the carrier's rail line, shall any revenue from the lighterage be credited to the water-transfer revenue accounts?

Answer. No. The revenue accounts for water transfers are intended to include merely revenue upon the basis of tariff rates covering only water-transfer service.

CASE 149.

Query. A carrier leases a part of the railroad which it operates. To what account shall be credited the rent received for the exclusive use of a dwelling house located upon the right of way of the leased line?

Answer. To account No. 510, "Miscellaneous rent income."

CASE 150.

Query. A carrier rents a part of its terminal station for use as a warehouse and furnishes electrical power for use of the tenant. To what account should be credited the compensation received?

Answer. If the compensation received is not based on distinct charges for rent of the facility and for the power furnished, and the quantity of power furnished is relatively small, the credit shall be to account No. 142, "Rents of buildings and other property." Only the proportion assignable as rent otherwise shall be credited in this account and the remainder shall be credited to account No. 141, "Power."

CASE 151.

Query. A carrier operates restaurant, billiard and pool, bathing, and barber service for the benefit of its employees. In what accounts shall the revenues and the expenses of the service be included?

Answer. The revenues shall be included in account No. 132, "Hotel and restaurant," and the expenses in account No. 442, "Hotels and restaurants."

CASE 152.

Query. To what account shall be credited the revenue derived under specific tariff rates for heating cars containing vegetable shipments?

Answer. To account No. 143, "Miscellaneous."

CASE 153.

Query. In what accounts shall be included the revenues and expenses of stock pens at stations, maintained for the feeding, watering, and resting of stock in transit, as required by law?

Answer. The revenue shall be credited to account No. 143, "Miscellaneous"; the expenses of maintenance shall be charged to account No. 227, "Station and office buildings"; and the expenses of operation shall be charged as may be appropriate to account No. 373, "Station employees," or to account No. 376, "Station supplies and expenses."

CASE 154.

Query. To what account shall be credited the revenue, derived under specific tariff rates, from transferring freight from narrow to standard gauge cars?

Answer. To account No. 143, "Miscellaneous."

CASE 155.

Query. What is the correct accounting for the revenues and expenses of coal wharves used for transferring coal from cars to boats, the revenue being derived from operations such as lifting coal from vessels, placing coal in cars, placing coal on wharves for storage and later loading into cars, and from charges for storage on wharves? This revenue is based upon specific charges. The service is not provided for in the tariff rates for the transportation of coal.

Answer. The revenue derived from storage shall be included in account No. 135, "Storage—Freight," and the remainder shall be included in account No. 143, "Miscellaneous." The cost of maintaining the wharves shall be included in account No. 243, "Coal and ore wharves," and the expense of operating them shall be included in account No. 375, "Coal and ore wharves."

CASE 156.

Query. A steam railroad company operates a street car line. What is the correct accounting for the revenues and expenses of the service?

Answer. The revenues from transportation service shall be included in the appropriate primary accounts under general account I, Transportation—Rail Line; the incidental revenue in the primary accounts under general account III, Incidental.

The expenses of operation shall be included in the appropriate primary accounts under general accounts I, Maintenance of Way and Structures; II, Maintenance of Equipment; III, Traffic; IV, Transportation—Rail Line; and VII, General.

If the carrier desires to determine the revenues and expenses of the specific operation, subprimary accounts may be set up in accordance with the order promulgating the Classification of Operating Revenues and Operating Expenses.

CASE 157.

Query. To what account shall be charged the cost of repainting switch stands and repairing bumping posts?

Answer. To account No. 216, "Other track material."

CASE 158.

Query. Road A maintains and operates a water station. Water is supplied from this station to A's train locomotives and to the train locomotives of Road B. B operates jointly with A a portion of A's tracks, and reimburses A upon a train-mile basis for a portion of the cost of maintaining and operating the water station. What is the correct accounting for the expenses of maintaining and operating this station?

Answer. A shall charge the entire cost of maintenance to account No. 231, "Water stations." The portion of the maintenance expenses borne by B shall be included in the accounts for maintaining joint tracks, yards, and other facilities. Each road shall charge its proportion of the expenses of operating the station to account No. 397, "Water for train locomotives." A has the option of including the total expense of operation in a clearing account or of clearing B's proportion of the expenses of operation through account No. 397, "Water for train locomotives."

CASE 159.

Query. To what account shall be charged expenses on account of personal injuries which a storehouse employee suffered while engaged in unloading a carload of lumber?

Answer. In case the lumber which was being unloaded was for maintenance of way and structures, the expense shall be charged to account No. 274, "Injuries to persons"; if for maintenance of equipment, the charge shall be to account No. 332, "Injuries to persons"; if for temporary grain doors, dunnage boards, sugar strips, etc., charge to account No. 420, "Injuries to persons."

CASE 160.

Query. To what account shall be charged insurance premiums and taxes on storehouse material stock?

Answer. Premiums for insuring maintenance-of-way material stock shall be included in account No. 275, "Insurance," and those for maintenance-of-equipment material stock to account No. 333, "Insurance." In case the premiums are for insuring general store material stock which is designed both for maintenance of way and structures and for maintenance of equipment the premium shall be equitably apportioned between the above-mentioned accounts. Taxes upon store material stock shall be included in account No. 532, "Railway tax accruals."

CASE 161.

Query. To what accounts shall be credited amounts received by a carrier for cleaning and oiling the passenger cars of a tenant company?

Answer. To the accounts to which were originally charged the cost of the labor expended and the material consumed in the work. (*See Case 53.*)

CASE 162.

Query. The amount received by a carrier in settlement under Master Car Builders' Association rules for one of its cars which was destroyed upon a foreign line was in excess of the original cost of the car. To what account shall the profit be credited?

Answer. To the appropriate equipment retirement account.

CASE 163.

Query. To what account shall be charged the wages of timekeepers who keep the time of shop employees and make up shop pay rolls and miscellaneous statements in connection therewith?

Answer. To account No. 301, "Superintendence."

CASE 164.

Query. To what account shall be charged the cost of repairs and renewals of tableware, silverware, linen, and kitchen utensils in dining cars?

Answer. To account No. 317, "Passenger-train cars—Repairs." (*See Case 140.*)

CASE 165.

Query. When ice, water, fuel, and lubricating material are supplied to sleeping cars which operate over a carrier's line and the cost of the material is borne by the carrier, to what account shall be charged the expense?

Answer. To account No. 402, "Train supplies and expenses."

CASE 166.

Query. To what account shall be charged a station agent's shortage in excess of the surety bond?

Answer. To account No. 411, "Other expenses."

CASE 167.

Query. It is provided in account No. 388, "Enginehouse expenses—Yard," that in this account shall be included the expense of calling yard enginemen. Shall the expense of calling train enginemen be included in account No. 400, "Enginehouse expenses—Train"?

Answer. It shall be so included.

CASE 168.

Query. In what account shall be included the cost of renewing equipment such as tableware, table linen, kitchen utensils, and bedding, and cost of repairing furniture in hotels and restaurants the revenue from which is includible in account No. 132, "Hotel and restaurant"?

Answer. Such expenses shall be considered, as heretofore, running expenses, and shall be charged to account No. 442, "Hotels and restaurants."

CASE 169.

Query. To what accounts shall be charged plaintiff's court costs and also the carrier's own court costs in connection with personal injury cases, when such expenses are borne by the carrier?

Answer. The plaintiff's court costs shall be charged to the appropriate accounts for injuries to persons. The carrier's court costs shall be charged to account No. 454, "Law expenses."

CASE 170.

Query. To what account shall be charged fees to physicians for the physical exam nation of (*a*) employees, and (*b*) applicants for employment?

Answer. (*a*) To the account to which the pay of the employee is chargeable, exce when otherwise provided; (*b*) to the account to which the pay of the applicant wou be chargeable if employed, except when otherwise provided.

CASE 171.

Query. When such costs are borne by the carriers, to what account shall be charg the cost of internal-revenue stamps required under the act entitled "An act to increa the internal revenue and for other purposes," approved on October 22, 1914?

Answer. The cost of such stamps for use in connection with operation shall be co sidered as taxes. When required in connection with construction projects, the co shall be appropriately included in the road and equipment accounts. If in connecti with the issuance of evidences of debt, it shall be accounted for as debt expense.

CASE 172.

Query. When equipment-trust certificates which mature serially are sold in one l at a flat discount rate upon their entire par value, how shall the discount be amortize

Answer. The discount and expense shall be amortized through charges to Incom in such manner that the ratio between the amortization charges and the principal the equipment-trust certificates outstanding will be uniform for all fiscal periods.

For example: A company issues five equipment-trust certificates, one certifica maturing each year. The debt discount and expense is $450. The distribution the discount and expense should be as follows:

First year, principal outstanding $5,000. . . amortization charge (rate 3 per cent) $1
Second year, principal outstanding $4,000. . amortization charge (rate 3 per cent) 1
Third year, principal outstanding $3,000. . . amortization charge (rate 3 per cent)
Fourth year, principal outstanding $2,000. . . amortization charge (rate 3 per cent)
Fifth year, principal outstanding $1,000. . . amortization charge (rate 3 per cent)

CASE 173.

Query. To what account shall be charged special assessments for construction a maintenance of sewers adjacent to property the cost of which is includible in balanc sheet account No. 705, "Miscellaneous physical property"?

Answer. Assessments for the construction of such sewers shall be included in accou No. 705, "Miscellaneous physical property," and those for maintenance in accou No. 534, "Expenses of miscellaneous operations," provided the property is operat by the carriers; otherwise to account No. 511, "Miscellaneous nonoperating physic property."

CASE 174.

Query. A carrier borrowed equipment from a foreign line. To what account sha it charge amounts which it pays the foreign line for transporting the equipment its line?

Answer. To the appropriate income account "Rent for equipment." (*See Case 7*

CASE 175.

Query. To what account shall be charged the rent paid for work equipment used b a carrier in maintenance of way and structures?

Answer. To account No. 540, "Rent for work equipment." Rents paid or receiv for work or other equipment used in operation are income items. (*See section 2 the general instructions for the Classification of Income, Profit and Loss, and Gener Balance Sheet Accounts.*)

CASE 176.

Query. Under the condition that the expenses of maintaining equipment are borne jointly by all users of a joint terminal, how shall a carrier account for amounts received in reimbursement of taxes upon equipment used in the operation of the terminal?

Answer. When the taxes are separable from other taxes the amount received in reimbursement therefor shall be credited by the operating company to the appropriate account for rent from equipment. In case they are inseparable, the credit shall be to account No. 508, "Joint facility rent income." Correspondingly the debtor company shall charge these amounts to the appropriate account for rent for equipment or to account No. 541, "Joint facility rents," as may be appropriate.

CASE 177.

Query. When a carrier's funds are expended for construction purposes and interest charges are made to Road and Equipment under the provisions of account No. 76, "Interest during construction," to what accounts shall such interest be credited?

Answer. To account No. 515, "Income from unfunded securities and accounts."

CASE 178.

Query. A carrier's fiscal year end on December 31. In the early part of the calendar year the carrier issues short-term notes at a discount. How shall such discount be accounted for?

Answer. The carrier's accounts shall be kept in such manner that in its annual report to the Commission the discount assignable to the period before July 1 shall be charged to income account No. 547, "Interest on unfunded debt." The amount thus assignable may be, at the carrier's option, either the entire discount or an amount proportionate to the life of the notes up to July 1.

CASE 179.

Query. To what account shall be charged interest paid on deferred taxes?

Answer. To account No. 547, "Interest on unfunded debt."

CASE 180.

Query. The capital stock of a terminal company is owned in equal proportions by the tenant companies which jointly use the terminal. The net income of the terminal company each year is distributed equally between the tenant lines. What is the correct accounting for the amounts thus distributed?

Answer. Under the conditions stated the division of this income is in substance the issue of a dividend upon stocks owned by the proprietary companies, and shall be charged by the terminal company to account No. 553, "Dividend appropriations of income."

CASE 181.

Query. Under the terms of a contract for purchase of equipment the carrier is required to deposit with the trustees all amounts collected from insurance companies on trust equipment destroyed by fire, such amounts to be held by them until the property is replaced. In what account shall these deposits be carried?

Answer. The character of the deposits indicates the propriety of their inclusion in the group of balance-sheet accounts designated as "Investments." Such deposits shall therefore be charged to account No. 704, "Deposits in lieu of mortgaged property sold."

CASE 182.

Query. Are the provisions of account No. 726, "Property abandoned chargeable to operating expenses," applicable in the accounting for amounts chargeable to Operating Expenses in connection with the retirement of equipment?

Answer. They are not applicable.

CASE 183.

Query. What is the correct accounting for a carrier's investment in a spur track to an industry when the cost of ties in and grading for the tracks is borne by the industry?

Answer. If constructed upon the property of the carrier, the entire cost of the track shall be included in the carrier's road and equipment accounts, and the cost of the ties and grading assumed by the industry shall be included in account No. 778, "Other unadjusted credits," or in account No. 606, "Donations," as may be appropriate. Amounts thus credited to account No. 606, "Donations," shall correspondingly be charged to account No. 615, "Surplus appropriated for investment in physical property," and concurrently credited to account No. 779, "Additions to property through income and surplus."

If constructed upon the land of the industry, only the portion of the cost which is borne by the carrier shall be included in its road and equipment accounts. (*See paragraph 11, section 2, in the general instructions for road and equipment accounts.*)

CASE 184.

Query. Under the provisions of paragraph 8, section 1, of the special instructions for the classification of operating revenues, for convenience in accounting is it permissible for a carrier to include revenue overcharges, when discovered, in the agency accounts and to clear the unrefunded items to account No. 778, "Other unadjusted credits."

Answer. Overcharges may be temporarily carried in the agency accounts, provided they are transferred to account No. 778, "Other unadjusted credits," if unrefunded at the end of 60 days.

CASE 185.

Query. To what account shall be charged the cost of ties used in the construction of pit cattle guards?

Answer. If crossties directly supporting the rails, the charge shall be to account No. 8, "Ties." Otherwise the charge shall be to account No. 13, "Right-of-way fences."

CASE 186.

Query. In connection with the elimination of grade crossings a carrier purchases land immediately outside its right of way to provide slopes in a highway. How shall the cost of this land be accounted for—

(*a*) When the carrier retains title to the land, and

(*b*) When the carrier relinquishes the title to the land to the municipality?

Answer. The cost shall be charged—

(*a*) To account No. 2, "Land for transportation purposes."

(*b*) To account No. 15, "Crossings and signs." (*See Case 100.*)

CASE 187.

Query. To prevent another railroad from crossing its tracks at grade a carrier contributes an amount toward the cost of constructing the crossing of the other railroad above the grade of its own tracks. To what account shall be charged the amount of this contribution?

Answer. The amount of the contribution shall be charged by the carrier to account No. 15, "Crossings and signs."

CASE 188.

Query. To what account shall be charged the cost of a gasoline storage plant consisting of a storage tank and pump? The gasoline is for use in motor cars.

Answer. To account No. 20, "Shops and enginehouses."

CASE 189.

Query. To what account shall be charged the cost of a water pipe line constructed from shop water-supply system to passenger-car yards, for conveying water for car cleaning and for filling water tanks in passenger cars?

Answer. To account No. 20, "Shops and enginehouses."

CASE 190.

Query. In what accounts shall be classed a carrier's investment in railway material storehouses?

Answer. If the storehouses are located at shops and are devoted to the storage of material for maintenance of way and structures and for maintenance of equipment, the investment shall be included in account No. 20, "Shops and enginehouses." If not thus located, when devoted to the storage of material for maintenance of way and structures the investment shall be included in account No. 17, "Roadway buildings"; and when devoted to the storage of material and supplies for general purposes the investment shall be included in account No. 35, "Miscellaneous structures." If located at division or line terminal stations and devoted to the storage of station and train supplies the investment shall be included in account No. 16, "Station and office buildings."

CASE 191.

Query. A carrier purchases a number of section motor cars to replace handcars. Handcars are not included in its property investment accounts. To what account shall the motor cars be charged?

Answer. To account No. 37, "Roadway machines."

CASE 192.

Query. To what account shall be charged the cost of a ditching machine which is ordinarily operated while temporarily mounted upon a flat car?

Answer. To account No. 37, "Roadway machines."

CASE 193.

Query. To what account shall be charged the initial equipment of locomotives and cabooses with wrecking frogs when their installation is under a general plan?

Answer. To account No. 51, "Steam locomotives," and No. 53, "Freight-train cars," respectively.

CASE 194.

Query. To what account shall be charged the cost of medical services rendered for an employee injured while engaged in the construction of a new road?

Answer. To the account chargeable with the cost of the work in connection with which the employee was injured.

CASE 195.

Query. To what account shall be charged the cost of a law library installed by an operating carrier?

Answer. To account No. 16, "Station and office buildings."

CASE 196.

Query. To what account shall be charged amounts paid to trust companies for the registration and transfer of capital stock?

Answer. Payments in connection with the issue of capital stock are provided for in account No. 71, "Organization expenses." Payments in connection with the transfer of capital stock shall be included in account No. 460, "Other expenses."

CASE 197.

Query. What should be the accounting, under the provisions of Conference Ruling No. 87, for tariff charges for transportation over the carrier's own line of kitchen utensils, food, and other supplies for hotels and restaurants which serve the general public, the revenue from which is creditable to account No. 132, "Hotel and restaurant."

Answer. The revenue from such charges shall be credited to the revenue account appropriate for the service, and concurrently charged to expense account No. 442, "Hotels and restaurants."

CASE 198.

Query. Road A purchases fuel supply coal f. o. b. mines, which are located on Road B. B charges $1.10 per ton for transporting the coal to A's line, absorbing a charge of $2 per car for interchange switching service rendered by A. The mining company prepays B's freight charges and includes them in a specific charge against A. How shall A account for these freight charges?

Answer. A shall include in the cost of the coal the freight charges, less the switching charges absorbed. The switching charges shall be charged to account No. 110, "Switching."

CASE 199.

Query. One of a carrier's terminals is jointly operated for the benefit of its own business and that of a connecting line. Shall the amounts charged the tenant company for rent of locomotives used in the operation of the joint terminal be considered as a joint facility item and included by the lessor in account No. 508, "Joint facility rent income," or shall the item be considered as a hire of equipment item, and included in account No. 504, "Rent from locomotives"?

Answer. It shall be included in account No. 504, "Rent from locomotives."

CASE 200.

Query. How shall be classified the train-miles of a gasoline-electric motor combination freight and passenger car which transports passengers and less-than-carload freight?

Answer. In account No. 803, "Mixed-train miles."

CASE 201.

Query. A carrier owns a piece of real estate, the cost of which is included in account No. 705, "Miscellaneous physical property." The right to remove sand and gravel from this property is leased. To what account shall the carrier credit the compensation received under the lease?

Answer. Such portion of the amount received as represents the depletion in the value of the property due to the removal of the sand and gravel shall be credited to the investment account and the remainder shall be credited to income account No. 511, "Miscellaneous nonoperating physical property."

CASE 202.

Query. The accounting for small items of overcharges on freight shipments which are found to be unrefundable involves a considerable refinement in accounting. Is it permissible to carry these items in the revenue accounts until refund is actually made?

Answer. Revenue overcharges amounting to one dollar or less on any one shipment may be carried in the freight revenue accounts until refunded.

CASE 203.

Query. Under the effective classification, is it intended that the cost of repairs and renewals of switch lamps shall be included in account No. 389, "Yard supplies and expenses"?

Answer. It is the intent of the classification that only the cost of switch-lamp supplies, such as oil, wicks, etc., shall be included in this account. The cost of repairs and renewals of switch lamps is provided for in account No. 216, "Other track material."

CASE 204.

Query. What shall be the accounting for expenditures during construction for salaries of a traffic manager, a traffic superintendent, and for printing and compiling tariffs? These expenditures were made solely for the purpose and in advance of commercial operations, no commercial traffic of any kind having been transported during the period of construction.

Answer. Under the conditions set forth these expenditures shall be charged to a suspense account until the road begins operation, and shall then be cleared to the appropriate operating expense accounts.

CASE 205.

Query. Where grade crossings are eliminated through a joint arrangement between a carrier and Government, whereby the latter assumes a proportion of the cost, on what basis shall the carrier's charges to its property investment accounts be made?

Answer. The carrier shall include in its property investment accounts its proportion only of the expenditure includible in the accounts of the Classification of Investment in Road and Equipment. Consideration shall be given to credits to property accounts resulting from abandonment of property in connection with the joint project.

CASE 206.

Query. What shall be the accounting for employers' liability insurance premiums assessed under State laws and based on a percentage of the wages paid employees engaged in construction work?

Answer. Such premiums shall be regarded as a labor cost, chargeable to the work to which the labor is assigned.

CASE 207.

Query. Shall a proportion of the salaries and expenses of a construction engineer and his office force when engaged on maintenance work be charged to operating expenses?

Answer. When the services rendered by such officers and employees are merely incidental, no charge shall be made to operating expenses.

When members of a construction engineering force are specifically assigned or devote a material portion of their time to maintenance work, or an engineer in charge of maintenance and members of his force are specifically assigned or devote a material portion of their time to construction or work on additions and betterments, their salaries and expenses while so engaged shall be charged to the accounts appropriate to the work upon which they have been engaged or to which they have been specifically assigned. (*See Cases 10 and 22.*)

CASE 208.

Query. What account is chargeable with the cost of land outside the carrier's right of way, upon which is erected a storage warehouse includible in account No. 22, "Storage warehouses"?

Answer. The cost of the land shall be charged to account No. 2, "Land for transportation purposes."

CASE 209.

Query. In order to avoid the expense of eliminating grade crossings a carrier contributed a sum of money to relocate a short section of a turnpike which crosses its line several times. The turnpike as originally located will continue to be used for the accommodation of parties who otherwise would be shut off from access to the turnpike. To what account shall the carrier charge this contribution?

Answer. To road and equipment account No. 2, "Land for transportation purposes."

CASE 210.

Query. In order to secure a right of way to a new bridge a carrier removed another company's transmission line to another location. To what account shall this expense be charged?

Answer. To account No. 2, "Land for transportation purposes."

CASE 211.

Query. A carrier purchased right of way through a certain tract under an agreement with the owner of the property that within two years from the date of its franchise the carrier would substitute electricity for steam in the operation of its road. This substitution was found impracticable and a certain amount was paid the former owner of the land as a release from all damages claimed for violation of the conditions of purchase. To what account shall this payment be charged?

Answer. This payment shall be regarded as additional cost of the land and shall be charged to account No. 2, "Land for transportation purposes."

CASE 212.

Query. In the course of construction Road A has occasion to cross the tracks of Road B. The tracks of the latter company are slightly higher than the proposed grade of the former and it is finally decided to construct the crossing at grade. Road A agrees to lower the grade of Road B, to relay and reballast its tracks and reconstruct a highway crossing which lies entirely upon the property of Road B. The entire expense of the work is borne by Road A and included in its property investment account. What primary accounts shall be charged with the cost of the work?

Answer. The entire cost of the work shall be included in account No. 2, "Land for transportation purposes," as a part of the cost of acquiring the right of way.

CASE 213.

Query. A local improvement association issued a note in payment for land which it donated to a railway company for a building site. The site was donated upon condition that the company would erect shops thereon. Not being able to undertake the construction of the shops immediately upon the donation

of the land, the carrier has agreed to pay the interest on the note until such time as construction is actually commenced. To what account shall such interest be charged?

Answer. The amount of interest paid shall be carried in a suspense account until the final disposition has been determined upon. If the condition under which the donation was made is fulfilled, interest payments shall be charged to road and equipment account No. 2, "Land for transportation purposes." If the conditions are not fulfilled and the plan is abandoned, the amount of interest shall be transferred to profit and loss account No. 621, "Miscellaneous debits."

Until the actual fulfillment of all the conditions, the land should not be considered as a donation, but the value of the property shall be debited and credited to appropriate suspense accounts included respectively in balance sheet accounts No. 727, "Other unadjusted debits," and No. 778, "Other unadjusted credits."

CASE 214.

Query. To what account shall be charged the cost of building towers to carry an electric power company's wires over the tracks of a carrier?

Answer. Their cost shall be charged to account No. 15, "Crossings and signs."

CASE 215.

Query. A carrier operating through a public street under its franchise is required to bear the expense of paving between its tracks, the paving including several highway crossings. What distinction shall be made in distributing the cost of the work between road and equipment accounts No. 15, "Crossings and signs," No. 36, "Paving," and No. 39, "Assessments for public improvements"?

Answer. As the cost of the work is borne by the carrier solely because of its occupancy of the street, the entire cost of the initial paving shall be included in account No. 36, "Paving." The paving at crossings in this connection is incidental and its cost shall not be separately accounted for.

CASE 216.

Query. To what accounts shall be charged expenditures incurred in installing racks to support tanks containing hydrocarbon for snow-melting purposes, and in building a railing at a switch stand on a steep embankment for the protection of trainmen?

Answer. When these racks are installed primarily in connection with the removal of snow from station platforms or station grounds their cost shall be charged to road and equipment account No. 16, "Station and office buildings"; if installed primarily in connection with the removal of snow from tracks or switches, to road and equipment account No. 17, "Roadway buildings." Cost of building railing at a switch stand should be charged to road and equipment account No. 35, "Miscellaneous structures."

CASE 217.

Query. To what account under the Classification of Investment in Road and Equipment shall be charged the cost of a building used for storage of supplies for both roadway and equipment maintenance purposes and the expenditures for furniture and fixtures necessary to equip it for such use?

Answer. If the use of the building for either one of the two purposes greatly predominates and renders insignificant its use for the other purpose, the cost of the building and the furniture and fixtures necessary to equip it for use shall be charged to account No. 17, "Roadway buildings," or account No. 20, "Shops and enginehouses," as indicated by the principal use mentioned. If not used for either purpose to the predominant extent referred to, the cost of the building and furniture and fixtures necessary to equip it shall be charged to account No. 35, "Miscellaneous structures." (*See Case 190.*)

CASE 218.

Query. To what account shall a carrier charge the cost of its installation of a tie-treating plant?

Answer. To account No. 17, "Roadway buildings."

CASE 219.

Query. A carrier maintains and operates a number of battery-charging plants installed in distinct buildings at various terminals and enginehouses for the purpose of charging storage batteries placed on locomotives to provide current for electric headlights. To what account shall the investment in these plants be charged and how shall the expenses of maintenance and operation be classified?

Answer. The investment in this property shall be charged to accounts No. 20, "Shops and enginehouses," and No. 44, "Shop machinery." The cost of maintaining the buildings shall be charged to account No. 235, "Shops and enginehouses," and of maintaining the boilers and machinery to account No. 302, "Shop machinery." The expense of operation shall be equitably apportioned between accounts No. 387, "Other supplies for yard locomotives," and No. 390, "Other supplies for train locomotives."

CASE 220.

Query. In what account shall be included the cost of constructing pipes which are used for conveying shavings from woodworking machines in shops to the point at which they are disposed of?

Answer. The cost of constructing such pipes shall be included in account No. 20, "Shops and enginehouses."

CASE 221.

Query. To what account shall be charged the cost of a building used for the production of oxy-acetylene gas, which is piped to various units comprising a shop layout?

Answer. The cost of the building shall be charged to investment in road and equipment under account No. 25, "Gas producing plants."

CASE 222.

Query. By the terms of an agreement between a railroad company and a telegraph company it is provided that the railroad company shall furnish the labor and the telegraph company the material required to construct, maintain, and operate a telegraph line along the railroad company's right of way. To what account shall be charged the railroad company's expenditures in connection with the construction of the telegraph line?

Answer. The railroad company's proportion of the cost of labor furnished to construct the original telegraph line shall be charged to road and equipment account No. 26, "Telegraph and telephone lines." (*See Case 223*)

CASE 223.

Query. To what account shall be charged the expenditures in connection with the installation of cross arms on poles owned by a telegraph company for the accommodation of the railway company's telephone lines? Under the agreement the entire cost of installation is borne by the railway company, but title to one-half of each cross arm installed is vested in the telegraph company.

Answer. As the entire expense of the installation is assumed by the railroad company, even though it acquires but one-half ownership in the cross arms, such expense shall be regarded as the railroad company's interest in the investment and charged to account No. 26, "Telegraph and telephone lines." In this connection, see the last paragraph of section 2 of the general instructions contained in the Classification of Investment in Road and Equipment, which provides that the carrier's proportion only of the cost of joint projects shall be included in the accounts of that classification. (*See Case 222*).

CASE 224.

Query. To what account shall be charged the cost of a well containing several pumps, the water from which is used solely in a power plant?

Answer. The cost of the well shall be charged to account No. 29, "Power plant buildings." The cost of the pumps shall be charged to account No. 45, "Power plant machinery."

CASE 225.

Query. To what account shall be charged the cost of installing lighting systems in switching yards?

Answer. The cost of overhead wires, insulators, and connections shall be charged to account No. 32, "Power distribution systems"; the items of construction enumerated in the text of account No. 33, "Power line poles and fixtures," shall be charged accordingly. The cost of electric lamps, globes, and reflectors, if they be used for lighting yards, shall be charged to account No. 35, "Miscellaneous structures." If they be used for lighting buildings, the cost shall be charged to the account represented by the building served.

CASE 226.

Query. To what account shall be charged underground conduits used for carrying electric light and power wires for general purposes not in connection with electric railway operations?

Answer. The cost of underground conduits in connection with power transmission and power distribution systems shall be included in account No. 34, "Underground conduits," whether the power conducted is for the propulsion of trains or for general purposes.

CASE 227.

Query. To what account shall be charged the cost of oak blocking and wedges for rerailing equipment?

Answer. The cost of first equipping work or other equipment with blocking and wedges for rerailing equipment shall be charged to the appropriate equipment accounts under investment in road and equipment.

The cost of renewals shall be charged to operating expense accounts Nos. 326, "Work equipment—Repairs," 387, "Other supplies for yard locomotives," 399, "Other supplies for train locomotives," or 402, "Train supplies and expenses," as indicated by the class of equipment supplied.

Wrecking frogs and wrecking wedges supplied to yards should be charged to operating expense account No. 389. "Yard supplies and expenses." (*See Case 193.*)

CASE 228.

Query. How may assessments chargeable to account No. 39, "Assessments for public improvements," be distinguished from those chargeable to account No. 532, "Railway tax accruals"?

Answer. Amounts chargeable to account No. 39, "Assessments for public improvements," are restricted to assessments which apply to defined areas within taxing districts and are based upon specific benefit to property from the construction of public improvements. Any proportion of the cost of such improvements which is included in the general tax levy for a regular taxing district shall be included in the appropriate tax account in Income.

CASE 229.

Query. To what account shall be charged an amount paid in the compromise of a suit filed jointly by a municipality and a paving company against a carrier for an assessment for paving a street adjacent to railway property? To what account shall be charged the court costs which were paid by the carrier?

Answer. The amount paid in the compromise of the suit shall be charged to account No. 39, "Assessments for public improvements." The court costs shall be charged to account No. 454, "Law expenses."

CASE 230.

Query. While a carrier's line was under construction it conducted commercial operations which made necessary certain expenditures for maintenance of track. To what account shall be charged this cost of maintenance?

Answer. When commercial operations are conducted over a line under construction the cost of track maintenance during the construction period shall be charged to account No. 40, "Revenues and operating expenses during construction."

CASE 231.

Query. To what account shall be charged the cost of portable buildings used in construction work?

Answer. The cost of such structures shall be charged to the construction work in connection with which the expenditure is incurred. If not thus assignable, their cost shall be charged to account No. 43, "Other expenditures—Road."

CASE 232.

Query. In what account shall be included a carrier's investment in apparatus for a testing laboratory?

Answer. The cost of the initial equipment of laboratory apparatus shall be included in account No. 44, "Shop machinery." The cost of repairs and renewals shall be included in account No. 302, "Shop machinery."

CASE 233.

Query. A carrier has purchased a considerable number of beet racks to be used on its cars during the beet shipping season. These racks are not for temporary use. They cost $125 apiece, are substantial in structure, and form part of the company's permanent equipment, being stored between seasons. Shall their cost be charged to operating expense account No. 402, "Train supplies and expenses," or to road and equipment account No. 53, "Freight-train cars"?

Answer. As these racks are not of the type of temporary car fitting, but are permanent equipment, their cost shall be charged to account No. 53, "Freight-train cars," under a subaccount, if desired, and depreciated under rules applying to equipment.

CASE 234.

Query. To what account shall be charged investment in locomotives permanently withdrawn from commercial service and assigned to shop or storehouse switching service?

Answer. Investment in locomotives permanently withdrawn from commercial service and assigned to switching service at shops or storehouses shall be charged to account No. 57, "Work equipment."

CASE 235.

Query. To what accounts shall be charged the initial cost and the cost of maintaining motor cars used in "hump" yards for transporting car riders between different parts of the yards?

Answer. The initial cost of cars shall be charged to account No. 57, "Work equipment." The cost of maintenance shall be charged to account No. 326, "Work equipment—Repairs."

CASE 236.

Query. To what account shall be charged the cost of farm machinery and live stock for a demonstration farm operated by a carrier?

Answer. To account No. 58, "Miscellaneous equipment." (*See Case 142.*)

CASE 237.

Query. To what account shall be charged revenue overcharges previously written off through account No. 605, "Unrefundable overcharges," and later refunded.

Answer. To account No. 605, "Unrefundable overcharges."

CASE 238.

Query. What is the correct accounting for the cost of adding, calculating, and typewriting machines purchased—

(*a*) To replace equipment charged to property account;

(*b*) To replace similar equipment, the cost of which was originally charged to operating expenses; and

(*c*) As the initial equipment of a road in operation?

Answer. Such expenditures shall be charged as follows:

(*a*) To the stationery and printing accounts in Operating Expenses appropriate for the departments making use of the machines.

(*b* and *c*) To the road and equipment accounts to which is chargeable the cost of the buildings of the class in which the machines are used.

Charges to property investment as additions under the provisions of this case are conditioned on the understanding that a satisfactory register is maintained to enable the proper distinction to be made between additional equipment and renewals or replacements. (*See Case 141.*)

CASE 239.

Query. What disposition shall be made in a carrier's accounts of other carriers' proportions of overcharges assumed under the operation of the rules of the Freight Claim Association which establish a voucher minimum of $1.

Answer. Proportions of overcharges due from foreign lines assumed in settlement of claims because less than the voucher minimum of $1 shall be adjusted through the revenue accounts.

CASE 240.

Query. A carrier's baggage storage tariffs provide that charges shall be assessed at the rate of 25 cents for the second 24 hours or fraction thereof, and 10 cents for each succeeding 24 hours or fraction thereof. The laws of the different States governing the sale of unclaimed baggage provide that it shall not be disposed of in less than variously specified periods. In one State, for example, the period prescribed is three months. In actual practice, however, baggage is held for a year, resulting in storage accruals of from $30 to $40 on every piece. The proceeds from sales average $1.50 a piece. Is it permissible to accrue storage revenue only for the time carrier is required by law to hold the baggage subject to claim?

Answer. Under the assumption that the retention of this baggage beyond the time the carrier is required by law to hold such property is for the convenience of the carrier only, there is no objection to discontinuing storage accruals after that date provided the baggage is actually sold as unclaimed.

CASE 241.

Query. A carrier has an arrangement with several electric railways that parallel its tracks for a considerable distance, whereby both passengers and freight originating at or destined to intermediate points that are common to both companies are received at or delivered to these points by the electric railways and the necessity avoided of stopping through trains or providing local trains for the accommodation of this traffic. The electric carriers concur in the tariffs upon which the transportation charges are assessed. In lieu of dividing the tariff rates with the electric railways to compensate them for the service they perform they are paid certain fixed monthly payments. To what account shall such payments be charged?

Answer. The amount of these payments to the electric railways may properly be considered as an ordinary division of the revenue and credited by the electric railways to appropriate revenue accounts. Correspondingly, the charges of the steam carrier shall be to its revenue accounts.

CASE 242.

Query. A carrier has in effect a traffic arrangement with certain connecting lines which provides that on competitive freight the switching line will receive a division of the through rate of approximately $10 per car. This division of rate is separate from and in addition to the tariff switching charge. To what account shall such revenues be credited?

Answer. When the terminal service involves only a switching movement the revenue shall be credited by the terminal carrier to account No. 110, "Switching." When the terminal carrier performs a road service the entire amount received by it shall be credited to account No. 101, "Freight."

CASE 243.

Query. To what account shall be charged the pay of a car inspector who lubricates cars in addition to his other duties?

Answer. The pay of such an employee whose duties are specifically divided between inspection and lubrication of cars shall be apportioned, upon the basis of the time devoted, to the repair and lubrication accounts, but the pay of such an employee engaged in ordinary car inspection, whose service in lubricating cars is incidental to his regular duties, shall be included in the appropriate equipment repair account.

CASE 244.

Query. What shall be the accounting for amounts paid a terminal company for making and breaking up trains? The rates for this service are now in the terminal company's tariffs.

Answer. Amounts paid a terminal company for making and breaking up trains upon the basis of switching tariff rates shall be treated as a division of the revenue and charged to account No. 101, "Freight," account No. 102, "Passenger," or account No. 110, "Switching," as may be appropriate. When an empty car is moved otherwise than in connection with a loaded movement, the amount paid for switching shall be charged to account No. 411, "Other expenses." The revenue collected by the terminal company shall be credited to account No. 110, "Switching." (*See Case 27.*)

CASE 245.

Query. How shall revenue of a terminal line operating within a switching district and participating in the movement of through less-than-carload shipments from points on its line to points on connecting lines be classified? The service performed at a published tariff rate involves picking up, classifying, and reloading of less-than-carload shipments.

Answer. The revenue shall be included in revenue account No. 110, "Switching."

CASE 246.

Query. What is the correct accounting for revenue derived from the transportation in baggage cars of baby carriages, bicycles, dogs, etc., when the baggage tariff under which they are handled specifies that such articles will be checked and charges assessed at excess baggage rates for the gross weight of the articles transported? None of the articles form any part of the baggage allowance.

Answer. Such revenue shall be credited to account No. 108, "Other passenger-train." (*See Case 144.*)

CASE 247.

Query. To what account shall be charged the pay of electricians while engaged in trimming, cleaning, and adjusting arc lights in yards?

Answer. To account No. 377, "Yardmasters and yard clerks."

CASE 248.

Query. To what accounts shall be credited revenue received for the movement of a carnival company on the basis of specific amount for transportation

between two stations on a carrier's line, the cars of the carnival company being attached to a regular mixed train handling other passengers and freight?

Answer. Such amounts shall be equitably apportioned between account No. 108, "Other passenger-train," and account No. 112, "Other freight-train."

CASE 249.

Query. To what account shall be credited the amount collected from a lumber company, under the terms of a guaranty, by which the lumber company agreed to ship a certain amount of lumber during a specified period and is therefore obligated to pay a stated amount per thousand feet for the lumber it failed to ship?

Answer. The amount collected under the guaranty shall be credited to account No. 112, "Other freight-train."

CASE 250.

Query. Note A, applying to primary account No. 121, "Freight," under general account II, "Transportation—Water line," on page 19 of the classification for operating revenues of steam roads, provides that "Other carriers' proportions of revenue and of uncollectible undercharges paid by the carrier on account of errors in routing and billing shall be charged to operating expense account No. 432, 'Operation of terminals,'" while the text of account No. 433, "Incidental," under the subhead "Loss and Damage—Freight," requires that that account shall be charged with "* * * uncollectible freight charges paid other carriers on misrouted * * * shipments."

Is there not a conflict between these instructions?

Answer. The instructions in Note A under account No. 121, "Freight," shall be followed. The text of account No. 433, "Incidental," at the first favorable opportunity will be brought into harmony with the provisions of the note mentioned.

CASE 251.

Query. To what account shall be credited commissions received by a carrier through its station agents for selling accident insurance policies?

Answer. To account No. 133, "Station, train, and boat privileges."

CASE 252.

Query. To what account shall be credited amounts collected from passengers as penalties for loss of baggage checks?

Answer. Collections from passengers for lost baggage checks shall be credited to account No. 143, "Miscellaneous."

CASE 253.

Query. To what account shall a carrier credit amounts collected at the rate of $1 per day for use of its tracks by a land company for the storage of a private car?

Answer. Amounts collected for the privilege of parking or storing private or chartered cars on a carrier's tracks shall be credited to account No. 143, "Miscellaneous."

CASE 254.

Query. To what account shall be credited amounts collected under a tariff provision to the effect that a stated charge shall be made for inspection of shipments of perishable freight not moving under refrigeration, the inspection being performed at various points between point of origin and destination for the purpose of ascertaining whether or not shipments are in proper condition to continue movement?

Answer. Under the conditions indicated, the amounts so collected shall be credited to account No. 143, "Miscellaneous."

CASE 255.

Query. In what account shall be included the proceeds derived from the sale of waste paper and old records?

Answer. The amount of such proceeds shall be credited to account No. 143, "Miscellaneous."

CASE 256.

Query. To what account shall be credited a carrier's revenue, on basis of tariff charges, for trimming coal cargoes transferred from cars to vessels belonging to outside parties? To what account shall the expense of this service be charged?

Answer. The revenue from trimming such coal cargoes shall be credited to account No. 143, "Miscellaneous." The expense of the service shall be charged to account No. 375, "Coal and ore wharves." (*See Case 155.*)

CASE 257.

Query. It frequently occurs that a joint facility is used in yard and terminal operations of one carrier and in other than yard or terminal operations by the other carrier. In accounting for settlements between carriers covering the operation of joint facilities, is it permissible for each carrier to use the particular joint facility primary account under general account IV, "Transportation—Rail line," which is appropriate according to the use of the property?

Answer. This may be done.

CASE 258.

Query. To what account shall be credited an amount billed against a lessee company under a contract covering the use of joint facilities for the proportion of an assessment for public improvements?

Answer. The assessment paid upon property used jointly shall be charged by the owning company to the appropriate investment account, and the proportion paid by the user shall be charged by it to account No. 541, "Joint facility rents," a corresponding credit being made by the owner to account No. 508, "Joint facility rent income."

CASE 259.

Query. Roads A and B equally own a passenger station and the land on which located, the station being so situated that both roads use their own tracks for trains arriving or departing therefrom. The station is not a regular freight

or passenger terminal for either road. The station employees are carried on each road's pay rolls for 50 per cent of their salaries, but Road A furnishes all station supplies and charges B with 50 per cent of such expense. The expenses of the station supplies average about $30 per month. To what account shall be charged expenditures by Road A for supplies furnished the station?

Answer. The proportion of the expense assumed by B shall be credited by A and charged by B to the appropriate joint facility operating expense accounts.

CASE 260.

Query. In what account shall be included the cost of compiling statistics for use in connection with rate cases (*a*) when they are prepared by a carrier's regularly employed accountants; (*b*) when such statistics are compiled by specifically retained statisticians and accountants?

Answer. The cost of compiling such statistics shall be included (*a*) in the account to which the employees' labor is ordinarily charged; (*b*) in the same accounts which would have been charged if the labor had been performed by the regular employees of the carrier. This also applies to the amounts paid as overtime to regularly employed office forces.

CASE 261.

Query. In the operations of a small carrier a locomotive regularly performs both train and yard service, the latter comprising switching at junctions and terminals and consisting of spotting cars at industrial and warehouse tracks, picking up empties at terminals, delivering cars to connecting carriers at interchange tracks, and making up trains. Upon what basis should a segregation be made in the accounts for train and yard service to cover wages of trainmen and enginemen, and the cost of fuel, water, lubricants, and other supplies? Should the amount of time devoted to each service be the determining factor? If so, what disposition shall be made of excess time at terminals waiting for schedule time of leaving?

Answer. The expenses of a road locomotive engaged in switching only incidentally or at way stations should be classified as road service. When a locomotive regularly combines train service with yard service at junction points and terminals where regular switching service is maintained and the basis of compensation varies according to class of service the wages of trainmen and enginemen shall be divided between train expenses and yard expenses upon basis of compensation allowed for each class of service. Where no distinction is made as to compensation the apportionment shall be upon the basis of time devoted to each class of service. The cost of fuel, water, and other supplies shall be divided according to the mileage of each class of service.

CASE 262.

Query. At various industries on a carrier's line, the carrier furnishes the locomotives and performs all switching on industry tracks for its own benefit and also for that of connecting lines. Bills are rendered against the other carriers on the basis of cost of the service performed. How shall the compensation be accounted for?

Answer. The proportion which covers the cost of repairs to and depreciation of locomotives shall be cleared through joint-facility accounts, "Maintaining joint equipment at terminals." The proportion covering wages of trainmen and enginemen and the cost of fuel, stores, and other supplies for locomotives

shall be cleared through joint-facility accounts, "Operating joint yards and terminals." Any allowance for the rent of locomotives shall be included in the appropriate locomotive rent accounts in Income.

CASE 263.

Query. To what account shall be charged the cost of initial application of oil to roadbed?

Answer. The cost of the initial and all subsequent applications of oil to roadbed shall be included in operating expense account No. 202, "Roadway maintenance."

CASE 264.

Query. In the text of operating expense account No. 202, "Roadway maintenance," under the subhead, "Care of roadbed," appears the item "constructing and cleaning tile ditches, open ditches, and drains." What is the nature of the construction referred to?

Answer. The item in question does not relate to permanent improvements, but is intended to apply to work of a temporary character in connection with maintenance.

CASE 265.

Query. To what account shall be charged the amount of a judgment rendered in behalf of a former employee in a suit against a carrier for personal injuries sustained while entering its general office building? This injury was alleged to have been caused by a defective step. The injured person was a station employee at the time of the accident, but was not acting in the discharge of his duties when it occurred.

Answer. The amount of the judgment shall be charged to account No. 460, "Other expenses."

CASE 266.

Query. To what account shall be charged the rent of a house used for storing track tools?

Answer. Account No. 277, "Other expenses."

CASE 267.

Query. To what account shall be charged the cost of disinfecting work equipment?

Answer. The cost of disinfecting cars used in work service shall be included in the accounts chargeable with the supplies consumed in connection with the operation of work trains and shall be included in the cost of the work to which the service pertains.

CASE 268.

Query. How shall a carrier account for the cost of repairs to locomotives used as work equipment?

Answer. All repairs to locomotives whether assigned to transportation service or work service, to the extent that the repairs were occasioned by the use of such equipment in maintenance work, shall be charged to account No. 326, "Work equipment—Repairs." The apportionment of repairs to locomotives used both in transportation and maintenance service shall be upon an equitable basis.

CASE 269.

Query. Due to an error on the part of a station employee, an item of customs charges amounting to $50 was omitted from billing and is now found to be uncollectible. To what account shall this amount be charged?

Answer. To account No. 411, "Other expenses."

CASE 270.

Query. To what account shall be charged amounts paid to claimants in settlement of losses occasioned by errors of a company's operators in transmitting commercial messages, the telegraph line being owned and operated by the railroad company?

Answer. To account No. 411, "Other expenses."

CASE 271.

Query. To what account shall be charged payments for parcels lost while in the possession of a carrier's check room?

Answer. To account No. 419, "Loss and damage—Baggage," or No. 433, "Incidental," as may be appropriate.

CASE 272.

Query. To what account shall be charged the pay of telegraph operators located in general offices who render services to all departments having offices in the general office building?

Answer. To account No. 452, "Salaries and expenses of clerks and attendants."

CASE 273.

Query. To what account shall be charged amounts paid in settlement of injuries to persons occurring in connection with the operation of a pay-car train?

Answer. To account No. 460, "Other expenses."

CASE 274.

Query. A carrier has arranged for the payment of wages or salaries to employees who are members of the National Guard and have enlisted in the military service of the United States. How shall such allowances be charged during the period of enlistment?

Answer. Expenditures for the purposes stated shall be charged to account No. 460, "Other expenses."

CASE 275.

Query. To what account shall be credited rentals received from other companies for the use of roadway machines loaned to them?

Answer. If the roadway machines in question are permanently mounted for movement on carriers' tracks, the rentals shall be credited to account No. 507, "Rent from work equipment"; if not so mounted, rentals shall be credited to account No. 510, "Miscellaneous rent income."

CASE 276.

Query. To what account shall be credited rentals received by a carrier (*a*) for the use of portions of its right of way for cultivation purposes, (*b*) for use of a part of its right of way for a pole line of a telephone company?

Answer. On the assumption that there is no expense for maintenance of the property so used the rentals shall be credited to account No. 510, "Miscellaneous rent income."

CASE 277.

Query. To what account shall be credited fees charged for exchanging coupon bonds for registered bonds?

Answer. Fees collected by a carrier in connection with the exchange of coupon bonds for registered bonds shall be credited to account No. 519, "Miscellaneous income." (*See Case 284.*)

CASE 278.

Query. To what account shall be charged amounts assessed against carriers by a State for the maintenance of the office of State inspector of automatic couplers, air brakes, and automatic brakes? These assessments are collected from all carriers subject to the tax.

Answer. Such expenditures shall be charged to account No. 532, "Railway tax accruals." (*See Case 138.*)

CASE 279.

Query. To what account shall be charged a company's proportion of taxes paid by another carrier on buildings which are jointly owned and jointly used by both companies?

Answer. The proportion of taxes billed against the contributing carrier shall be charged by it to account No. 532, "Railway tax accruals."

CASE 280.

Query. A carrier is allowed a discount for the prompt payment of its taxes. To what account shall this discount be credited?

Answer. The accounting rules contemplate that the net amount of taxes paid shall be included in income accounts No. 532, "Railway tax accruals," No. 535, "Taxes on miscellaneous operating property," and No. 544, "Miscellaneous tax accruals." The discount realized, therefore, shall be credited to the account to which the taxes are chargeable. (*See Case 179.*)

CASE 281.

Query. A special tax was levied by a county to aid a carrier in the electrification and extension of its line. The carrier contributed its share of this special tax. To what account shall be credited the proceeds of the special tax received from the county? To what account shall the carrier charge its proportion of the special tax?

Answer. The total amount received by the carrier from the county as the proceeds of this special tax, being the amount expendable for electrification and extension, shall be credited to account No. 754, "Grants in aid of construction." The carrier's proportion of the tax shall be charged to income account No. 532, "Railway tax accruals."

CASE 282.

Query. To what account shall be charged uncollectible car demurrag charges? The debtor company has become bankrupt, and very little, if an of the amount due for demurrage will ever be collected.

Answer. Any items accrued under tariffs and creditable to revenue accoun Nos. 101 to 143, inclusive, when uncollectible, shall be charged to account N 533, "Uncollectible railway revenue."

CASE 283.

Query. In a personal injury case a carrier has a judgment rendered again it in a trial court, but takes an appeal from the verdict to a higher court, which the judgment is affirmed. Interest from the date of the judgment in th lower court was paid at the time of final settlement. To what account shall th interest be charged?

Answer. The interest shall be charged to account No. 547, "Interest on u funded debt."

CASE 284.

Query. To what account shall be charged amounts paid financial institution for their services in paying interest on a carrier's bonds?

Answer. The expenditures in question shall be charged to account No. 55 "Miscellaneous income charges." (*See Case 277.*)

CASE 285.

Query. To what account shall be credited amounts received in part paymen of an account which had previously been charged to account No. 533, "Uncol lectible railway revenue"?

Answer. To account No. 533, "Uncollectible railway revenue."

CASE 286.

Query. To what account shall be charged expenditures in connection with th examination of records and the securing of data as to traffic and other informa tion relative to the placing of a bond issue?

Answer. Such expenses shall be charged to a suspense account and subse quently cleared to funded debt expense if the bonds are issued; if not issued th expenses shall be charged to account No. 621, "Miscellaneous debits."

CASE 287.

Query. A carrier made application to a State industrial commission to carr its own risk under the provisions of a workmen's compensation law. The appli cation was granted on condition that securities of the value of $5,000 be de posited with and registered in the name of the State industrial commission. I accordance with this requirement $5,000 par value of certain municipal bonds due 1953, were purchased and deposited with the commission. The interest o the bonds, however, will not be retained in the fund, but will be collected b the commission and forwarded to the carrier. Shall the cost of the securitie be charged to account No. 711, "Special deposits"? To what account shall th income be credited?

Answer. Inasmuch as the text of account No. 711, "Special deposits," limit its use to deposits of a temporary character, the cost of the securities deposite

with the State industrial commission shall be charged to account No. 721, "Insurance and other funds." The income from the securities shall be included in account No. 516, "Income from sinking and other reserve funds."

CASE 288.

Query. In the Form of General Balance Sheet Statement for Steam Roads, First Revised Issue, effective June 15, 1910, it is provided that account B–15, "Other working assets," shall include "advanced charges billed out on waybills not reported received at the end of the month," and that account B–41, "Other working liabilities," shall include "prepaid charges billed out on waybills not taken into the month's accounts."

No provision is specifically made for these items in the Classification of General Balance Sheet Accounts, effective July 1, 1914. In what accounts under the effective general balance sheet classification shall these items be included?

Answer. They shall be included respectively in accounts No. 719, "Other current assets," and No. 768, "Other current liabilities."

CASE 289.

Query. Under the special instructions applying to the classification of operating revenues of steam roads it is provided that overcharges when discovered shall be credited to balance-sheet account No. 778, "Other unadjusted credits," while the text of account No. 761, "Miscellaneous accounts payable," requires that overcharges shall be included in "Miscellaneous accounts payable." Is there not a conflict in these instructions?

Answer. It is the intent of the classifications that revenue overcharges shall be credited to account No. 778, "Other unadjusted credits."

CASE 290.

Query. In computing train switching locomotive-miles is it permissible to accumulate switching at various way stations to obtain an aggregate of 30 minutes or more on which to base mileage? See rule 6 on page 12 of the Classification of Train-Miles, Locomotive-Miles, and Car-Miles for Steam Roads.

Answer. Train switching locomotive-miles shall be computed on a cumulative basis for a day's run or trip. If, for example, a locomotive devotes 15 minutes to switching at each one of seven stations during a day's run or trip, the total time, amounting to 1 hour and 45 minutes, shall be considered as 2 hours. If 15 minutes were consumed at each one of five stations the total time shall be considered as 1 hour.

CASE 291.

Query. A train run for the accommodation of shop employees also transports a number of revenue passengers who find it convenient to use this train. Is it permissible to include the mileage of such a train in account No. 804, "Special-train miles"?

Answer. The mileage of such a train shall be included in account No. 802, "Passenger-train miles."

CASE 292.

Query. The recording of small items of passenger overcharges which are found to be unrefundable involves much refinement in accounting. Is it per-

missible to carry such items in the revenue accounts until such time as refund is actually made?

Answer. Passenger overcharges amounting to $1 or less in any one case may be carried in the revenue accounts until refunded.

CASE 293.

Query. To what account shall be charged the cost of battery renewals and repairs to battery boxes on axle-lighted passenger equipment?

Answer. The cost of repairs to the battery boxes shall be charged to account No. 317, "Passenger-train cars—Repairs." The cost of renewals of negative and positive groups and acids shall be charged to account No. 402, "Train supplies and expenses."

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[fol. 329] PLAINTIFF'S EXHIBIT 6

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

In Equity No. —

WILSON CYPRESS COMPANY, WILSON LUMBER COMPANY OF FLORIDA, Petitioners,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, Defendants

Notice of Application for Injunction

To the Attorney-General of the United States; the Interstate Commerce Commission:

You will hereby take notice that the Petitioners herein will present to the Judge of the District Court of the United States for the Northern District of Georgia, Atlanta Division, at Atlanta, Georgia, an application for a temporary or interlocutory injunction or a temporary stay or suspension, restraining the United States of America and the Interstate Commerce Commission from enforcing a certain order entered by the Interstate Commerce Commission on the fifth day of July, A. D., 1932, and a certain amendatory order entered by the Interstate Commerce Commission on the twenty-eighth day of July, A. D., 1932, in Docket No. 18364, as specifically set forth in the Bill of Complaint herein, copy of which Bill is attached hereto, and that said application will be heard at Atlanta, Georgia, on the fourteenth day of September, 1932, at 10 o'clock A. M. or as soon thereafter as the Court may hear the same.

Dated this ninth day of September, 1932.

H. P. Adair, C. G. Ashby, C. E. Cotterill, August G. Gutheirn, R. H. Hill, J. V. Norman, Solicitors for Petitioners.

[fol. 330] Service by copy of the within Application and Notice is hereby acknowledged this ninth day of September, 1932.

Elmer B. Collins, Special Assistant to the Attorney General, for Attorney General of the United States. E. M. Reidy, for Interstate Commerce Commission.

[fol. 331] PLAINTIFF'S EXHIBIT 7

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

In Equity No. —

STATE OF FLORIDA AND EUGENE S. MATTHEWS, MAMIE EATON-GREENE, AND TUCKER SAVAGE, as and Constituting Florida Railroad Commission, Petitioners,

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, Defendants

Notice of Application for Injunction

To the Attorney General of the United States; the Interstate Commerce Commission:

You will hereby take notice that the Petitioners herein will present to the Judge of the District Court of the United States for the Northern District of Georgia, Atlanta Division, at Atlanta, Georgia, an application for a temporary or interlocutory injunction or a temporary stay or suspension, restraining the United States of America and the Interstate Commerce Commission from enforcing a certain order entered by the Interstate Commerce Commission on the fifth day of July, A. D., 1932, and a certain amendatory order entered by the Interstate Commerce Commission on the twenty-eighth day of July, A. D., 1932, in Docket No. 18364, as specifically set forth in the Bill of Complaint herein, copy of which Bill is attached hereto, and that said application will be heard at Atlanta, Georgia, at 10 o'clock A. M. September fourteen, 1932, or as soon thereafter as the Court may hear the same.

Dated this ninth day of September, 1932.

Cary D. Landis, Attorney General of the State of Florida. T. T. Turnbull, Special Counsel for Florida Railroad Commission, Solicitors for Petitioners.

[fol. 332] Service by copy of the within Application and Notice is hereby acknowledged this ninth day of September, 1932.

Elmer B. Collins, Special Assistant to the Attorney General, for Attorney General of the United States.
E. M. Reidy, for Interstate Commerce Commission.

[fol. 333] PLAINTIFF'S EXHIBIT 8

STATE OF GEORGIA,
County of Fulton, ss:

Before me personally appeared L. F. Shore, who being by me first duly sworn deposes and on oath says: That he is log superintendent of F. S. Buffum Company, Incorporated, a Florida corporation; that said F. S. Buffum Company, Incorporated, now operates and for more than a year last past has operated a lumber mill at Jacksonville, Florida; that the cost of said mill of said F. S. Buffum Company, Incorporated, exclusive of the ground upon which the same is located, was approximately Ninety Thousand Dollars. ($90,000.00), and that said mill is of substantially that value today as a going concern, but that if said mill is unable to operate it will be of no substantial value for any purpose; that said mill has been operating almost continuously at full capacity for more than one year last past, and during said period has been cutting approximately 700,000 feet of cypress and hardwood lumber each month, and that the same now is in operation at full capacity and continuing its cutting at the same rate; that the supply of logs for such milling operations has been obtained by rail over the Atlantic Coast Line Railroad and by truck, with some small portion of such logs having been received by water; that all of such logs have been hauled for distances of less than 170 miles to said lumber mill, approximately 65% of such logs so received by said mill having been transported over the Atlantic Coast Line Railroad in intrastate commerce in Florida under the Cummer Scale of rates, and substantially all of the other 35% of such logs received by such mill having been transported by [fol. 334] truck; that such logs so transported by rail have amounted to approximately one hundred (100) car loads

of logs each month; that approximately ninety (90) men are now and for more than a year last past have been employed in said lumber mill in its operations, and approximately one hundred twenty-five (125) men have been employed in the logging operations necessary to supply said lumber mill with said logs; that said F. S. Buffum Company, Incorporated, pays taxes on account of said mill and its operations in the State of Florida in the amount of approximately $3,000.00, annually; that if the order of the Interstate Commerce Commission made July 5th, 1932, in Interstate Commerce Commission Docket No. 18364, as amended by the order of July 28th, 1932, and the rates prescribed therein become effective, said F. S. Buffum Company, Incorporated, will be unable to pay the transportation charges for hauling any logs to said mill under the rates so prescribed, and said mill will be forced to discontinue operations and said men employed in the logging and milling operations in connection with said mill as aforesaid will be thrown out of employment and said mill plant will become substantially without value; that affiant is personally familiar with each of the foregoing facts and is making this affidavit of his own knowledge and at the direction of the President of said company.

L. F. Shore.

Sworn to and subscribed before me this 14 day of September, A. D. 1932. Irene Hill, Notary Public. Notary Public, Fulton County, Georgia. My Commission Expires Aug. 21, 1936. (Seal of Irene Hill, Notary Public, Fulton County, Ga.)

[fol. 335] PLAINTIFF'S EXHIBIT 9

STATE OF GEORGIA,
County of Fulton, ss:

Before me personally appeared Ralph Hunt, who being by me first duly sworn deposes and on oath says: That he is president of Hardwoods, Incorporated, a Mississippi corporation, duly authorized to do business in the State of Florida; that said Hardwoods, Incorporated, now operates and for more than five months last past has operated a lumber mill at Jacksonville, Florida, be-

ing the same mill property formerly occupied and operated by Putnam Lumber Company at Ortega, Florida; that the value of said lumber mill as a going concern is approximately $50,000.00 but that if said mill is unable to operate it will be of no substantial value for any purpose; that said mill has been operating continuously at full capacity for the five months last past, and during said period has been cutting approximately 400,000 feet of hardwood lumber each month, and that the same now is in operation at full capacity and continuing its cutting at the same rate; that said mill now has on hand orders for lumber which will require the operation of said mill at full capacity for more than six months in the future if said mill is able to obtain the same facilities for its log supply as exist and heretofore for the last five months have existed; that the supply of logs for such milling operations has been and is now being obtained by rail over the Atlantic Coast Line Railroad, and by truck and by water; that all of such logs have been hauled for distances of less than one hundred seventy (170) miles to said lumber mill; that during the last two months approximately 40% to 50% of such logs so received by said mill have been transported over the Atlan-
[fol. 336] tic Coast Line Railroad in intrastate commerce in Florida under the Cummer Scale of rates, and approximately 40% of such logs received by said mill have been transported by truck, and substantially 10% of such logs received by said mill have been transported by water; that such logs so transported by rail have amounted to approximitely twenty (20) car loads of logs a month; that approximately fifty (50) men are now and for more than five months last past have been directly employed in said lumber mill in its operations; that said lumber mill purchases its logs at various points in the State of Florida and numerous other men are likewise employed in the logging operations necessary to supply said logs to said lumber mill for its operations; that said lumber is manufactured at said mill solely for export from Jacksonville, Florida, to foreign countries; that if the order of the Interstate Commerce Commission made July 5th 1932 in Interstate Commerce Commission Docket No. 18364, as amended by the order of July 28th, 1932, and the rates prescribed therein, become effective, said Hardwoods, Incorporated, will be unable to pay the transportation charges for hauling such logs to

said mill under the rates so prescribed, except for distances within which it will be unable to purchase any substantial amounts of logs, and said mill will be forced to discontinue operations unless able to arrange for the transportation of a sufficient supply of logs by water to meet its milling demands; that it is at present impossible to determine whether arrangements can be made to transport such a supply of logs by water; that if said mill is forced to discontinue operations the aforesaid men employed in logging and milling operations in connection with said mill will be thrown out of employment and said mill plant will become substantially without value.

Halph Hunt.

Sworn to and subscribed before me this 14 day of September, A. D. 1932. Irene Hill, Notary Public. Notary Public, Fulton County, Georgia. My Commission Expires Aug. 21, 1936. (Seal of Irene Hill, Notary Public, Fulton County, Ga.)

[fol. 337] IN UNITED STATES DISTRICT COURT

In Equity. No. 690

[Title omitted]

PETITION FOR LEAVE TO INTERVENE—Filed Sept. 14, 1932

To the Honorable the Judges of said Court:

Now comes Atlantic Coast Line Railroad Company, and respectfully represents unto this Honorable Court as follows:

1

Petitioner is a common carrier by railroad, operating in the States of Florida, Georgia, Alabama, South Carolina, North Carolina, and Virginia.

2

The subject matter of this litigation concerns rates for services to be performed by petitioner and it is interested in the issues of this case.

Wherefore, petitioner prays that it be allowed to intervene in this cause.

Respectfully submitted, Carl H. Davis, W. E. Kay, Alston, Alston, Foster & Moise, Attorneys for Atlantic Coast Line Railroad Company.

[fol. 338] The foregoing petition of Atlantic Coast Line Railroad Company to intervene in the above stated cause is granted.

This 14 day of September, 1932.

Samuel H. Sibley, United States Circuit Judge. E. Marvin Underwood, U. S. District Judge. Louie W. Strum, U. S. District Judge.

[fool. 339] [File endorsement omitted]

[fol. 340] IN UNITED STATES DISTRICT COURT

No. 690

[Title omitted]

MOTION TO DISMISS AND ANSWER—Filed Sept. 14, 1932

To the Honorable the Judges of Said Court:

Now comes Atlantic Coast Line Railroad Company, as intervenor in the above mentioned cause, and with leave of the court, pleads to said cause.

1

MOTION TO DISMISS

Intervenor moves the court to dismiss the petition of the petitioners on the following grounds:

I. Said petition sets forth no sufficient reason why the orders of the Interstate Commerce Commission should be [fol. 341] enjoined. On the other hand it shows that the said orders and report of the Commission, as set forth in said petition should be sustained.

II. Because the facts set out in the report and found and established by the Commission therein on July 5, 1932

in its Docket No. 18364; in the case of Georgia Public Service Commission versus Atlantic Coast Line Railroad Company; which report and orders thereon are set out in the bill in this cause, show that there were constitutional right and warrant for the exercise of federal power which has been exercised by the Commission.

III. For that said bill and the exhibits thereto show that the Interstate Commerce Commission has made adequate findings of fact to sustain its said orders. The said findings of fact are shown by the petition and report to have been sustained by competent and sufficient evidence.

IV. For that the basic, essential and jurisdictional facts necessary to justify and sustain the act of the Commission have been made clearly to appear in the report and findings of the Commission; and the findings of fact made by the Commission were warranted and demanded by the evidence before the Commission.

[fol. 342] V. For that the bill shows that the Commission did make findings supported by evidence as to the essential facts as to Florida intrastate rates on logs and the revenue therefrom, as to the effect of the intrastate rates, both as existing and prescribed, on the income of the Atlantic Coast Line Railroad Company, which did justify the aforementioned orders.

VI. For that the findings of fact by the Commission as set out in its said report and orders were and are sufficient to require and justify the report and orders.

Wherefore, intervenor prays that the said bill be dismissed.

Intervenor answers bill of petitioners and for answer thereto says:

1

Intervenor admits the allegations of paragraphs 1, 2 and 3 of the bill.

2

Intervenor admits the allegations of paragraph 4 of said bill except that the rates mentioned have been voluntarily maintained by it, and except that the Cummer scale of rates

was and still is the legal and lawful rate for the transpor-
[fol. 343] tation of logs in intrastate commerce within the State of Florida, and that no change could be made without the consent of the Florida Railroad Commission.

3

Intervenor admits the allegations of paragraph 5 of the bill except so much thereof as states there never was any movement of logs over six feet in length in interstate commerce. As to the allegation of said paragraph as to movement of such logs after February 28, 1928, this intervenor has not sufficient information either to admit or deny.

4

Intervenor admits the allegations of paragraph 6 of said bill. In addition to the allegations thereof, this intervenor says that the petition filed by the Georgia Public Service Commission with the Interstate Commerce Commission on May 3, 1926, fully and adequately set up that the scale of rates then in force in Florida for intrastate transportation of logs over six feet in length, except walnut, cherry, and cedar, over the lines of Atlantic Coast Line Railroad Company, up to distances of 170 miles, was violative of section 13 of the Act to regulate commerce.

The aforementioned rates for the transportation of logs intrastate in Florida over the Atlantic Coast Line were known as the "Cummer scale" of rates and will be hereinafter referred to as such.

[fol. 344] 5

Answering paragraph 7 of said bill, intervenor admits it was served with the aforementioned complaint and that it answered the same, which answer is referred to for its contents.

6

Intervenor admits the allegations of paragraphs 8 and 9 of the bill.

7

Intervenor admits so much of the allegations of paragraph 10 of said bill as relates to the introduction of testimony. Intervenor believes it to be true that the Georgia

Public Service Commission in the course of the proceedings in this cause before the Interstate Commission, averred that the end sought to be achieved under the complaint was an extension of the then effective intrastate Florida log rates interstate into Georgia. This intervenor denies that the said case did not proceed as a revenue case or that the proceeding was "not a revenue case." This court in its previous decisions has held against this contention and the Supreme Court of the United States has likewise held against it. This statement in the pleading is [fol. 345] based on an oral statement made by the Chairman of the Georgia Commission in opposition to introduction of certain evidence, which objection was overruled. This court dealt with that fact in its decision rendered January 17, 1929 in the case of State of Florida versus United States, 30 Fed. (2) 116-120, saying:

"We do not think the oral statement attributed to the chairman of the Georgia Commission during the examiner's hearing, to the effect that he desired the lowering of the interstate rate, rather than the raising of the intrastate rate, either changed the issues or limited the action of the Interstate Commerce Commission. Neither the examiner nor the counsel in their subsequent arguments before the Commission understood that the claim of discrimination by the intrastate rates against interstate commerce had been eliminated." See also 282 U. S. 194.

9

Intervenor admits the allegations of paragraph 17 of said bill.

[fol. 346]

10

Answering paragraph 18 of said bill intervenor admits that the mandate of the Supreme Court of the United States in this cause came down and that the judgment of the Supreme Court was made the judgment of this court.

11

The allegations of paragraph 19 of said bill are admitted by intervenor except as to the contents of the motions of the Georgia Public Service Commission and Atlantic Coast Line Railroad Company to reopen the proceedings before

the Interstate Commerce Commission. Reference to said motions themselves is made for the contents of each of them; and also except as to the allegation that neither of said motions asserted that the level of the Florida intrastate rates was so low as to constitute a burden either upon interstate commerce or upon the revenue of the carrier—that allegation is denied.

[fol. 347]

12

The allegations of paragraph 20 of the bill are admitted except as to the contents of the reply to the motions referred to in paragraph 19. Said reply is referred to for the contents thereof.

13

Answering paragraph 21 of the bill this intervenor admits there was a hearing on the reopened proceedings before the Interstate Commerce Commission, at Jacksonville Florida, on June 10, 11, and 12, 1931, and a further hearing in Washington, D. C. on July 20 and 21, 1931.

This intervenor believes that the assertions attributed to the State of Florida in said paragraph are true, but says that they were then and are now incorrect as to matters of law.

The remainder of the allegations of said paragraph are denied by this intervenor except as to the allegation that the evidence was taken before an examiner for the Interstate Commerce Commission.

14

Answering paragraph 22 of said bill, intervenor denies the allegation that the Georgia Public Service Commission offered no evidence whatever to prove any revenue burden on interstate commerce caused by the application of the [fol. 348] Florida intrastate scale of rates; intervenor admits that the issue was in the proceeding and that a motion to dismiss that portion of the complaint which under such ruling was construed as alleging that said Florida intrastate scale of rates unduly burdened interstate commerce, was made by the intervenors in that case; and that the Interstate Commission denied that motion in its report and orders of July 5, 1932.

The allegations of paragraph 23 of said bill are denied by intervenor except as hereinafter stated:

Intervenor admits that a request was made upon it that it produce at the hearing which was held in Jacksonville, Florida on June 10-12, 1931, a statement of the number of cars, total tonnage, and charges applicable thereto covering transportation on logs of the tariff description involved in these proceedings, moving over a period of five years beginning February 1, 1926 and ending January 31, 1931. This demand by the Florida Railroad Commission was dated May 16, 1931.

A like demand was made by the other contestants dated May 14, 1931. The Atlantic Coast Line Railroad Company replied under date of May 21, 1931 in part as follows:

[fol. 349] "While we expect to submit at this hearing certain data concerning the movement of logs by the Atlantic Coast Line Railroad Company, and the revenue derived thereon, we regret that we are not in a position to compile and furnish the information requested in your respective letters. The records of the movement of logs during the yearly periods referred to by you have not been kept upon the basis of a separation of the interstate and intrastate movements, nor of the separation as between the several classes or length of logs handled. Neither during the periods referred to, nor at the present time, it is the practice of shippers to indicate in their bills of lading the class of logs offered for shipment, except in the case of cedar logs, upon which special rates have been applied. For these reasons, the underlying data necessary to compile the statements which you request is not available. In addition, it would not be practicable to compile this information within the time available even if it could be obtained by an examination of the original records of the company."

This demand was then submitted to the Interstate Commerce Commission by the Florida Commission and the various shippers on May 29, 1931. Reply was made thereto by the Atlantic Coast Line Railroad Company, setting up that it had no records from which that data could be compiled; and also that the subpœna requested was not for the

production of any document or paper then in the hands of the Coast Line Company but sought rather to compel it through subpœna to prepare and compile certain state-
[fol. 350] ments; and in addition the request related to a miscellaneous mass of information, very large in volume, with no indication whatever as to the extent, if any, of the relevancy thereof to any issue in the proceeding.

The Commission denied the request for that it was not in compliance with rule 13(b) of the rules of practice of the Interstate Commerce Commission for that it did not specify what books, papers or documents of the defendant (Atlantic Coast Line Railroad Company) were desired; and also because the application did not show that the books, papers or documents sought would be of service in the determination of the proceedings. The Interstate Commission then called attention to the fact that

"defendant expects to submit certain data concerning the movement of logs over its lines and the revenues derived therefrom and it may well be that such data will be sufficiently complete and satisfactory to all parties and to the Commission that additional data will not be deemed necessary."

The hearing proceeded on June 10, 11, 12, 1931 in Jacksonville and was adjourned to Washington, D. C. and further hearings were held on July 20, and 21, 1931. The Atlantic Coast Line Railroad Company submitted a great [fol. 351] deal of data by way of exhibits and oral testimony as to many phases of transportation of logs. No further demand was made upon the Coast Line Company for this data and no further effort was made by the petitioners to have the Commission issue a subpœna duces tecum covering the matters and things mentioned. Furthermore neither the notice or application for subpœna duces tecum stated that the matters and things required were within the power of the Atlantic Coast Line to furnish. The demand was not for the furnishing of certain papers, but was for the statement of a great deal of data which the Atlantic Coast Line had not made and which it could not make from its records.

16

Answering paragraph 24 of said bill, intervenor admits that the examiners for the Interstate Commerce Commis-

sion to whom the said proceeding had been assigned, submitted and served a tentative report. The statement as to the contents of said report is substantially correct. The remainder of the allegations of said paragraph is denied.

17

Answering paragraph 25 of said bill, intervenor admits the proceedings came on to be argued before the entire Interstate Commerce Commission on February 3, 1932; were argued on that date as stated in said paragraph.

[fol. 352] 18

Answering paragraph 26 of said bill, intervenor admits that the Interstate Commerce Commission on July 5, 1932 rendered its report and order in said proceeding, copy of which is set out as Exhibit A to the said bill. The contents of said report are shown by the report itself. The Commission did find that the Cummer scale of rates was and is and for the future would be unjustly discriminatory against interstate commerce and directed the removal of said discrimination by putting into effect a scale of rates which are the same, mile for mile, as the interstate scale of rates prescribed by the Commission for the movement of logs between Florida and Georgia. The conclusions of the Commission were supported by an intermediate findings, all of which are set out in said report. Said findings of the Commission are clear and unambiguous. The findings contained in said report were sufficient in all respects to sustain the Commission's order.

19

The allegations of paragraph 27 of said bill are admitted by intervenor. The rates prescribed by said order of July 5, 1932 are not now in effect. They will in due course go into effect September 15, 1932. The order speaks for itself.

[fol. 353] 20

The allegations of paragraph 28 of the bill are admitted by the intervenor. The order which was entered fixing the effective date of the order of July 5, 1932 as September 15, 1932 was not one which required notice or hearing on the

part of the Commission. The original order was made effective at once. The amendment thereto moved forward that effective date forty-seven (47) days from the date of the amending order which was July 28, 1932.

21

Answering paragraph 29 of the bill, intervenor admits that the petitioners filed a petition for reargument and reconsideration and that the same was denied by the Interstate Commerce Commission; and that certain other intervenors filed a like petition which was denied; that certain of the parties at interest filed a petition to postpone the effective date of the order of the Interstate Commission and that was denied.

22

Answering paragraph 30 of the bill, intervenor says that the allegations contained therein are statements of conclusions of law which this intervenor is not called upon to answer.

[fol. 354] 23

Answering paragraph 31 of said bill, intervenor denies the allegations thereof.

24

Answering paragraph 32 of said bill, this intervenor says that each and every allegation of each and every subpara-ph thereof is denied except as hereinafter stated.

Answering each subparagraph this intervenor says:

I. The facts in the record of this case before the Interstate Commerce Commission show that the Cummer scale of rates was unjust and unreasonable and that it was insufficient to pay a fair proportionate share of the cost of maintaining an adequate railway system.

II. The findings of the Interstate Commission are in exact accord with the Wisconsin case reported in 257 U. S. at page 563, and with the many case- which follow it; and in accordance with the rules laid down by the Supreme Court of the United States when this particular case was before that Court in the case of Florida v. United States, 282 U. S. 194, especially at pages 210 and 211.

[fol. 355] III. There was no conflict of evidence before the Interstate Commission as to the relation of the Cummer scale of rates to many other rates including the rates on interstate shipments of logs from points in Florida to points in Georgia where the circumstances and conditions were substantially the same; nor was there any conflict as to the relation of the Cummer scale of rates to the rates on logs in other territories served by the Atlantic Coast Line; nor as to its relation to the rates on the same kind of logs over the Seaboard Air Line Railway and the Georgia and Florida Railway in the State of Florida; nor was there any controversy as to the relation of the Cummer scale of rates to the rates on other products having similar transportation characteristics. The rates under the Cummer scale are less than half of the rates under the interstate scale fixed by the Commission for movement of logs between Florida and Georgia; they are from one-third to one-half of the rates fixed on brick, lime, cement, cullet and other like things.

There was much evidence given before the Interstate Commission as to this relationship by this intervenor and by the Georgia Public Service Commission. There was no evidence offered before the Commission conflicting with [fol. 356] that offered by this intervenor as to the mathematical ascertainment of the cost of handling logs intrastate in Florida, which ascertainment showed the cost of handling a car of logs to be substantially more than the revenue derived therefrom under the Cummer scale of rates.

This intervenor asserts that the evidence offered before and received by the Interstate Commission as to the unreasonableness of the Cummer scale of rates and as to its discrimination against interstate commerce was ample, conclusive and uncontradicted.

IV, V, VI, VII, and VIII. What has been said above answers each of these subparagraphs of paragraph 32 of said bill. In addition, this intervenor says that the exhibits and evidence of the witness Perrin showed the total movement of logs during the two years from February 8, 1929 to January 31, 1931 and the revenue derived therefrom. The evidence also showed the number of cars and number of tons of logs hauled for the years 1926-1930, both inclusive. It showed the total traffic in cars and tons

for and the log traffic for the years 1928, 1929 and 1930 and the per cent of log traffic to the total traffic for the system and for the State of Florida for those years. It also showed the total revenue, the log revenue and the per cent of log revenue to the total revenue for the years
fol. 357] 1928, 1929 and 1930. The per cent of log revenue to total revenue for 1928 was 1.9; in 1929 it was 1.5 and in 1930 it was 1.3; although the per cent of log traffic to total traffic in 1928 was 7.0; in 1929 5.0; and 1930 4.0.

The evidence before the Commission shows that if the Cummer scale of rates had been in effect during the years 1929 and 1930 uniformly on interstate and intrastate traffic through its system, there would have been a reduction in the revenue of the Coast Line of $675,381.21.

The evidence also showed that there were 21,913,000,000 feet of pine timber standing in Florida in July 1931.

The Interstate Commerce Commission's scale of rates on logs was in effect from February 8, 1929 to January 31, 1931. During that period 18,602 carloads of logs moved intrastate in Florida producing gross freight revenues of $571,508.94. If the Cummer scale of rates had been effective the movement of those 18,602 carloads of logs under it would have been $290,283.19 less than those actually collected.

IX. The Interstate Commerce Commission found that the Atlantic Coast Line Railroad Company lost money on each carload of logs handled by it under the Cummer scale of rates, and the evidence justified and required that find-
[fol. 358] ing; and therefore this log traffic did not bear its fair proportionate share of the cost of maintaining the railway system. The Commission found this was true even before anything was taken into consideration for taxes and for return on investment.

X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, and XIX. Each of these subparagraphs of paragraph 32 is denied, and what has been said above further answers the same. The Commission not only found that the rates under the Cummer scale were unreasonable, but also found that the traffic moving under the Cummer scale does not pay its "fair proportionate share" of maintaining this intervenor's railway system. It found that

"The record shows the low earnings of defendant; the low earnings on its log traffic as compared with its earnings on other low-grade commodities; the much lower earnings on its Florida log traffic than on its interstate log traffic; and the much lower level of the Cummer scale than of other scales applicable interstate and intrastate throughout the south."

It then found:

"These facts and the cost evidence clearly warrant the conclusion that the traffic moving under the Cummer scale does not pay its 'fair proportionate share' of operation and maintenance alone."

[fol. 359] The Commission meant by that that the log traffic moving under the Cummer scale of rates did not pay the cost of moving it even before taxes and return on investment were taken into consideration.

The reasonableness or unreasonableness of the rates was not found by the Commission and then left there, but was found by the Commission as an element for use in determining whether or not that traffic to which those rates were applicable, carried its fair proportionate share of the costs.

XX, XXI, XXII, XXIII, XIV, XV, XVI, XVII, XVIII, XIX, XXX, and XXXI, Intervenor denies the allegations of each of these subparagraphs of paragraph 32, except as hereinbefore admitted or which may be herein now admitted.

This intervenor says that rate comparisons were used by the Interstate Commerce Commission; that rate comparisons were proper for it to use; that rate comparisons are used in almost every case where the reasonableness of rates is tested; that the United States Supreme Court has recognized rate comparison as the proper method of ascertaining the reasonableness of rates, and especially is this true when the Interstate Commission makes an interstate rate for the same commodity in the same territory.

[fol. 360] The Commission did give effect to system revenue returns but it did so after it had at great length and with great care ascertained that the costs per unit in Florida are higher than the average for the entire road or system including Florida. It states that the costs per unit in

Florida do not include the cost of transporting non-revenue or company freight and do not include anything for joint facility and equipment rents. The Commission found:

"But since it is indisputable that unit costs are higher in Florida than elsewhere on the system, it seems clear that system unit costs may be used to find a cost that may be said to be less than the cost in Florida."

The Commission in making its findings, did not give effect to any matter or thing that was not in evidence in this case.

XXXII. The Supreme Court of the United States in the case before it reported in 282 U. S. held it was not necessary that there be an application to the Florida Railroad Commission. Besides, the Florida Railroad Commission, one of the petitioners in this cause, has been engaged in this litigation before the Commission and before the courts trying to sustain the Cummer scale of rates, maintaining [fol. 361] it was just and proper, for more than six years. To have applied to it would have been perfectly useless.

XXXIII, XXXIV, XXXV, XXXVI, XXXVII, XXXVIII, and XXXIX. Each of these subparagraphs of paragraph 32 is denied and what has been already said above further answers each of them.

25

Answering paragraph 33 of said bill, this intervenor admits that there were and have been and are now situated in close proximity to the railroad lines, many millions of feet of standing and uncut timber. This timber will run into billions of feet and that it has large value. If logs from said timber should move over the Atlantic Coast Line Railroad Company under the Cummer scale of rates, the aggregate loss to the Coast Line Company would be so great as to impair, if not destroy, its effectiveness as an instrument of commerce. The pine timber in Florida, because of the favorable soil and climatic conditions, reproduces itself with great rapidity; that is, with a rapidity greater than in nearly any other part of the United States and if that timber should continue to move under the Cummer scale of rates, the aggregate loss to Atlantic Coast Line Railroad Company would reach such great sums as

to be almost beyond estimate and would certainly work destruction to this intervenor as a common carrier by rail. [fol. 362] The other allegations of paragraph 33 of said bill are irrelevant and immaterial. The mills referred to in said paragraph were located at Tidewater, the timber once being about 169 miles from the point where the logs were turned over to this intervenor for hauling. The location of the mills so far from the timber was uneconomical to both the mill owners and to the carrier. The rates under the Cummer scale did not produce to the Coast Line a reward equal to the cost of rendering the service. The location of the mills so far from the timber required an outlay for transportation which was uneconomical to the mill owner.

All of the matters mentioned in this paragraph 33 were considered in the original hearing and by this Court in the previous hearing. This court dealt with that subject in the ninth paragraph of its decision rendered on January 17, 1929, reported in 30 Fed. (2) 116-121, which is referred to.

26

Answering paragraph 34 of said bill, this intervenor says that the allegations of said paragraph are unquestionably pleaded not as facts but simply as conclusions of law. The law as pleaded, to-wit: Section 1, Article 3 of the Constitution of the United States, deals with nothing but the [fol. 363] establishment of a judicial system. The Tenth Amendment which is referred to simply provides that the powers not delegated to the United States by the Constitution, nor prohibited by it to the States are reserved to the States respectively or to the people.

No conflict with either of those provisions has been brought about by the Interstate Commerce Commission in this proceeding.

27

Intervenor respectfully avers that this cause has been pending before the Interstate Commerce Commission and the courts for more than six years. The Interstate Commission has twice found that the rates under the Cummer scale are unjust and unreasonable. It has twice found that they are discriminatory against interstate commerce. Its

first finding was sustained by this court. The judgment of this court was set aside by the Supreme Court of the United States because the Interstate Commission did not make sufficient intermediate findings. It was not set aside because of lack of evidence.

After that the cause was reopened before the Interstate Commission and was tried again practically de novo, although all of the evidence in the previous case was before the Commission. The Commission reaffirmed its previous finding that the rates under the Cummer scale were unjust and unreasonable. It made intermediate findings in great [fol. 364] detail, some of which have been referred to herein and all of which are set out in the Commission's report of July 5, 1932.

The Commission found there was an interference with the accomplishment of the purpose of Congress because of a disparity of intrastate rates as compared with interstate rates and it proceeded to end that disparity by directly removing it; and it was specifically authorized so to do in the case of Florida v. United States, 282 U. S. at page 211, and it has been authorized so to do in many other cases by the Supreme Court of the United States, especially in the Wisconsin case and the New York Passenger case, both of which are referred to and approved by the Supreme Court in the Florida case which was the appeal to the Supreme Court from this Court in this particular case.

28

Intervenor avers that the Interstate Commerce Commission has carefully considered this subject and all of the evidence offered, and in compliance with the law has made its findings that the rates under the Cummer scale are unreasonable and discriminatory against interstate commerce; that they did not bear their fair proportionate share of the cost of operation and maintenance; that they did not pay the cost of rendering the service required to be rendered; all of which was amply justified and required by the evidence in this case.

[fol. 365] Wherefore, this intervenor respectfully prays that the prayers of petitioners be denied and that the order of the Interstate Commerce Commission complained of in

this cause be not enjoined but that the same be allowed to go into effect in due course.

Respectfully submitted, Carl H. Davis, W. E. Kay, Alston, Alston, Foster & Moise, Attorneys for Atlantic Coast Line Railroad Co.

[fol. 366] *Duly sworn to by J. W. Perrin. Jurat omitted in printing.*

[fol. 367] [File endorsement omitted.]

[fol. 368] IN UNITED STATES DISTRICT COURT

In Equity. No. 690

[Title omitted]

ANSWER OF INTERSTATE COMMERCE COMMISSION—Filed Sept. 14, 1932

The Interstate Commerce Commission, defendant in the above-entitled suit, hereinafter called the Commission, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the petitioners' bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering paragraphs 1, 2, and 3 of the bill of complaint, the Commission admits, for the purpose of this suit, that the allegations therein contained are true.

II

Answering paragraphs 4 to 11, both inclusive, of the bill of complaint, the Commission admits that Division 4 of the Commission made and entered the report and order dated August 2, 1928, referred to in paragraph 11, in a proceeding entitled Georgia Public Service Commission v. [fol. 369] Atlantic Coast Line Railroad Company, Docket No. 18364, 146 I. C. C. 717, and the Commission refers the

court to the text of said report and order for full, complete, and accurate information concerning the contents of said report and order and for a description of the proceedings before the Commission upon which said report and order were based.

III

Answering paragraph 12 of the bill of complaint, the Commission admits that the allegations therein contained are true.

IV

Answering paragraphs 13 to 16, both inclusive, of the bill of complaint, the Commission admits that bills were filed in this court to enjoin, set aside, and annul the aforesaid order of August 2, 1928, and that the court, specially constituted as required by statute, sustained the validity of said order and entered a decree dismissing the bills for want of equity. The opinions of the court are reported as State of Florida v. United States, 30 F. (2d) 116 and 31 F. (2d) 580.

V

Answering paragraphs 17 and 18 of the bill of complaint, the Commission admits that upon appeal to the Supreme Court of the United States the aforesaid decree of this court was reversed, Florida v. United States, 282 U. S. 194.

VI

Answering paragraphs 19 and 20 of the bill of complaint, the Commission admits that shortly after the decision of the Supreme Court annulling the aforesaid order of August 2, 1928, the Commission, upon petitions filed by complainant and defendant in the aforesaid proceeding, Docket No. 18364, reopened said proceeding, and thereafter issued [fol. 370] a report and order, dated July 5, 1932, a copy of which report and order are attached to and made a part of the bill of complaint as Exhibit A; that said report is published at 186 I. C. C. 157, and the Commission refers the court to said report and order for full, complete, and accurate information concerning the contents of said report and order and for a description of the further proceedings before the Commission upon which said report

and order were, and are, based; that at hearings in said proceeding after it was reopened as aforesaid a large volume of testimony and other evidence bearing upon the matters covered by said report and order was submitted to the Commission for consideration; that at said hearings and subsequently, both orally and in briefs filed in said proceeding, questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of the parties thereto by their counsel, whereupon the Commission determined said matters and entered and served upon the parties to said proceeding the aforesaid report and order of July 5, 1932; that said report and order included the Commission's findings of fact, decisions, conclusions, orders, and requirements in the premises, and that, upon the evidence aforesaid and upon the evidence submitted at the original hearings in said proceeding, and as shown in and by said report, the Commission made the findings and stated the conclusions upon which said order is based.

VII

Answering paragraph 21 of the bill of complaint, the Commission admits that the allegations therein contained are true.

VIII

Answering paragraph 22 of the bill of complaint, the Commission admits, as stated in its report on rehearing, 186 I. C. C. 157, at page 159, that at the further hearing the Florida interveners moved that the complaint should [fol. 371] be dismissed as to the issue whether the Florida intrastate rates cause unjust discrimination against interstate commerce, and that, for the reasons stated in said report, said motion to dismiss was denied.

IX

Answering paragraph 23 of the bill of complaint, the Commission admits that certain motions were made in the proceeding upon rehearing to require the Atlantic Coast Line Railroad Company to produce information showing the total volume of the Florida log traffic for a number of years prior to the date of the Commission's original order of August 2, 1928, and that the Commission denied said motions.

Further answering said paragraph 23 the Commission alleges that the findings and conclusions in said report of July 5, 1932, were and are, and that each of them was and is, fully supported and justified by the evidence submitted to the Commission in said proceeding as aforesaid.

X

Answering paragraph 24 of the bill of complaint, the Commission admits that after the final hearings in said proceeding the Commission's examiners made and issued a proposed report which was served upon the parties but alleges that said proposed report did not constitute the report of the Commission, and that the conclusions of the Commission differed in part from those of the examiners.

XI

Answering paragraph 25 of the bill of complaint, the Commission admits that the allegations therein contained are true.

XII

Answering paragraphs 26 and 27 of the bill of complaint, the Commission neither admits nor denies the allegations in said paragraph relating to the contents of the Commis- [fol. 372] sion's report of July 5, 1932, but refers the court to the text of said report itself and to the Commission's order of the same date.

XIII

Answering paragraph 28 of the bill of complaint, the Commission admits that on July 28, 1932, it issued a supplemental order in said proceeding, a copy of which is attached to the bill of complaint and made a part thereof as Exhibit B.

XIV

Answering paragraph 29 of the bill of complaint, the Commission admits that the allegations therein contained are true.

XV

Answering paragraphs 30 and 31 of the bill of complaint, the Commission denies that said report and order, as amended as aforesaid, are either arbitrary or unreasonable

or beyond the power of the Commission or invalid or unlawful.

XVI

Answering paragraph 32 of the bill of complaint, the Commission denies that said order of July 5, 1932, is unlawful for the reasons or for any of the reasons set forth in said paragraph.

Further answering said paragraph 32, the Commission alleges that in making said report and order of July 5, 1932, it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance, and condition called to its attention on behalf of the parties in said proceeding by their counsel.

The Commission further alleges that said order of July 5, 1932, was not made or entered either arbitrarily or unjustly; or contrary to the relevant evidence, or without evidence to support it; that in making said order the Commission did [fol. 373] not exceed the authority which had been duly conferred upon it, or exercise that authority in an unreasonable manner; and the Commission denies each of and all of the allegations to the contrary contained in the bill of complaint.

XVII

Answering paragraph 33 of the bill of complaint, the Commission denies the allegations contained in said paragraph, except the allegations that there have been and are situate in proximity to the railroad lines of said Atlantic Coast Line Railroad Company in the State of Florida many millions of feet of standing and uncut timber, and that at the time of the filing of said complaint by said Georgia Public Service Commission many persons and corporations were engaged in cutting said timber and transporting the logs so produced over the aforesaid lines of the Atlantic Coast Line Railroad Company a distance of 170 miles or less to lumber mills located in the State of Florida, and these allegations the Commission admits are true. The Commission particularly denies that the said order of July 5, 1932, will cause either irreparable damage or irreparable injury, as alleged in paragraph 33 of the bill of complaint, unless said order of July 5, 1932, is enjoined and set aside by the court.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the bill of complaint in so far as they conflict either with the allegations herein or with either the statements or conclusions of fact included in said report and order of July 5, 1932, which said report and order are hereby referred to and made a part hereof.

[fol. 374] All of which matters and things the Commission is ready to aver, maintain, and prove as this honorable court shall direct, and hereby prays that said bill of complaint be dismissed.

Interstate Commerce Commission, by J. Stanley Payne, Assistant Chief Counsel. Daniel W. Knowlton, Chief Counsel, of Counsel.

Duly sworn to by Patrick J. Farrell. Jurat omitted in printing.

[fol. 375] [File endorsement omitted.]

[fol. 376] IN UNITED STATES DISTRICT COURT

No. 690

[Title omitted]

TEMPORARY RESTRAINING ORDER—Filed Sept. 14, 1932

This cause came on to be heard this September 14th A. D. 1932, before the Honorable Samuel H. Sibley, Circuit Judge, the Honorable E. Marvin Underwood, District Judge, and the Honorable Louie W. Strum, District Judge, and it appearing to the Court and the Court finding that the bill of complaint herein was filed in this cause on to-wit, September 9th, 1932, the purpose whereof was and is to enjoin, restrain and annul an order of the Interstate Commerce Commission entered July 5th, 1932 as amended by said Interstate Commerce Commission July 28th, 1932, insofar as relates to intrastate rates in Florida, said order as amended as aforesaid having been entered by said Interstate Commerce Commission in that certain proceeding entitled Georgia Public Service Commission, complainant, versus Atlantic Coast Line Railroad Company, defendant,

and being Interstate Commerce Commission Docket 18364, and it further appearing to the Court and the Court finding that in due course the Honorable E. Marvin Underwood, Judge of the United States District Court for the Northern District of Georgia, Atlanta Division, did duly call to his assistance the Honorable Samuel H. Sibley, Circuit Judge, and the Honorable Louie W. Strum, District Judge, pursuant to Acts of Congress in such cases made and provided, [fol. 377] upon the request of the complainants in this cause, and the said cause was duly and regularly set by and before said Court constituted of said three Judges as aforesaid, to be heard on September 14th, 1932 at 10:00 o'clock A. M. upon application of the complainants for a temporary stay or suspension of said order of said Interstate Commerce Commission, and for a temporary restraining order and injunction restraining and enjoining the said order and the effect thereof, and it further appearing to the court and the Court finding that there are important questions of law and fact to be considered and determined in said cause and that unless the said order be temporarily enjoined and restrained that irreparable injury will result to the interested shippers within the State of Florida, and it also appearing from the sworn bill of complaint and from the affidavits of L. F. Shore and Ralph Hunt filed in said cause and submitted to this Court that irreparable damage will result to petitioners and the shippers of logs in Florida in that the operations of divers manufacturers of lumber will be substantially hindered delayed, and embarrassed and such manufacturers subjected to substantial loss and damage on that account, it is thereupon,

Considered, ordered and adjudged by the Court that the said order of the Interstate Commerce Commission dated July 5th, 1932, as amended by said order of July 28, 1932, as aforesaid, insofar as the same relates to intrastate rates in Florida, be and the same hereby is temporarily stayed and suspended until sixty (60) days from the date hereof or until the further order of the Court.

[fol. 378] In open court this the 14th day of September, A. D. 1932, at 6.07 o'clock p. m.

Samuel H. Sibley, Circuit Judge. E. Marvin Underwood, District Judge. Louie W. Strum, District Judge.

[fol. 379] [File endorsement omitted.]

[fol. 380] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

In Equity. No. 690

[Title omitted]

ANSWER OF UNITED STATES OF AMERICA—Filed Sept. 22, 1932

United States, one of the defendants in the above-entitled case, for answer to the bill of complaint filed therein against it answers and says:

I

United States admits the truth of the opening paragraph and of paragraphs 1, 2, 3, 4 and 5 of the bill, with these exceptions: (1) it says that the conclusion stated in the second subdivision of said paragraph 4 with respect to the laws of Florida is irrelevant and immaterial, and it neither admits nor denies the same; and (2) it says that the last subdivision of said paragraph 5 is also irrelevant and immaterial, and it neither admits nor denies the same.

[fol. 381] II

United States admits that the allegations stated and contained in paragraphs 6, 7, 8, 9, 10, 11 and 12 of the bill are true, with this exception: it denies that the second subdivision of said paragraph 10 contains a full or accurate statement of the averments of the Georgia Public Service Commission in said proceedings, or of the evidence introduced by it in said proceedings, and respectfully refers the Court to said complaint of said Georgia Commission and to its evidence in said proceedings, both of which have been introduced and now are a part of the record of evidence before this Court.

III

United States admits that the matters and things alleged in paragraphs 13, 14, 15, 16, 17 and 18 of the bill are substantially true.

IV

Answering paragraph 19 of the bill, United States admits that motions were filed by the Georgia Public Service

Commission and the Atlantic Coast Line Railroad Company with the Interstate Commerce Commission to reopen the proceedings before it after the Supreme Court had reversed the decree of this Court, but United States denies that said paragraph contains a full or accurate description of the allegations of said motions, and respectfully refers the Court to the full, complete text of said motions which are now a part of the record of evidence filed in this Court.

[fol. 382]

V

Answering paragraph 20, United States admits that petitioners filed replies to said motions substantially as alleged therein, and that on April 6, 1931, the Interstate Commerce Commission reopened said proceedings for further hearing.

VI

United States admits the allegations of paragraph 21 of the bill.

VII

Answering paragraphs 22 and 23 of the bill, United States denies the allegations thereof, except that it admits that the motions therein described were made to dismiss a portion of the complaint and to require the Atlantic Coast Line Railroad Company to produce certain statements with respect to the revenues produced from the transportation of logs in Florida, and that said Interstate Commerce Commission denied said motions and refused to require said Railroad Company to furnish said information; but United States denies that there is no evidence in the record before the Commission showing the amount of revenue received by said Railroad Company from its Florida intrastate traffic.

VIII

Answering paragraph 24, United States admits that the Commission's examiners prepared and served upon the parties a proposed report, but denies that any of the allegations in said paragraph 24 are relevant or material to the [fol. 383] validity of the Commission's order, for the reason that the examiners' proposed report is not the official act or order of the Commission and is not binding upon it or the parties to the proceeding.

IX

United States admits the allegations of paragraph 25.

X

Answering paragraph 26, United States admits that on July 5, 1932, the Interstate Commerce Commission rendered its report and order in said proceeding, and that a true copy thereof is attached to the bill as Exhibit A, but for answer to the remaining allegations of said paragraph, United States denies that they contain a full, accurate or complete statement of the matters and things set forth and stated in said report, and respectfully refers the Court to the full text of said report, attached as Exhibit A to the bill. United States denies each and every allegation and implication made and contained in or arising from the last sentence of said paragraph 26 of the bill.

XI

United States admits the allegations made and contained in paragraphs 27, 28, 29 and 30 of the bill.

XII

United States denies the allegations made and contained [fol. 384] in paragraphs 31, 32 and 33 of the bill, and denies that said order issued by the Commission on July 5, 1932, is invalid or unlawful for the reasons set forth in said paragraph 32, or for any of them, or for any other reason; and particularly denies the allegation in paragraph 33 that petitioners will suffer irreparable or other legal damage or injury if said order be not enjoined.

XIII

Answering paragraph 34 of the bill of complaint, United States admits that this Court is entitled to determine its own jurisdiction, and to determine from the facts in the record before the Commission whether the proceeding conducted by the Commission was one within the Commission's statutory authority, but United States denies that this Court has authority and that petitioners have a right to a trial denovo upon the question whether there was such a discrimination against interstate commerce caused by the

Florida intrastate rates as to justify the Interstate Commerce Commission in conducting the proceeding, and further denies that this Court is empowered to make any determination of fact, or to hear evidence with respect to the existence of discrimination.

Except as herein expressly admitted, United States denies each and every allegation made and contained in the bill of complaint, and each of the several paragraphs thereof.

Wherefore, having fully answered the bill of complaint, United States prays that the relief therein prayed be denied and the bill of complaint dismissed with costs to the peti- [fol. 385] tioners, and that it have the benefit of such other and further orders, decrees, or relief as may be just and proper.

Elmer B. Collins, Special Assistant to the Attorney General. Clint W. Hager, United States Attorney. John Lord O'Brian, the Assistant to the Attorney General.

[fol. 386] *Duly sworn to by Elmer B. Collins. Jurat omitted in printing.*

[fol. 387] [File endorsement omitted.]

[fol. 388] IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

In Equity. No. 690

[Title omitted]

SUPPLEMENTAL BILL OF COMPLAINT—Filed Feb. 24, 1933

To the Honorable Judges of the District Court in and for the Northern District of Georgia, in Chancery Sitting:

State of Florida by Cary D. Landis, its Attorney-General, and Eugene S. Matthews, Mamie Eaton-Greene and W. B. Douglass as and constituting the Florida Railroad Commission by T. T. Turnbull, Special Counsel designated [fol. 389] by them, with leave of Court first had and obtained, bring this their Supplemental Bill of Complaint

herein against the United States of America and Interstate Commerce Commission and Atlantic Coast Line Railroad Company, defendants. Thereupon your orators complain and say:

1. That heretofore, to-wit: on September 9th, 1932, your orators filed in this cause their bill of complaint hereafter called the "original bill" against United States of America and Interstate Commerce Commission, defendants herein, wherein and whereby they sought to annul, set aside and enjoin that part of the order entered by said Interstate Commerce Commission in its Docket No. 18364, dated July 5, 1932, as amended July 28, 1932, wherein and whereby the said Interstate Commerce Commission attempted to invade the domain of the State of Florida and to disestablish the scale of lawful rates in force and effect for the transportation of logs, except walnut, cherry and cedar, in carloads, minimum weight 50,000 pounds, excess in proportion (herein called the Cummer Scale) upon the lines of the Atlantic Coast Line Railroad Company in intrastate Commerce in Florida and to require said Atlantic Coast Line Railroad Company, a common carrier and subject to the jurisdiction and regulation of the State of Florida, to establish, put in force and maintain a certain other scale of rates for the transportation of such logs prescribed in and by the terms of said order.

[fol. 390] The said cause came on to be heard in said City of Atlanta before the Honorable Samuel H. Sibley, United States Circuit Judge, and the Honorable Louie W. Strum and the Honorable E. Marvin Underwood, United States District Judges, on motion of your orators after due notice to the said defendants for an order of this Court staying order of the Interstate Commerce Commission pending this proceeding pursuant to the laws of Congress in such cases made and provided; that at such hearing the said Atlantic Coast Line Railroad Company by order of this Court was permitted to intervene in said cause and did intervene therein and filed its answer to the original bill of complaint; that thereafter answers were duly filed by the defendants, United States of America and Interstate Commerce Commission, and certified copies of the proceedings had by and before the said Interstate Commerce Com-

mission in said docket No. 18364 were duly filed in evidence in said proceeding; and that on, to-wit: September 14, 1932, this Court did make and enter in said cause its order wherein and whereby the said order of the Interstate Commerce Commission and the effect thereof was duly stayed until further order of the Court, but not to exceed sixty days from the date thereof. That no final judgment or [fol. 391] decree of this Court has been entered in nor have any issues in the original suit been determined by this Court.

2. That since the time of the filing of the original bill of complaint herein your orators have learned of the recent publication of reduced scales of rates for the transportation of logs in fourteen different Southeastern and Southwestern States over the lines of twenty-one different railroad carriers operating in and between said States. That nearly all of said reduced scales of rates (hereinafter called the Newly Reduced Rates) were published by said railroads after July 5, 1932, (the date of the said order of the Interstate Commerce Commission herein involved) and said Interstate Commerce Commission has permitted said scales of rates so published to become effective.

That the said railroads so publishing said Newly Reduced Rates are as follows:

Atlantic Coast Line Railroad.
Central of Georgia Railway.
Chicago, Rock Island & Pacific Railway.
Columbus & Greenville Railroad.
Georgia and Florida Railroad.
Gulf, Mobile & Northern Railroad.
Illinois Central Railroad.
Louisville & Nashville Railroad.
Missouri Pacific Railroad.
Mobile & Ohio Railroad.
Nashville, Chattanooga & St. Louis Railway.
New Orleans & North Eastern Railroad.
Norfolk & Southern Railroad.
Savannah & Atlanta Railway.
Seaboard Air Line Railway.
Southern Railway.
St. Louis-San Francisco Railway.

St. Louis-South Western Railway.
Tennessee, Alabama & Georgia Railway.
[fol. 392] Western Railway of Alabama.
Yazoo & Mississippi Valley Railroad.

That the Southeastern and Southwestern States within and between which said Newly Reduced Rates are applicable in both interstate and intrastate commerce are as follows:

Florida.
Georgia.
South Carolina.
North Carolina.
Virginia.
Alabama.
Mississippi.
Louisiana.
Tennessee.
Kentucky.
Missouri.
Arkansas.
Oklahoma.
Texas.

3. That said Newly Reduced Rates were and are (with the exceptions hereinafter noted) a mileage scale expressed in lump sum terms per carload, regardless of weight, and were and are upon the basis hereinafter set forth and were and are published in the tariffs hereinafter described by the carriers hereinafter named (said Newly Reduced Rates being divided into "Schedule 1", "Schedule 2", "Schedule 3" and "Schedule 4" for reasons hereinafter appearing) viz.

[fol. 393] Schedule I

Rates

Distance	Rate per car regardless of weight
25 miles and less	$12.00
50 miles and over 25 miles	15.00
75 miles and over 50 miles	17.50
100 miles and over 75 miles	20.00

Tariff Number, by What Railroad Issued, and Application of Said Rates

I. C. C. Tariff No.	Issued by	Application
B-860	M. & O. R. R.	From stations on the M. & O. R. R. to Columbus, Corinth, Miss., Humbolt, Jackson, Tenn., Meridian, Miss., Mobile, Ala., Wickliffe, Ky., and Whistler, Ala.
7789	I. C. R. R.	From stations on the I. C. R. R. to Corinth, Miss., Dyersburg, Tenn., Fernwood, Granada, Jackson, Miss., Jackson, Tenn., Mccomb, Pickens, Miss., Ponchatula, La., Water Valley, Miss.
7810		From stations on the Y. & M. V. R. R. to Charleston, Clarksdale, Miss., Denham Springs, La., Gloster, Greenville, Greenwood, Grenada, Hickory, Holcomb, Jackson, Kings, Lambert, Meridian, Natchez, Philips, Stevenson, Tehula, Trotters Point, Vicksburg and Yazoo City, Miss.
3284-A	N. C. & St. L. Ry.	Applies on interstate traffic between points on the N. C. & St. L. Ry.
Rate issue 41296	N. C. & St. L. Ry.	Applies on Tennessee State Traffic between points on the N. C. & St. L. Ry.
A-10425 Supp. 5	Sou. Ry.	From points in Alabama, Georgia and Tennessee to Chattanooga, Tenn. (Note 1).

Rate issue	Issued by	Application
9019	St. L. S. F. Ry.	Between stations on the St. L. S. F. Ry. in Alabama, Florida and Mississippi (Note 2).
*2848	Cent. of G. Ry.	Between stations on Cent. of Ga. Ry. and Montgomery, Ala. (Note 3).

NOTE 1.—Sou. Ry.—25 miles and less, 50 cents per car more than above scale; all other distances the same as above scale.

NOTE 2.—St. L. S. F. Ry.—100 miles and over 75, $2.50 per car more than above scale; all other distances the same as above scale.

NOTE 3.—Cent. of Ga. Ry.—$2.50 per car more than above scale for all distances.

[fol. 394] Schedule 2

Rates

Distance	Rate per car regardless of weight
25 miles and less	$12.00
50 miles and over 25 miles	15.00
75 miles and over 50 miles	17.50
100 miles and over 75 miles	22.50

Tariff Number, by What Railroad Issues, and Application of Said Rates

I. C. C. Tariff No.	Issued by	Application
A-9212	Mo. Pac. R. R.	Between points on Mo. Pac. R. R. in Arkansas and Louisiana, Missouri, Oklahoma and Texas.

* This tariff (No. 2848) was republished by I. C. C. No. 2867 G. F. O. Special 140-A, effective intrastate Jan. 23, 1933, which extends application of rates to shipments to Dothan, Ala., from points between Eagle Pond, Ga., to Florala, Ala., inclusive of Lakewood, Fla.

I. C. C. Tariff No.	Issued by	Application
C-12130	C. R. I. & P. Ry.	Between points on the C. R. I. & P. Ry. in Arkansas and Louisiana.
4676	St. L. S. W. Ry.	Between points on the St. L. S. W. Ry. in Arkansas, Louisiana and Missouri. (Applies on cars of 90,000 lbs. or less, excess loads to be charged proportionately).
9346	St. L. S. F. Ry.	Between points on the St. L. S. F. Ry. in Arkansas and between points in Arkansas and points in Missouri.

[fol. 395] Schedule 3

Rates

Distance	Rate per car regardless of weight
25 miles and less	$12.00
50 miles and over 25 miles	15.00
75 miles and over 50 miles	17.50
100 miles and over 75 miles	20.00

Tariff Number, by What Railroad Issued, and Application of Said Rates

I. C. C. Tariff No.	Supplement No.	Issued by	Application
A-10472		Sou. Ry.	From Sou. Ry., A. G. S. and C. N. O. & T. P. stations in Ga. and Ala. to Chattanooga (Note 1) and from Sou. Ry. stations in Miss., Ala. & Tenn. to Corinth, Miss.
A-659	115	Glenn for T. A. & G. Ry.	From T. A. & G. stations to Chattanooga and Gadsden, Ala. (Note 1).

I. C. C. Tariff No.	Supplement No.	Issued by	Application
A-10448	2	Sou. Ry.	From Sou. Ry. stations between Memphis, Tenn., and Corinth, Miss., to Memphis, Tenn.
A-10425	6	Sou. Ry.	From all Sou. Ry. stations in Ala. to Mobile and Selma, and from Sou. Ry. stations in Ala. and from A. G. A. stations in Ala. and Miss. to York, Ala. (Note 2).
7789		Ill. Cent. R. R.	From stations on the G. & S. I. to Jackson, Miss. and Laurel, Miss.
3101		N. O. & N. E. R. R.	From N. O. & N. E. stations to Laurel, Miss. (Note 3).
36	6 and 8	Columbus & Greenville R. R.	From all stations on the C. & G. to Columbus, Greenville, Grenada, and West Point, Miss. (Note 4).
[fol. 396]			
A-7638		S. A. L. Ry.	From S. A. L. stations in Ala. between Omaha, Ga., and Montgomery, Ala. (Note 2).
A-129		W. Ry. of Ala.	From all stations on W. R. of A. to Montgomery, Ala., and Selma, Ala. (Note 2).
1137		G. M. & N. R. R.	Between all G. M. & N. stations intrastate in Mississippi (Note 5).

I. C. C. tariff No.	Supplement No.	Issued by	Application
*A-10467		Sou. Ry.	To Charleston, S. C. from Augusta, Ga. and Edgefield, Park Hill, Baynham, Columbia, Hardeeville, Denmark, Bath, Kingville, May, Orangeburg, and Sumter, S. C. (Note 6).

NOTE 1.—Sou. Ry. rates to Chattanooga and Gadsden—25 miles and less 50 cents per car more than above scale, all other distances same as above scale.

NOTE 2.—S. A. L. Ry. rates to Montgomery, W. Ry. of Ala. rates to Montgomery and Selma, Sou. Ry. rates to Mobile, Selma and York—$2.50 per car more than above scale for all distances.

NOTE 3.—N. O. & N. E. R. R. rates to Laurel, Miss.—25 miles and less are 50 cents more than above scale, and 100 miles and over 75 miles are $2.50 more than above scale, other distances same as above scale.

NOTE 4.—Columbus & Greenville R. R. scale extends over 100 miles as follows:

125 miles and over 100 miles	$22.50 per car
150 miles and over 125 miles	25.00 per car
170 miles and over 150 miles	27.50 per car

NOTE 5.—G. M. & N. R. R. rates—100 miles and over 75 miles $2.50 per car more than scale, all lesser distances same as above scale.

NOTE 6.—This Sou. Ry. scale to Charleston is not a per car, regardless of weight, scale. It is published on a basis of cents per hundred pounds as follows:

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*Rates on conduits, cross arms, crossties, fence posts, lumber, paving blocks, piling, poles and timber.

	Per hundred pounds
From Augusta, Ga., and from Edgefield, Park Hill, Columbia, Hardeeville, Kingville and Sumter, S. C. to Charleston, S. C	2 cents
From Baynham, Bath and May, S. C. to Charleston, S. C	1½ cents
From Denmark and Orangeburg, S. C. to Charleston, S. C	1 cent

[fol. 397] Schedule 4

Rates, Tariff Numbers, by What Railroads Issued, and Application of Said Rates

Louisville & Nashville Railroad

Tariff I. C. C. No. 16022, Supp. 19

Rate	Per car regardless of weight	Application
25 miles and less	$12.00	Over entire L. & N. system, except on Alabama and Florida intrastate traffic, and except on traffic from, to, or between points in Illinois, Indiana, Missouri and/or Ohio.
50 miles and over 25 miles	15.00	
75 miles and over 50 miles	17.50	
100 miles and over 75 miles	20.00	

From Linsey, Ky. to Knoxville, Tenn. (140 miles), $29.50 per car, regardless of weight.

Atlantic Coast Line Railroad

Tariff I. C. C. No. B-2745 (Rule 127)

Rates on Crossarms, Crossties, Lumber, Piling, Poles and Timber not Otherwise Specified

Rate	Cents per 100 lbs.	Application
100 miles and under	2½	From A. C. L. stations to Montgomery, Ala.
125 miles and over 100 miles	3½	
175 miles and over 125 miles	4½	

[fol. 398] Atlantic Coast Line Railroad

Tariff I. C. C. No. B-2745, Supp. 1

Rate	Cents per 100 lbs.	Application
To Charleston from Gourdin	1	To Charleston from, following A. C. L. stations in South Carolina, Gourdin *(51) Florence to Lanes (102), Sumter (94), Gamble to Carpon (56), Dillon to Florence Transfer (132), Mullins to Evansdale, (130), Darlington to Haynesworth (110), Berry to Clio (128), Currans to Nix (104), Ebenezer to Ryttenburg (95), Bennettsville to Lides (134); Maxie to Noah (138), Wisacky to Lucknow (115), Floyd to Perkins (116), Auburn and Hartsville (122).
To Charleston from: Florence to Lanes, Sumter and Gamble to Carpon	1½	
To Charleston from: Dillon to Florence Transfer, Mullins to Evansdale, Darlington to Haynesworth, Berry to Clio, Currans to Nix, Ebenezer to Ryttenburg	2½	
To Charleston from: Bennettsville to Lides, Maxie to Noah, Wisacky to Lucknow, Floyd to Perkins, Auburn and Hartsville	3	

Central of Georgia Railroad

Tariff I. C. C. No. 2851

Rate	Cents per 100 lbs.	Application
50 miles and under	2½	From C. of G. stations to Augusta and Waynesboro, Ga.
75 miles and over 50 miles	3	
100 miles and over 75 miles	3½	

*Distance to Charleston in parenthesis.

[fol. 399] Norfolk & Southern Railroad

Tariff I. C. C. No. A-760

Rate on Lumber, Piles, and Other Forest Products

Rate	Cents per 100 lbs.	Application
50 miles and under	3	From N. & S. stations to Norfolk, Va.
100 miles and over 50 miles	4	
150 miles and over 100 miles	5	
200 miles and over 150 miles	6	

Georgia & Florida Railroad Company

Tariff I. C. C. No. 558

Rate	Cents per 100 lbs.	Application
50 miles and under	2½	Over entire line of G. & F. R. R.
75 miles and over 50 miles	3	
100 miles and over 75 miles	3½	
160 miles and over 100 miles	4	
200 miles and over 160 miles	4½	

Savannah & Atlanta Railway

Tariff I. C. C. No. 115

Rate	Cents per 100 lbs.	Application
25 miles and under	2½	From S. & A. Ry. stations to Warrenton, Sardis and Newington, Ga.
50 miles and over 25 miles	3	
75 miles and over 50 miles	3½	

Seaboard Air Line Railway

Tariff I. C. C. No. A-7528, Supp. 8

Rate	Application
$2.50 per 1,000 feet Doyle Scale (Minimum carload of 4,000 feet required—approximately 48,000 lbs.).	From S. A. L. Ry. stations between and including Branchville, Va., and Littleton, N. C. *(44.7) to Boykins, Va., and from S. A. L. Ry. stations between and including Severn, N. C. and Lewiston, N. C. (35) to Boykins, Va.

*Distance to Boykins in parenthesis.

[fol. 400] Seaboard Air Line Railway

Tariff I. C. C. No. A-7528, Supp. 9

Rate	Application
3½ cents per 100 lbs.	Fitz Siding, N. C., to Norfolk, Va. (61 miles)

(Minimum carload of 80,000 lbs. required.)

Southern Railway

Tariff I. C. C. No. 10425, Supp. 7

Rate	Per car regardless of weight	Application
25 miles and under	$12.50	From E. N. O. & T. P. stations to Knoxville, Tenn., from Sou. Ry. stations to Dayton, Tenn., and from Sou. Ry. stations to Fayette, Ala.
50 miles and over 25 miles	15.00	
75 miles and over 50 miles	17.50	
100 miles and over 75 miles	20.00	

4. That on, to-wit, October 12th, 1932, your orators filed with said Interstate Commerce Commission in said proceeding before it a motion to set aside the said order of said Interstate Commerce Commission and for further hearing in and reconsideration of said proceeding, and in and by said motion averred that after July 5, 1932 (the date of said order of the Interstate Commerce Commission), and prior to September 15, 1932, the date on which said order of the Interstate Commerce Commission was by its terms to become effective, at least ten railroad carriers doing business in the Southern and Southwestern territorial rate groups and operating within and between eleven different Southern and Southwestern states, including Florida, had filed with said Interstate Commerce Commission and said Commission had permitted to become effective said Newly Reduced Rates. And in and by said motion and petition for rehearing your orators set forth the rates and the railroads by which the same were issued and the application of such rates, which rates are hereinabove described in "Schedule 1" and "Schedule 2" hereof.

[fol. 401] 5. That on, to-wit, October 12th, 1932, and after the filing of said motion and petition for rehearing before said Interstate Commerce Commission your orators presented for filing in this cause a supplemental bill of complaint wherein your orators set forth said Newly Reduced Rates mentioned and described in "Schedule 1" and "Schedule 2" hereof, and in and by said supplemental bill it was further alleged that, as soon as possible after learning of said Newly Reduced Rates, your orators had filed with said Interstate Commerce Commission, said motion and petition for rehearing, and your orators prayed this Court to stay the operation and effect of said order of the Interstate Commerce Commission until said motion for rehearing should have been acted upon by said Commission, and until the further order of this Court, and that in the event said Interstate Commerce Commission should refuse to set aside its said order that this Court would decree said order to be invalid and unlawful, and enter a decree enjoining said order. That at the time of presenting said supplemental bill of complaint to this Court your orators moved this Court for leave to file the same and said motion was set for hearing on October 22, 1932, before said Court.

6. That on, to-wit, October 21, 1932, said Interstate Commerce Commission entered its order reopening the proceedings in its said Docket No. 18364, and assigned said [fol. 402] proceeding for further hearing for the purpose of receiving evidence respecting any change in the rates on logs since the close of the previous hearing therein, the circumstances connected with and the conditions which occasioned such changes, and whether such circumstances and conditions, or any of them, were present with respect to the Florida intrastate log rates of the Atlantic Coast Line Railroad Company, and further suspending the operation of its said order of July 5, 1932, as amended July 28, 1932, until its further order. That thereupon, said order being brought to the attention of the Court, this Court cancelled said hearing set for October 22, 1932, upon the above mentioned motion for leave to file said supplemental bill, and no further proceedings were had in this cause.

7. That on November 21 and 22, 1932, said further hearing before said Interstate Commerce Commission, under its said Docket No. 18364, was held. That at said hearing

in said proceeding, in addition to the numerous tariffs publishing said newly reduced rates hereinabove mentioned and described in "Schedule 1" and "Schedule 2" hereof, there were filed in evidence certain other tariffs (only discovered by your orators after the filing of said motion and petition for rehearing) publishing said Newly Reduced Rates applicable in said Southern territory. That said [fol. 403] additional tariffs are hereinabove described in "Schedule 3" hereof, and were recently—in many instances after the presentation of said supplemental bill—filed with said Interstate Commerce Commission by seven railroad carriers doing business in said Southern territorial rate group and operating within and between six different Southern States and said Interstate Commerce Commission had permitted the same to become effective.

8. That thereafter, to-wit, on January 9, 1933, said Interstate Commerce Commission, in its second report on further hearing, affirmed all of the findings in its report on further hearing and by its order of January 9, 1933, in said proceeding, as amended by its order of January 19, 1933, vacated its order of October 21, 1932, and ordered that after February 25, 1933, the aforesaid order of July 5, 1932, as amended by said order of July 28, 1932, should remain in full force and effect until the further order of said Commission. That a copy of said second report on further hearing and order of January 9, 1933, and a copy of said amendatory order dated January 19, 1933, are attached hereto and marked "Exhibits A" and "B" respectively, and made by reference a part hereof.

9. That on, to-wit, February 8th, 1933, your orators filed their petition with said Interstate Commerce Commission [fol. 404] praying for further hearing in said proceeding before said Commission, a copy of said petition being hereto attached and marked "Exhibit C" and made by reference a part hereof. That, as is set forth in and by said petition for rehearing, in addition to all the tariffs hereinabove mentioned and described in "Schedule 1", "Schedule 2" and "Schedule 3" hereof publishing said Newly Reduced Rates, certain additional tariffs have been recently filed with said Interstate Commerce Commission by eight railroad carriers doing business in said Southern territorial rate group and operating within and between ten different

Southern States, and said Interstate Commerce Commission has permitted the scales of rates therein published to become effective. That said additional tariffs and the rates set forth therein are hereinabove set forth and described in "Schedule 4" hereof, save and except the rates set forth in said petition on the Atlanta, Birmingham and Coast Railroad which your orators have since learned are not applicable to logs and save and except that the Louisville & Nashville Railroad rate of $29.50 per car from Linsey, Kentucky, to Knoxville, Tennessee, was erroneously set forth in said petition to be applicable from Louisville to Knoxville.

10. That said petition for re-hearing was denied by said Commission on February 13th, 1933. That no final judgment or decree of this Court has been entered in, nor have any issues in the original suit been determined by this Court.

11. That your orators aver all and singular the matters and things averred in and by said original bill of complaint and in addition thereto, aver the following:

(a) That all of said Newly Reduced Rates hereinabove mentioned and described in "Schedule 1", "Schedule 2", "Schedule 3", and "Schedule 4", are now in effect for the transportation of logs in Southern and Southwestern territory, and said Interstate Commerce Commission has per- [fol. 405] mitted them to become effective. That in order to show the widespread application of said rates your orators have attached hereto a railroad map of the United States, which said map is marked "Exhibit D", and made by reference a part hereof. That the lines marked upon said "Exhibit D" in blue color show and represent the application of said Newly Reduced Rates upon the railroad lines of the numerous various carriers publishing the same. That said Newly Reduced Rates are now in effect on numerous railroad carriers in every State in the Southeastern territory, south of the northern boundaries of Kentucky and Virginia and east of the Mississippi River, including Florida, and on or over all or portions of the lines of every railroad of any consequence which operates in interstate commerce south of the States of Kentucky and Virginia, including the defendant, Atlantic Coast Line Railroad, and including the Louisville & Nashville Railroad which is controlled through

stock ownership by said Atlantic Coast Line Railroad, and including the Nashville, Chattanooga & St. Louis Railroad which is controlled through stock ownership by said Louisville & Nashville Railroad. That said Newly Reduced Rates are applicable in Florida in interstate commerce on and over the lines of said Louisville & Nashville Railroad and the Central of Georgia Railroad and are likewise applicable in Florida in interstate and intrastate commerce on and over the lines of the St. Louis-San Francisco Railway and the lines of the Georgia & Florida Railroad.

[fol. 406] (b) That said second report of said Interstate Commerce Commission on further hearing, "Exhibit A" hereof, states that said Newly Reduced Rates in Southwestern territory (that is, west of the Mississippi River) "should expire by limitation December 21, 1932", whereas the testimony in said proceeding before said Interstate Commerce Commission shows, without contradiction, that said railroads publishing said tariffs in said territory had assented to an extension of those scales of rates throughout the year 1933, and your orators aver that tariffs have been filed with said Interstate Commerce Commission since the last hearing in said proceeding so extending said expiration date, and that said Newly Reduced Rates will be applicable in said Southwestern territory at least until December 31, 1933.

(c) That the Commer Scale is a mileage scale of rates expressed in lump sum terms per car of minimum weight of 50,000 pounds, excess in proportion; that the Newly Reduced Rates which said Interstate Commerce Commission has permitted to become effective in interstate commerce in Southeastern and Southwestern territories other than Flor-
[fol. 407] ida are almost all expressed in lump sum terms per car regardless of weight; that the capacity of cars in which logs ordinarily are loaded for transportation in Southwestern and Southeastern territories ranges from 80,000 to 100,000 pounds per car, with the privilege of overloading to the extent of 10% of such capacity. And your orators aver that shippers generally, particularly shippers of commodities such as logs, in shipping upon rates applicable to carloads regardless of weight, customarily load to the full carrying capacity of the car; and that the loading of logs of all kinds, including hardwood moving in the

Southeastern and Southwestern territories and in Florida, upon lump sum per car rates regardless of weight would substantially exceed 70,000 pounds per car, and would average from 75,000 to 85,000 pounds per car or more.

(d) That the table below compares for the hauls up to 100 miles the rates, per car of the weight mentioned, for the transportation of logs upon the Cummer Scale intrastate in Florida (Column 2); upon the Newly Reduced Rates (Column 3); and upon the scale prescribed by said Interstate Commerce Commission as aforesaid intrastate in Florida (Column 4):

[fol. 408]

(1) Hauls in miles	(2) Cummer scale	(3) Newly reduced rates in S. E. Territory	(4) Scale fixed by I. C. C.
Computed on Carload of 70,000 Pounds			
25 miles	$11.97	$12.00	$24.50
50 miles	14.70	15.00	31.50
75 miles	16.10	17.50	38.50
100 miles	18.20	20.00	42.00
Computed on Carload of 75,000 Pounds			
25 miles	12.82	12.00	26.25
50 miles	15.75	15.00	33.75
75 miles	17.25	17.50	41.25
100 miles	19.50	20.00	45.00
Computed on Carload of 80,000 Pounds			
25 miles	13.68	12.00	28.00
50 miles	16.80	15.00	36.00
75 miles	18.40	17.50	44.00
100 miles	20.80	20.00	48.00
Computed on Carload of 85,000 Pounds			
25 miles	14.54	12.00	29.75
50 miles	17.85	15.00	38.35
75 miles	19.55	17.50	46.75
100 miles	22.10	20.00	51.00
Computed on Carload of 90,000 Pounds			
25 miles	15.40	12.00	31.50
50 miles	18.90	15.00	40.50
75 miles	20.70	17.50	49.50
100 miles	23.40	20.00	54.00
Computed on Carload of 95,000 Pounds			
25 miles	16.26	12.00	33.25
50 miles	19.95	15.00	42.75
75 miles	21.85	17.50	52.25
100 miles	24.70	20.00	57.00
Computed on Carload of 100,000 Pounds			
25 miles	17.12	12.00	35.00
50 miles	21.00	15.00	45.00
75 miles	23.00	17.50	55.00
100 miles	26.00	20.00	60.00

[fol. 409] (e) That said second report of said Interstate Commerce Commission on further hearing, "Exhibit A" hereof, finds that said Newly Reduced Rates are "on substantially the same level as the Cummer Scale", and your orators aver that in practical operation and effect each and every of said Newly Reduced Rates hereinabove referred to are on substantially the same level as the Cummer Scale, or are on a lower level than the Cummer Scale.

(f) That said Newly Reduced Rates, published in thirty-four tariffs as aforesaid, are published in some of said tariffs as transit rates, but in more than twenty other of said tariffs are published as local rates, that is, the application of the rate is not dependent upon the posting of any bond or the payment of any additional sum or the execution of any commitment of any sort to assure any outbound movement over the lines of the railroad carrier which moves the logs to the mills. That the Cummer Scale of rates, while in terms a local scale, is in practical operation and effect tantamount to a transit scale, in that all or substantially all of the outbound products manufactured by the several shippers receiving logs under the Cummer Scale move over the lines of the Atlantic Coast Line Railroad Company, under and by virtue of the terms of service contracts exacted from such shippers in the case of trainload shipments and by virtue of the location of the mills of many if not most of such other shippers as receive logs under the Cummer Scale. That in said proceeding before said Interstate Commerce Commission your orators offered [fol. 410] and attempted to prove that said Cummer Scale in practical operation and effect is tantamount to a transit scale as aforesaid and, upon objection of said Atlantic Coast Line Railroad, said offer and the evidence supporting it was refused and rejected by said Interstate Commerce Commission. That in practical operation and effect said newly reduced rates are substantially similar to the Cummer Scale, and in many instances substantially lower than said Cummer Scale.

(g) That to-wit, in June, 1931, the carriers by rail and water throughout the United States subject to the jurisdiction of the Interstate Commerce Commission did institute proceedings before said Commission wherein and whereby the authority of said Commission was sought to increase all interstate freight rates to the extent of 15 per

cent to remove revenue burdens from said carriers; that the defendant Atlantic Coast Line Railroad Company and the several rail carriers by which the Newly Reduced Rates have been published were parties to or represented in said last described proceedings before said Interstate Commerce Commission; that in and by and on behalf of the said carriers all and singular it was urged in said proceedings that such increase was required to provide additional revenue for the operation of said carriers; that said Interstate Commerce Commission in and by its report and order (178 I. C. C. 539) authorized certain increases upon a large number of classes and commodities of freight but refused to [fol. 411] permit any increase in the rates on certain other commodities, including logs; that afterwards, to-wit, in the month of September, 1932, the said Interstate Commerce Commission in and by its said report (186 I. C. C. 615) authorized the said carriers by rail and by water to continue the said increase in rates and in and by its further orders in said proceeding did attempt to authorize such carriers each and every to increase the intrastate rates on certain commodities and classes of freight to the extent that the interstate rates were increased as aforesaid; that all or substantially all of the newly reduced rates were established after the institution of the said 15 per cent proceeding and while the increase in freights therein and thereby authorized were in force and effect.

(h) That after the last hearing herein the defendant, Atlantic Coast Line Railroad Company, by its tariff G. F. O. No. 256, issued December 5, 1932, effective December 9, 1932, published rates on logs in minimum carloads of 50,000 pounds from all stations on its lines within thirty miles of West Marion, South Carolina, to said West Marion, which are as follows:

20 miles and under	1½ cents per hundred pounds.
30 miles and over 20 miles	2 cents per hundred pounds.

That said rates so published are not transit rates and have no connection with the movement of the outbound manufactured product, and said rates are substantially the same as the Cummer scale and for certain distances less than the Cummer scale. And your orators alleged that said Atlantic Coast Line Railroad now has in force and effect other rates

for the transportation of logs which are as low or lower than said Cummer scale.

(i) That in seeking to justify its invasion of the domain of the State of Florida, the Interstate Commerce Commission relied upon and gave consideration to comparisons of the said Cummer Scale with divers scales of transit and other rates on logs then effective upon divers other rail- [fol. 412] roads in said Southeastern territory, and in many instances the very rates so compared with said Cummer Scale have been superseded in whole or in part by the Newly Reduced Rates which said Interstate Commerce Commission has suffered and permitted lately to become effective as aforesaid.

(j) That the circumstances and conditions surrounding the transportation of logs in intrastate commerce in Florida over the lines of the defendant Atlantic Coast Line Railroad are similar to, and as favorable or more favorable than, the circumstances and conditions surrounding the transportation of logs over the railroads, and under the tariffs, publishing said Newly Reduced Rates. And your orators aver that there is now a substantial movement of logs by truck in Florida.

(k) That the action of said Interstate Commerce Commission in permitting said newly reduced rates to become effective and to supersede the substantially higher interstate rates theretofore existing for the transportation of logs, is substantially concurrent with the attempt on the part of said Commission to supersede said Cummer Scale of rates in intrastate commerce in Florida with the substantially higher scale of rates prescribed by said Commission as aforesaid. That said Interstate Commerce Commission at no time has attempted to fix intrastate rates for the transportation of logs in any state in the Southern territorial rate group other than in Florida, or on any railroad other than the Atlantic Coast Line Railroad.

12. That your orators by the exercise of no reasonable amount of diligence could have discovered the filing, publication or establishment of said Newly Reduced Rates so permitted as aforesaid by said Interstate Commerce Commission to become effective, and since such discovery have [fol. 413] acted diligently in the preparation and filing of

said motions for further hearing in said proceeding before said Interstate Commerce Commission and in the preparation and filing of this supplemental bill of complaint herein.

13. And your orators aver (as at all times in these proceedings they have averred) that said Interstate Commerce Commission is without the power, authority or jurisdiction to prescribe intrastate rates for the transportation of logs in intrastate commerce in Florida in said proceeding, and that said Interstate Commerce Commission has not made and cannot upon the record in said proceeding make the findings which would justify the invasion of the domain of the State of Florida, and that said Interstate Commerce Commission has not justified and could not upon said record justify the invasion of the domain of the State of Florida to fix intrastate rates, and that the action of said Interstate Commerce Commission in attempting so to do was and is arbitrary and unlawful; that the matters and things hereinabove set forth constitute additional evidence further demonstrating that the said order of the said Interstate Commerce Commission in invading the domain of the State of Florida as aforesaid was not and is not justified and was and is arbitrary, unreasonable, beyond the power of said Interstate Commerce Commission, and wholly invalid and unlawful.

[fol. 414] 14. And your petitioners allege that the authority of the State of Florida acting in its sovereign capacity over its own intrastate rates was at all times and is paramount and superior to Federal authority with respect to said rates until and unless said State authority actually conflicts with the Federal authority to regulate interstate commerce, and that the Interstate Commerce Commission is without the statutory power to invade the domain of the State of Florida in derogation of said State authority until and unless it shall be made to clearly appear from lawful evidence that the jurisdictional facts exist which warrant the Interstate Commerce Commission in invading said domain of the State of Florida; that whether or not such jurisdictional facts exist and have been made to clearly appear from lawful evidence is a judicial question which this Court under the Constitution of the United States (and in particular under Section 1 of Article III thereof, and the Tenth Amendment thereof,

of which your petitioners claim the benefit and protection), is bound to determine for itself in this cause according to the established forms of law, anything in the Interstate Commerce Act as amended to the contrary notwithstanding. That your petitioners are entitled to a trial de novo upon such jurisdictional facts by this Court and hereby make demand for such trial.

Forasmuch, therefore, as your orators are without remedy save in a Court of Equity, your orators pray as follows:

[fol. 415] A. That process may issue against the defendants, United States of America, and Interstate Commerce Commission, an administrative tribunal of the United States, and Atlantic Coast Line Railroad Company with service thereof and of this supplemental bill of complaint in the manner prescribed by statute in such cases made and provided.

B. That this Court order, adjudge and decree that the said report and order of said Interstate Commerce Commission of July 5, 1932, as amended, are beyond the authority of said Interstate Commerce Commission and are without warrant in law and are null and void and that said report and order, as amended, be set aside and annulled.

C. That this Court will allow a temporary stay or suspension of the operation of the said order of the Interstate Commerce Commission pending the application for the injunctions herein sought.

D. That this Court will grant to your petitioners herein an interlocutory order, setting aside and enjoining the enforcement of said order of July 5, 1932, as amended, of said Interstate Commerce Commission, and that such interlocutory order continue in force until further order of this Court.

E. That upon final hearing this Court will make and enter a decree and order herein annulling, setting aside and enjoining the said order, as amended, of said Interstate Commerce Commission, and permanently enjoining the enforcement thereof.

[fol. 416] F. That your petitioners may have such other and further relief in the premises as to this Court shall seem meet and just and as equity may require.

And your petitioners will ever pray, etc.

The State of Florida, by D. M. Sholtz, Governor. Eugene S. Matthews, Mamie Eaton-Greene, W. B. Douglass, as and constituting the Railroad Commissioners of the State of Florida. Cary D. Landis, Attorney General of the State of Florida; Theo. T. Turnbull, Special Counsel for Florida Railroad Commission, Solicitors for Petitioners.

[fol. 417] *Duly sworn to by Eugene S. Matthews. Jurat omitted in printing.*

[fol. 418] EXHIBIT "A" TO SUPPLEMENTAL BILL

INTERSTATE COMMERCE COMMISSION

No. 18364

GEORGIA PUBLIC SERVICE COMMISSION

v.

ATLANTIC COAST LINE RAILROAD COMPANY

Submitted November 22, 1932. Decided January 9, 1933

FINDINGS IN PRIOR REPORT ON FURTHER HEARING, 186 I. C. C. 157, THAT THE RATES ON LOGS OVER SIX FEET IN LENGTH, EXCEPT WALNUT, CHERRY, AND CEDAR, IN CARLOADS, APPLYING ON SHIPMENTS BETWEEN POINTS ON THE ATLANTIC COAST LINE RAILROAD IN FLORIDA FOR DISTANCES OF 170 MILES AND LESS WERE UNJUSTLY DISCRIMINATORY AGAINST INTERSTATE COMMERCE, AFFIRMED.

R. C. Alston and F. W. Gwathmey for defendant.

T. T. Turnbull for Florida Railroad Commission.

H. P. Adair, C. T. Ashby, J. V. Norman, A. G. Gutheim, F. S. Hillyer and E. C. Green for interveners.

Second Report of the Commission on Further Hearing

MEYER, Commissioner:

Our report on further hearing of July 5, 1932, 186 I. C. C. 157, contains a full and complete history of this proceeding

up to that time. To briefly summarize what is there shown: In the original report, 146 I. C. C. 717, defendant's interstate rates on logs over six feet in length, except walnut, cherry, and cedar, for distance of 170 miles and less, from northern Florida to Georgia were found unreasonable, and its Florida intrastate rates on similar logs for similar hauls, known as the Cummer scale, found to result in undue preference to shippers of intrastate traffic within Florida and undue prejudice to shippers of interstate traffic from points in Florida to points in Georgia and in unjust discrimination against interstate commerce. Suits were brought by the State of Florida, the Florida Railroad Commission, and certain manufacturers of lumber in Florida, [fol. 419] interveners herein, to enjoin that part of the order entered that dealt with the Florida intrastate rates, and in Florida v. United States, 282 U. S. 194, the Supreme Court held that such part of the order was not supported by appropriate findings. Thereafter, upon petitions of complainant and defendant, we reopened the proceeding for further hearing, which was held. In our report on such further hearing, referred to above, we affirmed the previous findings, except that as to the alleged undue prejudice against persons and localities in interstate commerce we made no finding. We again, by order of July 5, 1932, as amended by order of July 28, 1932, *as amended by order of July 28, 1932*, required that the unjust discrimination against interstate commerce be removed by establishing intrastate in Florida the same scale which we found reasonable for interstate application from Florida to Georgia. Bills to enjoin this order were filed in the United States District Court by the same parties who had succeeded in enjoining the previous order. Argument was had before the Court September 14, 1932, the day before the effective date of our order. The Court took the case under advisement and, in order to allow time for it to consider the case, issued a temporary suspension order for not to exceed 60 days. In early October the same parties filed with us petitions for further hearing, setting forth therein that since our report on further hearing other southern rail carriers had reduced their log rates to substantially the same basis as the Cummer scale. On or about the same time they filed supplemental bills in the United States District Court in which they set up the filing of these petitions and prayed

that our order be further stayed. Upon consideration of the petitions referred to, we suspended the operation of our order of July 5, 1932, as amended, until our further order and reopened the proceeding for further hearing for the [fol. 420] sole purpose of receiving evidence respecting any change in the rates on logs since the close of the previous hearing, the circumstances connected with and the conditions which occasioned such changes, and whether such circumstances and conditions, or any of them, are present with respect to the Florida intrastate log rates of defendant. The bills and supplemental bills filed in the United States District Court are still pending. The further hearing has been held; also oral argument before the presiding examiner, as provided by our order of reopening.

The evidence introduced at the further hearing shows that certain carriers that operate in southwestern and southern territories have in recent months established rates on logs, bolts, billets, rough staves, and heading in amounts per car regardless of weight, which rates are on substantially the same level as the Cummer scale referred to. These rates were first established by certain railroads operating west of the Mississippi River, following a meeting held March 29, 1932, between their representatives and certain shippers, at which meeting it was agreed that rates of $12.50 for distances of 25 miles or less, $15 for distances of 25 but not over 50 miles, $17.50 for distances of 50 but not over 75 miles, and $22.50 for distances of 75 but not over 100 miles should be established in Arkansas, Louisiana, and Missouri experimentally in an effort to meet truck competition, and that they should expire by limitation December 31, 1932.

On or about the same time the Illinois Central System, and later the Gulf, Mobile & Northern Railroad, Mobile & Ohio Railroad, St. Louis-San Francisco Railway, Central of Georgia Railway, Southern System, Nashville, Chattanooga & St. Louis Railway, Seaboard Air Line Railway, Western Railway of Alabama, and Columbus & Greenville [fol. 421] Railway established similar rates. Those of the Illinois Central System became effective April 1, 1932, intrastate in Mississippi, and April 12, 1932, interstate; those of the Gulf, Mobile & Northern, May 9, 1932; and those of the other lines at subsequent dates, generally in July and August, 1932. Generally these rates are published to ex-

pire in one year unless sooner canceled, changed, or extended.

The rates of these southern lines are not uniform and also vary somewhat from those referred to above as agreed upon by the southwestern carriers. Like those of the southwestern carriers, all are in amounts per car regardless of weight. Generally they are either $12 or $12.50 for distances to 25 miles and either $20 or $22.50 for distances over 75 but not over 100 miles, with rates for the intermediate mileage blocks the same as those of the southwestern carriers. However, the rates of the Seaboard Air Line and Central of Georgia to Montgomery, Ala., and those of the Western of Alabama to Montgomery and Selma, Ala., which are the only per car rates published by those lines, as well as those of the Southern to Selma, Mobile, and York, Ala., are $14.50, $17.50, $20.00 and $22.50 for the respective mileage blocks mentioned above. The Columbus & Greenville has also established rates of $22.50 for distances over 100 but not over 125 miles; $25. for distances over 125 but not over 150 miles; and $27.50 for distances over 150 but not over 170 miles.

The per car rates of the Illinois Central System apply to approximately 30 manufacturing points east of the Mississippi River, 2 of which are in Tennessee, 2 in Southern Louisiana, and the remainder in Mississippi; those of the Seaboard Air Line and the Central of Georgia to Montgomery only; those of the Western of Alabama to Montgomery and Selma; those of the Southern to Mobile, Selma, [fol. 422] and York, Ala., Chattanooga and Memphis, Tenn., and Laurel and Corinth, Miss., those of the Mobile & Ohio to Columbus, Corinth, and Meridian, Miss., Humboldt and Jackson, Tenn., and Mobile and Whistler, Ala.; those of the Columbus & Greenville to Columbus, Greenville, Grenada, and West Point, Miss.; and those of the Gulf, Mobile & Northern, St. Louis-San Francisco east of the Mississippi River, and Nashville, Chattanooga & St. Louis to all points on those lines, although in practical effect those of the Gulf, Mobile & Northern and St. Louis-San Francisco apply only to manufacturing points, their application being dependent upon an outbound movement of manufactured products, as will be later explained. It will be noted that all of these rates apply in the western portion of southern territory and none in the eastern portion.

Some of the per car rates of the southern carriers are published as transit rates and others as local or proportional rates. All, except those of the Nashville, Chattanooga & St. Louis and some of those of the Southern, apply only if the manufactured product moves outbound over the line of the carrier which moves the logs inbound. In some instances the tariffs provide that, upon the shipper giving satisfactory bond to forward the outbound manufactured product over the line of the carrier transporting the logs, the charges originally collected on the logs will be these per car rates; in other instances they provide that the original charges will be based on the local rates and, upon satisfactory evidence of the outbound movement of the manufactured product over the line of the carrier which moved the logs inbound, refund will be made to the basis of these per car rates. The local log rates in effect prior to the establishment of these per car rates are still in effect and are applicable to the movement of logs to points to which the per car rates are not applicable, also [fol. 423] to points to which they are applicable if the tariff provisions referred to above are not complied with. The rates of the Nashville, Chattanooga & St. Louis and those of the Southern to Mobile, Selma, York and Chattanooga are local rates and their application is not dependent upon the outbound movement of the manufactured products over their lines.

The per car rates of these southern lines, like those of the southwestern lines, were established primarily as an experiment to meet actual truck competition which the carriers' investigations showed to exist. While the extent of this truck competition is not shown, it apparently was sufficiently compelling, in the judgment of the managers of these railroads, to warrant the establishment of these rates as an experiment. With some of these southern carriers, particularly the Mobile & Ohio and the St. Louis-San Francisco, carrier competition also had a considerable influence in the establishment of these rates. For example, a representative of the St. Louis-San Francisco testified that that road had decided not to establish these rates east of the Mississippi River, but was later forced to do so to meet the competition of other carriers, it having found that logs were being trucked from its rails to competing railroads which had previously established the

per car rates. In this connection it should be remembered that the carrier transporting the logs to the manufacturing point at these per car rates is also assured of the outbound movement on the manufactured products, except in the case of the Nashville, Chattanooga & St. Louis and, in some instances, the Southern.

It is clear from the record that the object of the southern lines in establishing these per car rates was not merely to meet the truck competition on the logs, but was to be assured at the same time of receiving the outbound move-
[fol. 424] ment of the manufactured product; and that while these rates, standing alone would not be attractive to these carriers from a revenue standpoint, they are attractive when coupled with the rates for the eastbound movement of the manufactured product. A representative of the Southern testified that in those instances in which its per car rates were not made dependent on the outbound movement of the manufactured product it was willing to depend upon what it termed the moral obligation of the shipper to give it the outbound movement. With respect to its per car rates to Memphis, Laurel and Corinth the Southern provides by its tariffs that such rates shall apply only if it transports the outbound manufactured product. No representative of the Nashville, Chattanooga & St. Louis appeared at the further hearing.

Representatives of the Illinois Central, Gulf, Mobile & Northern, Mobile & Ohio, St. Louis-San Francisco, Central of Georgia, and Southern testified that they hoped that the experiment of publishing these rates would prove successful after sufficient time had elapsed to fully test it, but that so far the experiment had not proved successful, as they had regained relatively little of the log traffic from the trucks; that what traffic they had regained from the trucks had been for the most part traffic moving from about 25 to 60 miles, although some had been recovered that moved as much as 98 miles and some that moved as little as 11 miles; and that there is little, if any, hope of securing much of the traffic that now moves by truck for distances under 25 miles, a considerable portion of which never has moved by rail.

A witness for the Florida interveners testified that two mills, which he had visited and whose records he had inspected, had materially increased their shipments by rail since the establishment of these per car rates; that one,

[fol. 425] at Montgomery, previously received about 10 per cent of its logs, amounting to about 10 or 12 carloads a month, by rail, whereas since the establishment of these rates it had received over the Central of Georgia from 60 to 90 carloads a month, which constituted about 50 per cent of the logs received; and that the other, at Chattanooga, with a capacity of 25,000 feet a day and operating from 2 to 3 days a week for the past year, previously received about 20 per cent of its logs by rail and 80 per cent by truck, whereas since the establishment of these rates it has received about 80 per cent by rail and 20 per cent by truck. His testimony with respect to the receipts of the mill at Montgomery is not borne out by the testimony of the representative of the Central of Georgia, which shows that that carrier's per car rates to Montgomery became effective August 15, 1932, intrastate, and September 13, 1932, interstate, and that thereafter to November 11, 1932, which was 10 days prior to the further hearing, it had transported but 53 carloads of logs to Montgomery. On the basis of 2 days' operation per week, the total log requirements of the Chattanooga mill would be about 5 carloads of 100,000 pounds each per week. Accordingly, the increase in the rail movement of logs to that mill from approximately 20 to 80 per cent of the total represents an increase of but 3 carloads a week. On the basis of 3 days' operation, the increase would be about 4 or 5 carloads a week.

The parties are in agreement that the tendency of rates per car regardless of weight is to increase the loading of the cars. The Florida interveners show that since the establishment of these per car rates the mill at Chattanooga, referred to above, will accept only cars that have a loading capacity of about 125,000 pounds and that its average loading ranges from 105,000 to 110,000 pounds; and that mills at Montgomery and Memphis have received cars loading over 90,000 pounds and a mill at Laurel has received cars loading as high as 122,000 pounds.

[fol. 426] Such truck competition as has been shown in the movement of logs in Florida is generally to the smaller lumber mills and between points where the rail hauls are 25 miles or less. A witness employed by the Florida intervener to make an investigation of the extent of the movement of logs by truck in Florida specified 23 mills located

at 19 different points in Florida to which all or substantially all of the logs cut were transported by truck. Most of these mills were cutting less than 10,000 feet of lumber a day; only 4 were cutting more. The 23 mills were cutting a total of less than 200,000 feet a day, which is less than the capacity of a single large Florida mill such as that of intervener Brooks-Scanlon Corporation at Foley, and is a very small percentage of the total lumber cut in Florida. This witness testified as to the range of the hauls by truck to nearly all of these mills, but did not know what the average hauls were, the location of the logs, or how far they were from a railroad. The maximum hauls were 10 miles or less to 3 of the mills; between 10 and 15 miles to 2; between 15 and 20 to 5; between 20 and 25 miles to 4; between 25 and 30 miles to 2; and between 30 and 45 miles to 5. The length of the hauls to 2 of the mills were not known. Of the 23 mills, 7 were located on defendant's lines exclusively; 3 on the lines of defendant and the Seaboard Air Line; one on the lines of defendant and the Southern; 9 on the Seaboard Air Line exclusively; one on the Florida East Coast; one on the Georgia, Southern & Florida; and one on the Live Oak, Perry & Gulf. The 11 mills located on defendant's lines were cutting a total of approximately 87,500 feet a day, and the maximum haul by truck was 10 miles to 2 of the mills; between 10 and 15 miles to 2; between 15 and 20 miles to 2; between 20 and 25 miles to 3; and between 25 and 30 miles to one. The length of the hauls to 2 were not known. The record does not show whether any of the logs moved by truck to these 11 mills could have moved over defendant's lines. A cut of 87,500 feet a day represents approximately [fol. 427] 20 carlods of logs, based on 4,231 board feet to the carload, the average of one intervener as will hereinafter appear.

In addition to the above, representatives of two other mills located at Jacksonville testified as to the movement of logs to their mills by truck. One is located on defendant's lines exclusively and the other on the Seaboard Air Line exclusively. The former started operations in June, 1930, and cuts approximately 700,000 feet a month; the latter started operations in March, 1931, and has cut from 75,000 to 100,000 feet a week from that time to early in November last, when it ceased operations until the first of the year, when it expected to resume.

The first of these mills is that of F. S. Buffum Company, which company was permitted to intervene herein at the time the case was reopened for further hearing. From June, 1930, to October, 1932, both months inclusive, it received 1,092 carloads of logs by rail, 931 of which were transported to Jacksonville by defendant, 135 by the Seaboard Air Line, 2 by the Southern, and 24 by the Florida East Coast. During the same period this intervener received the equivalent of 1,935.3 carloads by truck and 151.3 carloads by water, using 4,231 board feet of logs as a carload, that being the average board measure per carload received by rail at this mill. The movement during the period when the interstate rates prescribed in the original report of division 4 were in effect is compared with the movement during the subsequent period when the Cummer scale was charged. While the Cummer scale was reestablished April 10, 1931, shipments received during April and May, 1931, were included in the period during which the interstate scale was in effect, the witness for intervener stating that it had taken some time to rearrange the mill's contracts for logs. During the 12 months from June, 1930, to May, 1931, this intervener received 275 carloads by rail and the equivalent of 703.8 carloads by truck and 85 by water, a total of 1,063.8 carloads. Approximately 26 per cent of the carloads were received by rail during this period. During the subsequent [fol. 428] 7 months, June to December, 1931, during which the Cummer scale was in effect, a total of 529 carloads were received, of which approximately 26 per cent were by rail. During the latter period the mill was not operating for two and a half months. During the first 10 months of 1932, when the Cummer scale was also in effect, 683 carloads were received by rail and the equivalent of 848.5 by truck and 64.2 by water, a total of 1,595.7 carloads. During this period approximately 43 per cent of the carloads moved by rail. The hauls of the shipments received by truck during these 10 months of 1932 ranged from 16 to 55 miles and the weighted average haul was 30.6 miles. If these logs had moved by rail, the rail hauls would have ranged from 12 to about 40 miles. The difference between the rail and the truck distances range from 2 to 20 miles and apparently the greater part of these differences represent the hauls necessary to get the logs to the railroad. For example, the truck hauls from Maxville and Doctor's Inlet are given as 30 and 38 miles, respectively, and the rail hauls from the same points

at 28 and 18 miles, respectively. Of the shipments by truck during these 10 months only the equivalent of 254 carloads, or approximately 30 per cent of the total received by truck, were from points from which they could have moved over defendant's lines if moved by rail; over 50 per cent were from points adjacent to the Florida East Coast. These 254 carloads moved by truck notwithstanding the fact that the Cummer scale was in effect over defendant's lines. All but 3 of these 254 carloads moved from points from which the rail distances to Jacksonville range from 11 to 26 miles.

The other Jacksonville mill referred to is that of the W. J. Bryson Lumber Company. Its representative testified that since it started operations in March, 1931, it has received all of its logs by truck, except that 27 or 28 carloads were received by rail from Dukes and Cross City on defendant's lines. The rail hauls to Jacksonville from those points are [fol. 429] 58 and 118 miles, respectively. While the witness further testified that the truck hauls ranged from 10 to 68 miles and that a substantial portion of the logs were hauled over 50 miles, instancing the haul from Green Cove Springs as between 60 and 70 miles, the evidence introduced by the Jacksonville intervener, referred to above, shows that its truck hauls from that point were but 40 miles and the rail distance 26 miles. This witness also testified that the average haul by truck to his mill was about 50 miles, but the evidence of record as a whole indicates that none of the specific movements referred to by him was ever about 40 miles.

The total cut of all the mills to which the Florida interveners show a movement of logs by truck is less than 250,000 feet a day, which is equivalent to a daily movement of about 57 carloads of logs. However, many of these mills are not on the rails of defendant and much of the movement by truck to these mills is from territory not served by defendant. As stated, approximately 254 carloads moved to the Buffum Company by truck during the first 10 months of 1932 that could have moved over defendant's lines, and the record also indicates that approximately 200 carloads received by the Bryson Company since March, 1931, could have moved over defendant's lines, but the record does not show that any of the other logs shown to have moved by truck in Florida could have moved over defendant's lines. The logs that moved by truck to these two companies which the record shows could have moved over defendant's lines

represents an average of approximately 35 carloads a month and, as indicated above, they moved for relatively short distances. During the first 8 months of 1932, defendant transported 773 carloads of logs to Jacksonville, an average of 96.5 carloads per month. The rail hauls on these logs ranged from 32 to 185 miles; the hauls on all except 8 carloads were 53 miles or more.

A witness for intervener Wilson Lumber Company of Florida which operates at Perry one of the larger hard- [fol. 430] wood mills in Florida, testified that that company has received very few logs by truck but that the road conditions in the vicinity of the mill are favorable for movement by truck; that his company owns or has under option about 14,000,000 feet of timber located from about one-fourth to 15 miles from defendant's line at Carbur, which is 17 miles from Perry over defendant's lines, and about 1,000,000 feet at other points within about 30 miles of its mill; that it also buys hardwood logs from other companies which cut pine and cypress, which logs have moved by rail for distances up to about 170 miles; that it has received an offer from a responsible party to transport these logs from Carbur to Perry for $2 per thousand feet, minimum 25,000 feet a day; that the Cummer scale rate of 171 cents per 100 pounds for the distance from Carbur to Perry is equivalent to $2.05 per thousand feet, and the interstate scale of 3 cents for that distance equivalent to $3.60 per thousand feet, which latter rate it would be out of the question for his company to pay as against the truck rate of $2 per thousand feet.

The freight traffic manager of defendant testified that one of his important duties is to keep informed as to the extent to which trucks are taking business from defendant and as to the advisability and practicability of defendant reducing its rates because of truck competition, and that from 75 to 80 per cent of his time is given to a study of truck competition; that there has been no substantial change in conditions in Florida since the former hearing; that the movement of logs by truck in the territory served by defendant, including Florida, is negligible and not sufficient to warrant reductions in rates to save such traffic from the trucks; and that the log traffic which moves by

truck for distances under 25 miles could not be regained by any rates defendant might make because in most instances the distances from the woods to the railroad sta- [fol. 431] tions represent such a large percentage of the distances to the mills as not to justify transfer from the trucks to cars. This witness also showed that defendant's total log traffic in Florida, exclusive of that moving in train-loads, for the 13 months following the last hearing, that is from August 1, 1931, to August 31, 1932, was 2,453 carloads as compared with 3,245 carloads during the previous 13 months from July 1, 1930 to July 31, 1931. The decrease was 792 carloads, or 24.4 per cent, but the decrease in defendant's Florida lumber traffic during the same period was even greater. From July 1, 1930, to July 31, 1931, defendant transported 15,949 carloads of lumber, shingles and lath originating in Florida, whereas during the subsequent 13 months it transported but 9,672 carloads, a decrease of 6,277 carloads, or 39.4 per cent. Defendant also shows that the decrease in its Florida lumber traffic has been substantially the same as the decrease in the lumber traffic over its entire line, over all class I carriers in the southern region, and over all class I carriers in the United States. For example, from July 1, 1930, to June 30, 1931, defendant's Florida lumber traffic amounted to 15,130 carloads, an average of 3,782 for each quarter year, and during the following 9 months the quarterly average was 2,604 carloads, a decrease of 1,178 carloads, or 31 per cent. The corresponding percentage reductions in the lumber traffic over defendant's entire line and of the carloads of lumber originated by all class I carriers in the southern region and by all class I carriers in the United States were 27, 28 and 30, respectively.

Exclusive of the movement in train-loads, defendant handled a monthly average of 282 carloads of logs over six feet in length between points in Florida during the year 1930, an average of 198 carloads a month during 1931, and an average of 188 carloads a month during the first 8 months of 1932. In this connection it should be remembered that in 1930, when the movement was heaviest, [fol. 432] and to April 10, 1931, the interstate scale of rates prescribed in the original report was in effect, and that during the remainder of 1931 and 1932 the much lower Cummer scale was charged. The monthly movement, ex-

clusive of that in train-loads, since the former hearing, July 21, 1931, has averaged substantially the same as from December 1, 1930 to August 1, 1931. As stated in our prior report on further hearing the main depression in the lumber industry in Florida began about the latter part of 1930. At the time of the last previous hearing, the only remaining train-load movement was from Hines to Palatka. The extent of that movement and the extent to which the mill at Palatka has been operating since that time has not been shown, nor has it been shown that the mill at Palatka has received any logs by truck. As stated in our prior report on further hearing, the movement from February 1 to June 30, 1931, was from 52 different stations to 17 different destinations. The movement from February 1, 1931, to August 31, 1932, exclusive of the train-load movement from Hines to Palatka, was 4,079 carloads, which shipments were from 125 different stations to 28 destinations for hauls ranging from 5 to 235 miles. Of these shipments, 79 moved for distances over 170 miles, beyond which distance the Cummer scale does not extend, and, as indicated by Appendix B to our prior report on further hearing, the Florida intrastate rates applicable over defendant's lines for distances over 170 miles are on substantially the same level as the interstate rates generally applicable in southern territory and as the rates prescribed for intrastate application in Florida for distances of 170 miles and less in the original report in this proceeding.

The record warrants the conclusion that truck competition and, to a lesser degree carrier competition, has been sufficiently compelling in the judgment of the responsible traffic officials of the various railroads operating in the [fol. 433] western portion of southern territory, to warrant the establishment experimentally of the low per car rates on logs hereinbefore referred to; that these reduced rates have not as yet succeeded in regaining for the railroads which established them any great amount of log traffic; that it is doubtful if the log traffic now moving by truck for the shorter distances, particular- 25 miles and under, can be regained by these or any other rates that the carriers could make; that there is but little competition between defendant and trucks for the movement of logs intrastate in Florida for distances over 25 miles and, in the judgment of defendant's responsible traffic official, it is not of sufficient

importance to warrant the establishment or maintenance of subnormal rates in an effort to regain it; and that the circumstances and conditions which occasioned the establishment of the experimental reduced per car rates on logs by other railroads in a section of southern territory quite widely separated from that in which defendant operates are not present with respect to the intrastate log traffic over defendant's lines in Florida.

The Florida interveners contend that as transportation conditions are substantially similar throughout southern territory and as the Cummer scale is substantially the same as or slightly higher than the per car rates of these other southern lines, the Cummer scale cannot cast an undue revenue burden on interstate commerce, as found in our prior report on further hearing, unless the per car rates referred to also cast a similar revenue burden on interstate commerce.

Transportation conditions are not substantially similar throughout southern territory. In our prior report on further hearing we specifically found that the circumstances and conditions surrounding the transportation of these logs intrastate in Florida were not on the whole as favorable as the circumstances and conditions surrounding the interstate movement of logs over defendant's lines. [fol. 434] Therein we also pointed out that the less favorable operating conditions in the Florida peninsula than in the remainder of southern territory have given rise to the general practice of permitting the addition of arbitraries to the rates on interstate traffic to and from points in that territory. We referred to Southern Class Rate case in which we prescribed class rates for that port of the hauls within the Florida peninsula that were 15 per cent higher than the basis prescribed for the remainder of southern territory. In that proceeding we stated that if and when we were called upon to fix maximum reasonable commodity rates to and from Florida, we would not be bound by what had been done with respect to the class rates. Since then we have in several cases prescribed commodity rates with relatively higher arbitraries for the hauls within Florida than were prescribed in the Class Rate case. In Rates on Chart, Clay, Sand & Gravel, 140 I. C. C. 85, and Petroleum and Its Products, 171 I. C. C. 286, the rates prescribed for

the hauls in Florida were approximately 40 per cent higher than for the reminder of southern territory.

Even if transportation conditions were similar in Florida as on the lines of the carriers that have established the per car rates, competitive conditions are not similar, as has been pointed out. The carriers that have established the per car rates have done so voluntarily as an experiment in an endeavor to regain traffic that was moving by truck and thereby increase their revenues, not only on the logs to the mills but on the outbound manufactured products from the mills, their per car rates being conditioned upon an outbound movement of the manufactured products in nearly all instances.

In Florida, on the other hand, the movement of logs has not been shown to have gone to the trucks to any substantial extent where the hauls are over 25 miles and this record warrants the conclusion that truck competitive rates for distances under 25 miles would regain little, if any, traffic, [fol. 435] and that to require defendant to continue to maintain the Cummer scale to meet what little truck competition could be met would greatly decrease the revenues of defendant and would not be warranted. Logs in single carloads are now moving by rail over defendant's lines throughout Florida in substantially the same volume as at the time of the previous hearing and for the six months prior thereto, and the movement has not decreased to as great an extent as the outbound movement of lumber from Florida. The monthly movement since February 10, 1931, when the Cummer scale was reestablished, has been substantially the same as from the latter part of 1930, when the main depression in the lumber business in Florida began, to February 10, 1931, indicating that the reestablished substantially lower Cummer scale has had no effect on the volume of rail movement.

Generally we do not approve of rates published in amounts per car regardless of weight and nothing contained herein should be considered as an approval of rates so published on logs. These per car rates on logs are not here in issue and no one has complained to us in any other proceeding that they are unreasonable, unduly preferential, or otherwise unlawful.

We affirm all of the findings in our prior report on further hearing and will vacate our order suspending the op-

eration of our order of July 5, 1932, as amended.

Our findings herein and in our prior report on further hearing are without prejudice to the right of the authorities of the State of Florida or of any other interested party to apply in the proper manner for a modification of our findings and order as to any specified intrastate rate on the ground that it is not related to interstate rates in such a way as to contravene the provisions of the interstate commerce act.

[fol. 436] At a General Session of the INTERSTATE COMMERCE COMMISSION, Held at Its Office in Washington, D. C., on the 9th Day of January, A. D. 1933

No. 18364

GEORGIA PUBLIC SERVICE COMMISSION

v.

ATLANTIC COAST LINE RAILROAD COMPANY

It appearing, That on July 5, 1932, the commission made and filed its report on further hearing and entered its order in the above-entitled proceeding; that on July 28, 1932, it entered its order amending said order of July 5, 1932; and that on October 21, 1932, it entered its order reopening said proceeding for further hearing for the sole purpose of receiving evidence respecting any change in the rates on logs since the close of the last hearing herein, the circumstances connected with and the conditions which occasioned such changes, and whether such circumstances and conditions, or any of them, are present with respect to the Florida intrastate log rates of defendant, and also suspending the operation of said order of July 5, 1932, as amended by order of July 28, 1932, until the further order of the commission:

It is further appearing, That such further hearing has been had, and that the commission, on the date hereof, has made and filed a second report on further hearing containing its findings of fact and conclusions thereon, which said report and also the report on further hearing and the order of July 5, 1932, as amended by order of July 28, 1932, are hereby referred to and made a part hereof:

It is ordered, That the order heretofore entered in this proceeding on October 21, 1932, suspending the operation of the order of July 5, 1932, as amended by order of July 28, 1932, until the further order of the commission be, and it is hereby, vacated and set aside as of February 11, 1933, and that thereafter the aforesaid order of July 5, 1932, as amended by order of July 28, 1932, shall remain in full force and effect until the further order of the commission.

By the commission.

George B. McGinty, Secretary. (Seal.)

[fol. 437] EXHIBIT "B" TO SUPPLEMENTAL BILL

Order

At a General Session of the INTERSTATE COMMERCE COMMISSION, Held at Its Office in Washington, D. C., on the 19th Day of January, A. D. 1933

No. 18364

GEORGIA PUBLIC SERVICE COMMISSION

v.

ATLANTIC COAST LINE RAILROAD COMPANY

Upon further consideration of the record in the above-entitled proceedings, and for good cause shown:

It is ordered, That the order heretofore entered in said proceeding on January 9, 1933, vacating and setting aside as of February 11, 1933, the order previously entered therein on October 21st, 1932, be, and it is hereby, amended so as to vacate and set aside said order of October 21st, 1932, as of February 25, 1933, and to provide that thereafter the order previously entered in this proceeding on July 5, 1932, as amended by order of July 28, 1932, shall remain in full force and effect until the further order of the Commission.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 438] EXHIBIT "C" TO SUPPLEMENTAL BILL

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 18364

GEORGIA PUBLIC SERVICE COMMISSION, Complainant,

vs.

ATLANTIC COAST LINE RAILROAD COMPANY, Defendant.

MOTION TO SET ASIDE THE FINAL ORDER OF THE INTERSTATE COMMERCE COMMISSION AND FOR FURTHER HEARING IN AND RECONSIDERATION OF THE ABOVE ENTITLED PROCEEDING

Come now the State of Florida and the Florida Railroad Commission, and not admitting the jurisdiction or power of the Interstate Commerce Commission to enter the final order which was entered in the above entitled cause, but expressly denying the existence of such jurisdiction and power, and move the said Interstate Commerce Commission to set aside such final order and for a further hearing in [fol. 439] and reconsideration of the above entitled cause, and in support of such motion, respectfully show:

1. That by its report and order dated July 5, 1932, as amended July 28, 1932, and by its second report on further hearing and order dated January 9, 1933, as amended January 19th, 1933, to become effective February 25, 1933, this Interstate Commerce Commission purported to fix intrastate rates thereafter to be charged in Florida for the transportation of logs on the lines of the Atlantic Coast Line Railroad (said rates being expressed in cents per hundred pounds) as follows:

Distances	Rates cents
10 miles and under	2.5
20 miles and over 10	3.0
30 miles and over 20	3.5
40 miles and over 30	4.0
55 miles and over 40	4.5
70 miles and over 55	5.0
85 miles and over 70	5.5
100 miles and over 85	6.0
120 miles and over 100	6.5
140 miles and over 120	7.0
160 miles and over 140	7.5
170 miles and over 160	8.0

2. That this Interstate Commerce Commission sought to justify its invasion of the domain of the State of Florida, and to prescribe intrastate log rates upon no ground save [fol. 440] upon the asserted ground that the lawful state rates of the State of Florida (the Cummer scale of rates) constituted an unjust discrimination against Interstate Commerce from a revenue standpoint; and that in reaching its conclusions and prescribing said rates in its said report and order of July 5, 1932, said Interstate Commerce Commission relied upon and gave consideration to certain comparisons of said Cummer scale of rates with other scales of rates for the transportation of logs effective in Southern territory.

3. That said second report on further hearing of this Interstate Commerce Commission refers to certain newly reduced rates established by certain carriers in Southern and Southwestern territories for the transportation of logs, the tariffs setting forth which said rates having been filed in evidence in this proceeding. That said newly reduced rates were found by said second report to be "on substantially the same level as the Cummer scale". That in addition to said rates set forth in said tariffs already in evidence herein, certain other tariffs have been filed with said Interstate Commerce Commission and said Commission has permitted to become effective the scales of rates for the transportation of logs set forth in such tariffs.

4. That the Louisville & Nashville Railroad Company, after the last hearing herein, by its tariff, I. C. C. No. 16022, Supplement 19, effective January 27, 1933, published a scale of rates for the transportation of logs over its entire system except on Alabama intrastate traffic, and except on traffic from, to, or between points in Illinois, Indiana, Missouri and/or Ohio, which is as follows:

[fol. 441] 25 miles and less	$12.00
50 miles and over 25 miles	15.00
75 miles and over 50 miles	17.50
100 miles and over 75 miles	20.00

That said tariff likewise published a rate for the transportation of logs of $29.50 per car, from Louisville, Kentucky, to Knoxville, Tennessee, a distance of 277 miles. That said rates so established by said Louisville and Nash-

ville Railroad Company are per carload rates expressed in lump sum terms per carload, regardless of weight, and said scale of rates is now in effect and applicable on and over more than 225 miles of the lines of said Louisville & Nashville Railroad Company in the State of Florida.

5. That the defendant, Atlantic Coast Line Railroad Company, by its tariff I. C. C. No. 2745, filed to become effective December 10, 1932, and in Rule 127 of said tariff, has published for the transportation of logs over its lines to Montgomery, Alabama, net transit rates which are as follows:

100 miles and under ..... 2½ cents per hundred pounds
125 miles and over 100 miles ..... 3½ cents per hundred pounds
175 miles and over 125 miles ..... 4½ cents per hundred pounds

[fol. 442] And said Atlantic Coast Line Railroad Company, after the last hearing herein by Supplement Number 1 to said tariff, effective December 10, 1932, did publish rates on lumber, poles, piling and forest products not otherwise specified to Charleston, South Carolina, from the following points of origin as follows:

From	To	Distance miles	Rate (in cents per hundred pounds)
Gourdin, S. C.	Charleston, S. C.	51	1
Florence to Lanes, S. C.	Charleston, S. C.	102	1½
Sumter, S. C.	Charleston, S. C.	94	1½
Gamble to Carpon, S. C.	Charleston, S. C.	56	1½
Dillon to Florence Transfer, S. C.	Charleston, S. C.	132	2½
Mullins to Evansdale, S. C.	Charleston, S. C.	130	2½
Darlington to Haynesworth, S. C.	Charleston, S. C.	110	2½
Berry to Clio, S. C.	Charleston, S. C.	128	2½
Currans to Nix	Charleston, S. C.	104	2½
Ebenezer to Ryttenburg	Charleston, S. C.	95	2½
Bennettsville to Lides	Charleston, S. C.	134	3
Maxie to Noah	Charleston, S. C.	138	3
Wisacky to Lucknow	Charleston, S. C.	115	3
Floyd to Perkins	Charleston, S. C.	116	3
Auburn and Hartsville	Charleston, S. C.	122	3

[fol. 443] That the distance from the points of origin to Charleston, South Carolina, are likewise shown in the above tabulation. That said rates to Charleston, South Carolina, published by said tariff, are applicable for re-ship-

ment to Richmond, South Richmond, Petersburg, Jarratt, Norfolk, Pinnacle's Point, Portsmouth, Suffolk, Lynchburg, Roanoke, Virginia, or points beyond.

6. That the Central of Georgia Railway Company by its tariff I. C. C. No. 2851, effective interstate September 27, 1932, and intrastate August 26, 1932 (and which has only since the last hearing herein come to the attention of these interveners), published a scale of rates for the transportation of logs from stations on its lines to Augusta and Waynesboro, Georgia, which is as follows:

	Cents per 100 lbs.
50 miles and under	2½
75 miles and over 50 miles	3
100 miles and over 75 miles	3½

7. That the Atlanta, Birmingham and Coast Railroad Company by its tariff No. 18, effective October 10, 1927 (and which has only since the last hearing herein come to the attention of these interveners), published a scale of rates for the transportation of logs, applicable at Thomas-[fol. 444] ville and Tifton, Georgia, which is as follows:

	Cents per 100 lbs.
25 miles and under	½
50 miles and over 25 miles	1½

8. That the Norfolk and Southern Railroad Company, by its tariff I. C. C. No. A-760, effective May 15, 1931 (and which has only since the last hearing herein come to the attention of these interveners), published a scale of rates for the transportation of lumber, piles and other forest products to Norfolk, Virginia, which is as follows:

	Cents per 100 lbs.
50 miles and under	3
100 miles and over 50 miles	4
150 miles and over 100 miles	5
200 miles and over 150 miles	6

9. That the Georgia & Florida Railroad Company, by its tariff I. C. C. No. 558, effective May 6, 1931 (and which has only since the last hearing herein come to the attention of these interveners), published a scale of rates for the transportation of logs, applicable over its entire line, [fol. 445] which is as follows:

	Cents per 100 lbs.
50 miles and under	2½
75 miles and over 50 miles	3
100 miles and over 75 miles	3½
160 miles and over 100 miles	4
200 miles and over 160 miles	4½

And that said tariff last mentioned is applicable over the lines of said Georgia & Florida Railroad Company in the State of Florida.

10. That the Savannah & Atlanta Railway Company, by its tariff I. C. C. No. 115, effective July 14, 1930, (and which has only since the last hearing herein come to the attention of these interveners) published a scale of rates for the transportation of logs from all stations on its lines to Warrenton, Sardis and Newington, Georgia, which is as follows:

	Cents per 100 lbs.
25 miles and under	2½
50 miles and over 25 miles	3
75 miles and over 50 miles	3½

[fol. 446] 10a. That the Seaboard Air Line Railway Company, by its tariff I. C. C. No. A-7528, Supplement No. 8, effective August 10, 1932, (and which has only since the last hearing herein come to the attention of these interveners) published a scale of rates for the transportation of ash, oak, cypress and poplar logs from stations between and including Branchville, Virginia, and Littleton, North Carolina, to Boykins, Virginia, and from stations between and including Severn, North Carolina, and Lewiston, North Carolina, to Boykins, Virginia, which is $2.50 per 1,000 feet and requires a minimum carload of 4,000 feet. That the distance from Littleton to Boykins is 44.7 miles and the distance from Lewiston to Boykins is 35 miles and the record shows that these logs weigh from ten to fourteen pounds per foot (R. 1585-1586). That said rate is therefore approximately the same as the Cummer scale for said distances and is about one-half of the scale of rates contained in the order of the Interstate Commerce Commission herein.

10b. That the Seaboard Air Line Railway Company, by its tariff I. C. C. No. A-7528, Supplement No. 9, effective December 11, 1932, (after the last hearing herein) published a scale of rates for the transportation of gum logs

from Fitz Siding, North Carolina, to Norfolk, Virginia, a distance of 61 miles, which is 3½ cents per 100 pounds and which requires a minimum carload of 80,000 pounds. That said rate is approximately the same as the Cummer scale for said distance and is about one-half of the scale of rates contained in the order of the Interstate Commerce Commission herein.

[fol. 447] 11. That the Southern Railway Company, after the last hearing herein, by Supplement No. 7 to its tariff I. C. C. No. 10425, effective December 31, 1932, published a scale of rates for the transportation of logs from all C. N. O. & T. P. stations to Knoxville, Tennessee, and from all Southern Railway stations to Dayton, Tennessee, and from all Southern Railway stations to Fayette, Alabama, which is expressed in lump sum terms per carload, regardless of weight, and which is as follows:

25 miles an under	$12.50 per carload
50 miles and over 25 miles	15.00 per carload
75 miles and over 50 miles	17.50 per carload
100 miles and over 75 miles	20.00 per carload

12. That said tariffs above mentioned and the scales of rates therein and hereinabove set forth, are now in force and effect and applicable to the transportation of logs over the lines of the carriers therein mentioned, and are in addition to the scales of rates which were shown at the last hearing in this proceeding to have been in force and effect.

13. That the second report of this Interstate Commerce Commission on further hearing, dated January 9, 1933, on Sheet 3 states that these reduced rates established in South-[fol. 448] western territory "should expire by limitation December 31, 1932", whereas the testimony shows, without contradiction, that the Southwestern Freight Bureau had assented to a proposal to extend the effective dates of those rates one year beyond that expiration date so that said rates would remain in effect throughout the year 1933. That by various tariffs, filed since the last hearing herein, said expiration date has been extended to December 31, 1933, and it clearly appears, both from the record in this proceeding and from the tariffs on file with said Interstate Commerce Commission, at the time of the making of said report, that

the said reduced rates in Southwestern territory would not and did not expire by limitation December 31, 1932.

14. That said second report of this Interstate Commerce Commission on further hearing states on Sheet 5 that "all of these (reduced) rates apply in the western portion of southern territory and none in the eastern portion". This statement is inaccurate. The evidence shows that the reduced rates apply in Georgia (R. 1448), and are applicable between all stations in Florida on the St. Louis-San Francisco Railroad (Exhibit 134). We have likewise herein-[fol. 449] above shown that they are applicable between all stations in Florida on the Louisville & Nashville Railroad. The record shows that reduced rates, comparable to the Cummer scale, have been established to Charleston, S. C. (R. 1464, 1465, 1467), and we have hereinabove shown that the Atlantic Coast Line Railroad itself has established such reduced rates, comparable to the Cummer scale, to Charleston. We have hereinabove shown rates to Augusta and Waynesboro, Georgia (both of which points are substantially directly North of Jacksonville, Florida), on the Central of Georgia Railway Company; and rates applicable in Florida and Georgia on the Georgia & Florida Railroad which are substantially the same as the Cummer scale and all of which are in effect with the permission of the Interstate Commerce Commission. That these reduced rates are now in effect in every single state in the South, including Florida, and the report is clearly inaccurate and misleading with respect to the widespread and general nature of their application.

15. That said second report of this Interstate Commerce Commission on further hearing at sheet 5 asserts that all of these newly reduced rates, "except those of the Nashville, Chattanooga and St. Louis and some of those of the Southern, apply only if the manufactured produce moves outbound over the line of the carrier which moves the logs [fol. 450] inbound". This is incorrect (R. 1450-1466, see also Exhibit 161 showing twenty tariffs of various railroads which apply the new rates locally as signified by the symbol "L" on said exhibit). At sheet 7 the report asserts that "while these (reduced) rates standing alone would not be attractive to these carriers from a revenue standpoint, they are attractive when coupled with the rates for the outbound movement of the manufactured product."

Substantially similar statements are repeated in that report at sheet 17. The inclusion by the Interstate Commerce Commission of these matters in the report is inconsistent. It should be observed (R. 1530) that the Florida Lumber companies, interveners, in this proceeding offered to prove that in practical operation and effect the Cummer scale as applied in Florida is tantamount to a transit scale in that the Atlantic Coast Line Railroad got the outbound movement of lumber under the Cummer scale and after some argument (R. 1530-1532) the Examiner ruled that shipments of outbound lumber were not within the issues in the proceeding and refused to hear this testimony, to which ruling exceptions were taken by the interveners. The same offer was repeated for the same purpose and again refused (R. 1605). And again when the Traffic Manager of the [fol. 451] Atlantic Coast Line Railroad was on the witness stand, these interveners on cross-examination offered to prove the same thing by him and that he had testified to that effect in another proceeding, and again this testimony was refused (R. 1784). Yet the Interstate Commerce Commission in its report attempts to distinguish between the Cummer Scale and these reduced rates on this basis. Upon further hearing, if the same be granted, these movants again offer to prove that the Cummer scale is in practical operation and effect a transit rate in that the Atlantic Coast Line Railroad secures substantially 100 per cent of the outbound movement of the lumber products from the mills to which the logs are moved, and that as regards the trainload shippers of logs such outbound movement is required to move over the Atlantic Coast Line Railroad by service contracts existing between said railroad and said shippers.

16. That said second report of said Interstate Commerce Commission on further hearing at sheet 16 states that there is "little competition between defendant and trucks for the movement of logs intrastate in Florida for distances over 25 miles". The evidence disclosed numerous hauls of thirty to fifty miles by truck and even hauls of seventy miles in length. The report is incorrect in this statement and it is apparent, in a flat country such as Florida with the existing good roads which have been shown in evidence here, that if the rates prescribed by the Interstate Com- [fol. 452] merce Commission herein become effective this

competition will be increased and the hauls by truck lengthened. The testimony of the witness Roland (R. 1580-1582) and the witness Buffum (R. 1528) is to this effect, and that conclusion is inevitable. Apparently the Interstate Commerce Commission has considered this reopened proceeding as a petition for the establishment of the newly reduced rates in Florida for the purpose of meeting truck competition, whereas these interveners have never requested the Interstate Commerce Commission to do more than not to invade the domain of the State of Florida.

17. That said second report of said Interstate Commerce Commission on further hearing at sheet 18 asserts that "The monthly movement since February 10, 1931, when the Cummer scale was re-established, has been substantially the same as from the latter part of 1930, when the main depression in the lumber business in Florida began, to February 10, 1931, indicating that the re-established substantially lower Cummer scale has had no effect on the volume of rail movement." Disregarding the fact that the Cummer scale was not re-established in February, 1931, and that trainload movements are not included in the evidence upon this subject, it is apparent that if the volume of traffic was not substantially less in 1932 than it was in 1930 then the traffic is an exception to the general rule with respect to traffic during those two years and that the only way to account for its being an exception to the general rule is the [fol. 453] existence of the Cummer scale. It is indeed remarkable, with the instability and uncertainty which this proceeding has cast upon log rates in Florida, that the volume of traffic even under the Cummer scale was maintained.

18. That said second report of said Interstate Commerce Commission on further hearing at sheets 16 and 17 asserts that the prior report found that the circumstances and conditions surrounding the transportation of logs in Florida were not on the whole as favorable as the circumstances and conditions surrounding the interstate movement of logs over the lines of the Atlantic Coast Line Railroad. The only basis of this statement is the fact that in certain other proceedings arbitraries have been prescribed for the hauls within Florida. The report then points out

the highest arbitraries that had ever been prescribed, and omits to mention the fact that in other proceedings no arbitraries whatsoever have been prescribed. The report overlooks entirely the evidence of the witnesses, Buffum and True, who testified with respect to the circumstances and conditions surrounding the transportation of those logs intrastate in Florida and in other states where the newly reduced rates are in effect, and pointed out the matters in which the circumstances and conditions surrounding the transportation of such logs intrastate in Florida were more favorable than in those other states. That testimony was not contradicted anywhere in the record.

[fol. 454] 19. That the defendant Atlantic Coast Line Railroad Company controls the Louisville & Nashville Railroad (see statement of Examiner Hoy, R. 1775-1776) through stock ownership. That the only ground upon which the Interstate Commerce Commission purports to act herein is that the Cummer scale constitutes an unjust discrimination against interstate commerce from a revenue standpoint. That the second report on further hearing herein found said newly reduced rates to be on substantially the same level as the Cummer scale, and these interveners insist that the evidence in this proceeding shows that due to the heavy loading of the cars, said newly reduced rates are in practical operation and effect lower than said Cummer scale. That said Louisville & Nashville Railroad, controlled through stock ownership as aforesaid by said Atlantic Coast Line Railroad, with the permission of this Interstate Commerce Commission, has applied and is applying a scale of rates in Florida and elsewhere lower than said Cummer scale, while at the same time said Atlantic Coast Line Railroad insists upon, and this Interstate Commerce Commission has directed, the charging of a rate in Florida which in practical operation and effect is from two to three times as high as said log rates now in effect on said Louisville & Nashville Railroad in Florida.

[fol. 455] 20. And these movants aver (as at all times in these proceedings they have averred) that this Interstate Commerce Commission is without the power, authority or jurisdiction to prescribe intrastate rates for the transpor-

tation of logs in intrastate commerce in Florida in this proceeding; also, that this Interstate Commerce Commission has not made and cannot upon the record in this proceeding make the findings which would justify the invasion of the domain of the State of Florida, and that this Interstate Commerce Commission has not justified and cannot upon this record justify the invasion of the domain of the State of Florida to fix intrastate rates in Florida, and that the action of this Interstate Commerce Commission in attempting so to do was and is arbitrary and unlawful; that the matters and things set forth in the preceding paragraphs of this motion constitute additional evidence (newly discovered by these movants and overlooked by this Interstate Commerce Commission) and further demonstrate that the said order of the Interstate Commerce Commission in invading the domain of the State of Florida as aforesaid was not and is not justified, and was and is arbitrary and unlawful and ought not to have been entered, and having been entered ought to be set aside by this Interstate Commerce Commission.

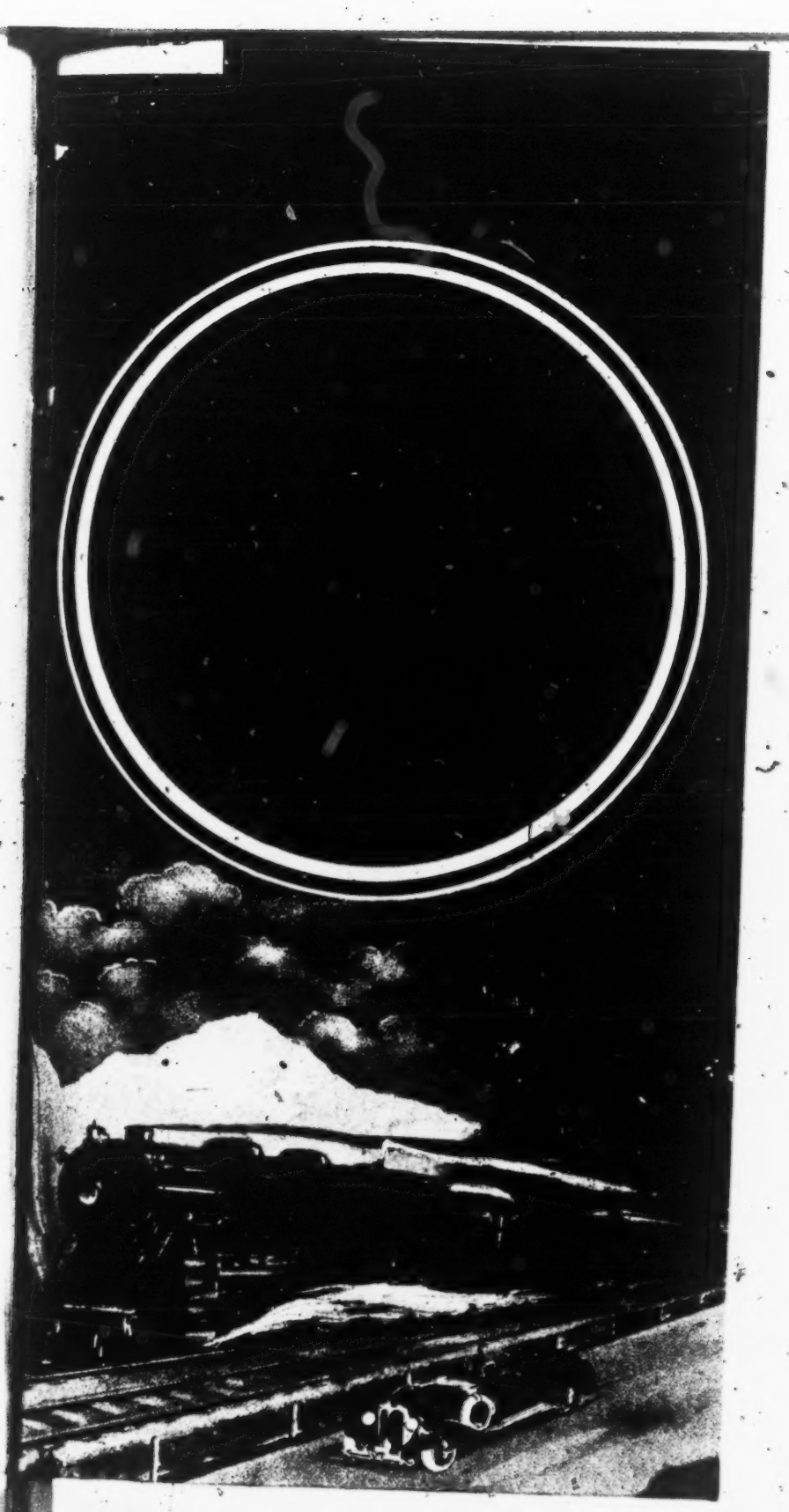
[fol. 456] 21. And these petitioners hereby re-assert and re-affirm each and every of the matters and things heretofore asserted and affirmed in the several petitions for rehearing and re-consideration heretofore filed herein by these petitioners.

Wherefore, your petitioners move that these proceedings be reopened for further hearing and reconsideration; and that the outstanding order herein prescribing rates to be applied for the transportation of logs intrastate in Florida be annulled and set aside and that these proceedings be dismissed.

Respectfully submitted, The State of Florida, by Cary D. Landis, Its Attorney General. Florida Railroad Commission, by Theo. T. Turnbull, Special Counsel.

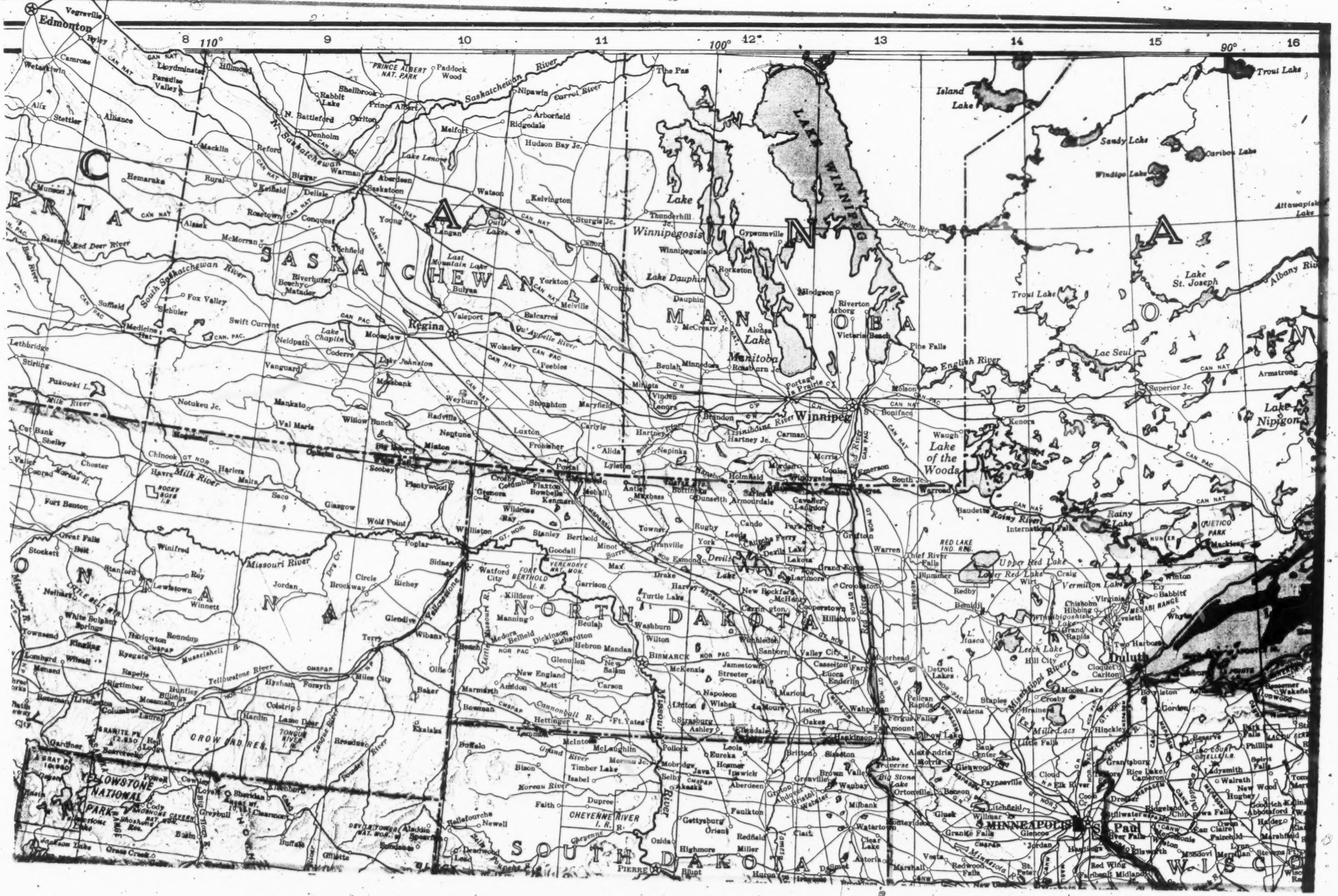
Tallahassee, Florida, February 4th, 1933.

(Here follows Exhibit D, side folio 457)



UNITED STATES

Index	Town	State	Pop. in Thousands
F12	Aberdeen,	S. D.	16
C2	Aberdeen,	Wash.	22
H19	Adrian,	Mich.	13
H20	Akron,	Ohio	255
I1	Alameda,	Calif.	35
N13	Albany,	Ga.	15
F23	Albany,	N. Y.	127
L8	Albuquerque,	N. M.	27
O15	Alexandria,	La.	23
I22	Alexandria,	Va.	24
H23	Allentown,	Pa.	93
H20	Alliance,	Ohio	23
J16	Alton,	Ill.	30
H21	Altoona,	Pa.	82
L10	Amarillo,	Tex.	43
F23	Amsterdam,	N. Y.	35
E6	Anaconda,	Mont.	12
I18	Anderson,	Ind.	40
I22	Annapolis,	Md.	13
H19	Ann Arbor,	Mich.	27
M18	Anniston,	Ala.	22
G17	Appleton,	Wis.	25
M13	Ardmore,	Okla.	16
K13	Arkansas City,	Kan.	14
H23	Asbury Park,	N. J.	15
L20	Asheville,	N. C.	50
J19	Ashland,	Ky.	29
H20	Ashtabula,	Ohio	23
D2	Astoria,	Ore.	10
J14	Atchison,	Kan.	13
M20	Athens,	Ga.	18
M19	Atlanta,	Ga.	270
I23	Atlantic City,	N. J.	66
E24	Auburn,	Me.	19
G22	Auburn,	N. Y.	37
M20	Augusta,	Ga.	60
E25	Augusta,	Me.	17
H17	Aurora,	Ill.	47
G15	Austin,	Minn.	12
P12	Austin,	Tex.	53
K2	Bakersfield,	Calif.	26
I22	Baltimore,	Md.	805
E25	Bangor,	Me.	29
H20	Barberton,	Ohio	24
L13	Bartlesville,	Okla.	15
G21	Batavia,	N. Y.	17
E25	Bath,	Me.	9
O16	Baton Rouge,	La.	31
H18	Battle Creek,	Mich.	44
G19	Bay City,	Mich.	47
P14	Beaumont,	Tex.	58
H20	Beaver Falls,	Pa.	17
I20	Bellaire,	Ohio	13
J16	Belleville,	Ill.	28
B3	Bellingham,	Wash.	31
H16	Beloit,	Wis.	24
H17	Benton Harbor,	Mich.	15
I1	Berkeley,	Calif.	82
E24	Berlin,	N. H.	20
M18	Bessemer,	Ala.	21
H23	Bethlehem,	Pa.	58
F24	Biddeford,	Me.	18
E8	Billings,	Mont.	16
O17	Biloxi,	Miss.	15
G22	Binghamton,	N. Y.	77
M18	Birmingham,	Ala.	260
E11	Bismarck,	N. D.	11
I16	Bloomington,	Ill.	31
J18	Bloomington,	Ind.	18
K20	Bluefield,	W. Va.	19
F4	Boise,	Idaho	22
H14	Boone,	Iowa	12
L11	Borger,	Tex.	7
F24	Boston,	Mass.	781
I9	Boulder,	Colo.	11
K18	Bowling Green,	Ky.	12
G21	Bradford,	Pa.	19
G24	Bridgeport,	Conn.	147
I23	Bridgeton,	N. J.	16
H23	Bristol,	Pa.	12
K20	Bristol,	Tenn. & Va.	21
G24	Brockton,	Mass.	64
R12	Brownsville,	Tex.	22
N21	Brunswick,	Ga.	14
H19	Bucyrus,	Ohio	10
G21	Buffalo,	N. Y.	573
I15	Burlington,	Iowa	27
E23	Burlington,	Vt.	25
H21	Butler,	Pa.	24
E6	Butte,	Mont.	40
K17	Cairo,	Ill.	14
E16	Calumet,	Mich.	1
I20	Cambridge,	Ohio	15
H23	Camden,	N. J.	119
H20	Canton,	Ohio	105
K16	Cape Girardeau,	Mo.	16
G22	Carbondale,	Pa.	20
I2	Carson City,	Nev.	2
G9	Casper,	Wyo.	17
H15	Cedar Rapids,	Ia.	56
J16	Centralia,	Ill.	13
I22	Chambersburg,		11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16
Edmonton
Vegreville
Camrose
Wetaskiwin
Lloydminster
Hillmond
Paradise Valley
Alix
Stettler
Alliance
Mackiln
Reford
Hemaruka
Rural
Keifield
Bigger
Warman
Aberdeen
Saskatoon
Delisle
Watson
Kelvington
Sturgis Jc.
Rosetown
Conquest
Young
Langan
Quill Lakes
Canora
Alsask
McMorran
Red Deer River
Bassano
Tichfield
Last Mountain Lake
Yorkton
Melville
Wroxton
Bulyea
Riverhurst
Beechy
Matador
Fox Valley
Suffield
Schuler
Swift Current
Medicine Hat
Regina
Valeport
Balcarres
Qu'Appelle River
Moosejaw
Lake Chaplin
Neidpath
Coderre
Lake Johnston
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Peebles
Vanguard
Lethbridge
Stirling
Pasowki L.
Milk River
Notukeu Jc.
Mankato
Val Marie
Willow Bunch
Weyburn
Radville
Neptune
Stoughton
Maryfield
Carlyle
Luxton
Frobisher
Alida
Cut Bank
Shelby
Chester
Valier
Conrad
Morias L.
Chinook
Havre
Milk River
Harlem
Malta
Saco
Glasgow
Scobey
Opheim
Big Beaver
Minton
Poplar
Wolf Point
Fort Benton
Great Falls
Stockett
Belt
Winifred
Roy
Stanford
Lewistown
Nellhart
Winnett
Missouri River
Jordan
Brockway
Circle
Richey
Sidney
Dry Cr.
Watford City
Killdeer
Manning
Beulah
Washburn
Wilton
Max
Drake
Harvey
Turtle Lake
Garrison
Goodall
Minot
Granville
Surrey
Towner
Rugby
Leeds
Devils Lake
Lakota
Grand Forks
Grafton
Warren
Larimore
Crookston
Fosston
Thief River Falls
Plummer
Redby
Bemidji
Warroad
Baudette
Rainy River
International Falls
Rainy Lake
Lake of the Woods
Kenora
Waugh
Island Lake
Trout Lake
Sandy Lake
Caribou Lake
Windigo Lake
Attawapiskat Lake
Albany River
Lake St. Joseph
Trout Lake
Pigeon River
Lac Seul
English River
Pine Falls
Armstrong
Superior Jc.
Lake Nipigon
Molson
Lake Winnipegosis
Winnipegosis
Gypsumville
Thunderhill Jc.
Rorketon
Lake Dauphin
Dauphin
Hodgson
Riverton
Arborg
Victoria Beach
McCreary Jc.
Alonsa
Lake Manitoba
Beulah
Minnedosa
Rosaburn Jc.
Portage la Prairie
Miniota
Virden
Lenore
Brandon
Winnipeg
St. Boniface
Hartney
Hartney Jc.
Carman
Morris
Emerson
South Jc.
Warroad
Melita
Boissevain
Napinka
Holmfield
Elgin
Minto
Dunseith
Armourdale
Cavalier
Langdon
Pembina
Gretna
Altona
Winkler
Morden
Portal
Lyleton
Antler
Bottineau
Flaxton
Bowbells
Kenmare
Crosby
Columbus
Stanley
Berthold
Wildrose
Ray
Williston
Watford City
Killdeer
Manning
Beulah
Washburn
Wilton
Bismarck
Mandaan
Hebron
Richardton
Dickinson
Belfield
Medora
Glendive
Terry
Wibaux
Beach
Ollie
Baker
Miles City
Forsyth
Hysham
Rapelje
Ryegate
Roundup
Harlowton
Ringling
Lombard
Wilsall
Townsend
White Sulphur Springs
Neihart
Livingston
Bozeman
Belgrade
Three Forks
Manhattan
Gallatin
Logan
Bozeman
Bridger
Columbus
Laurel
Billings
Huntley
Hardin
Crow Ind. Res.
Lame Deer
Colstrip
Broadus
Ekalaka
Rosebud
Tongue River
Powder River
Custer
Gardiner
Red Lodge
Bearcreek
Absaraka
Cody
Yellowstone National Park
Cowley
Lovell
Sheridan
Greybull
Basin
Thermopolis
Worland
Grass Creek
Buffalo
Gillette
Alzada
Devils Tower Nat. Mon.
Aladdin
Sundance
Belle Fourche
Newell
Deadwood
Lead
Rapid City
Cheyenne River I. R.
Faith
Dupree
Timber Lake
Isabel
Morean River
Mobridge
Selby
Akaska
Java
Ipswich
Aberdeen
Gettysburg
Orient
Redfield
Onida
Highmore
Miller
Pierre
Blunt
Huron
Ashton
Frederick
Andover
Bristol
Webster
Milbank
Watertown
Clear Lake
Astoria
De Smet
Volga
Brookings
Arlington
Madison
Flandreau
Egan
Canton
Sioux Falls
Elk Point
Vermillion
Yankton
Lesterville
Tabor
Parker
Marion
Menno
Freeman
Scotland
Wagner
Platte
Winner
Mission
Valentine
Chamberlain
Oacoma
Kimball
Bonesteel
Gregory
Burke
Colome
Winner
Mission
Rosebud
Ideal
Reliance
Lower Brule
Fort Thompson
Crow Creek I. R.
Big Bend
Fort Pierre
Stanley
Oahe

15 80° 16 17 18 19 80° 20 21 22 23 70°

Longitude West of Greenwich

Trout Lake
Sandy Lake
Caribou Lake
Windigo Lake
Winisk Lake
Attawapiskat River
Attawapiskat Lake
Albany River
Lake St. Joseph
Ogoki River
Lac Seul
Kenogami River
Nakina
Longlac
Long Lake
Lake Nipigon
Nipigon
Superior Jc.
Armstrong
Hearst
Moose River
Missinaibi River
Mattagami River
Abitibi River
Kapuskasing R.
Cochrane
Timmins
Abitibi Lake
Franz
Chapleau
Chapleau
Obakamiga L.
Lake Timiskaming
Cobalt
Lake Timagami
Capreol
Sudbury
Sault Ste. Marie
Lake Nipissing
North Bay
Mattawa
Pembroke
Ottawa
Hull
Renfrew
Perry Sound
Scotia
Wallace
Parry Sound
Coboconk
Peterborough
Belleville
Kingston
Lindsay
Lake Simcoe
Orillia
Barrie
Toronto
Lake Ontario
Rochester
Auburn
Syracuse
Fairville
Cooperstown
Utica
Schenectady
Albany
Troy
Saratoga
Glens Falls
Whitehall
Rutland
Burlington
Montpelier
Barre
Woodstock
Windsor
Claremont
Concord
Manchester
Nashua
Lowell
Lawrence
Boston
Worcester
Springfield
Hartford
New Haven
Bridgeport
Stamford
New York
Newark
Trenton
Philadelphia
Wilmington
Baltimore
Washington
Richmond
Norfolk
Raleigh
Charleston
Columbia
Atlanta
Augusta
Macon
Savannah
Jacksonville
Tallahassee
Tampa
Miami
Key West
Mobile
Montgomery
Birmingham
Tuscaloosa
Meridian
Jackson
Vicksburg
Natchez
New Orleans
Baton Rouge
Lafayette
Houston
Galveston
Beaumont
Port Arthur
Lake Charles
Shreveport
Texarkana
Little Rock
Memphis
Nashville
Knoxville
Chattanooga
Atlanta
Louisville
Cincinnati
Columbus
Dayton
Springfield
Toledo
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Youngstown
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Buffalo
Niagara Falls
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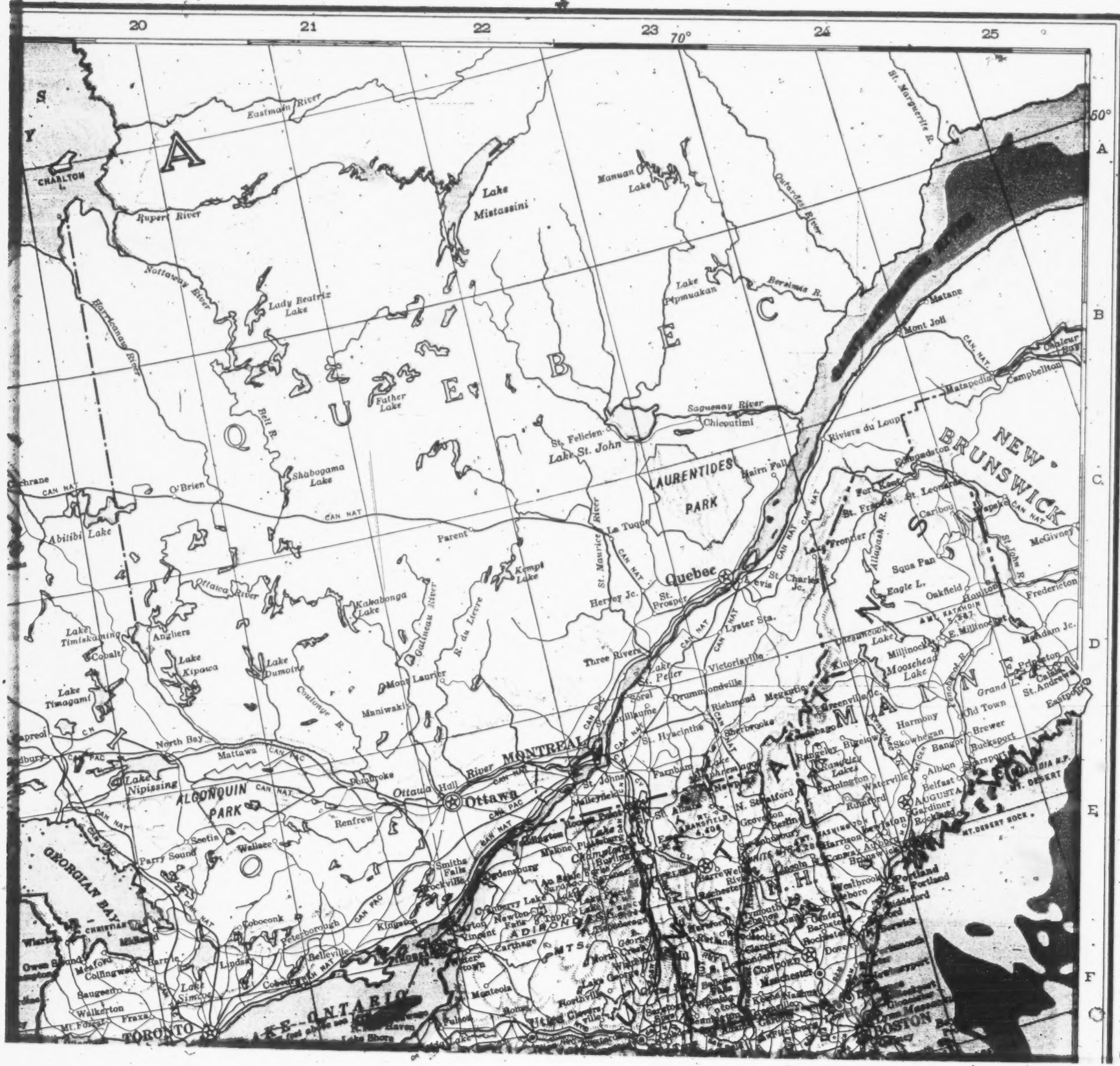
Syracuse
Utica
Albany
Troy
Schenectady



Index	Town	State	Pop. in Thousands
J19	Lexington,	Ky.	46
I19	Lima,	Ohio	42
I16	Lincoln,	Ill.	13
I13	Lincoln,	Neb.	76
M15	Little Rock,	Ark.	82
G21	Lockport,	N. Y.	23
I18	Logansport,	Ind.	19
L2	Long Beach,	Calif.	142
H23	Long Branch,	N.J.	18
H20	Lorain,	Ohio	45
L2	Los Angeles,	Calif.	1238
J18	Louisville,	Ky.	308
F24	Lowell,	Mass.	100
J21	Lynchburg,	Va.	41
F24	Lynn,	Mass.	102
M14	McAlester,	Okla.	12
I21	McKeesport,	Pa.	55
N20	Macon,	Ga.	54
G16	Madison,	Wis.	58
F24	Manchester,	N.H.	77
G17	Manitowoc,	Wis.	23
G14	Mankato,	Minn.	14
H19	Mansfield,	Ohio	34
I20	Marietta,	Ohio	14
F17	Marinette,	Wis.	14
I18	Marion,	Ind.	24
I19	Marion,	Ohio	31
E17	Marquette,	Mich.	15
N14	Marshall,	Tex.	16
H15	Marshalltown,	Ia.	17
I22	Martinsburg,	W. Va.	15
G14	Mason City,	Ia.	23
H20	Massillon,	Ohio	26
J17	Mattoon,	Ill.	15
H20	Meadville,	Pa.	17
L16	Memphis,	Tenn.	253
G24	Meriden,	Conn.	38
N17	Meridian,	Miss.	32
R22	Miami,	Fla.	111
H17	Michigan City,	Ind.	27
G24	Middletown,	Conn.	25
G23	Middletown,	N. Y.	21
I19	Middletown,	Ohio	30
I23	Millville,	N. J.	15
G17	Milwaukee,	Wis.	578
F14	Minneapolis,	Minn.	464
D11	Minot,	N. D.	16
H18	Mishawaka,	Ind.	29
D6	Missoula,	Mont.	15
J15	Moberly,	Mo.	14
O17	Mobile,	Ala.	68
I1	Modesto,	Calif.	14
H16	Moline,	Ill.	32
N15	Monroe,	La.	26
H19	Monroe,	Mich.	18
N18	Montgomery,	Ala.	66
E23	Montpelier,	Vt.	8
I21	Morgantown,	W. Va.	16
I20	Moundsville,	W. Va.	14
I18	Muncie,	Ind.	47
K16	Murphysboro,	Ill.	8
H15	Muscatine,	Iowa	17
G18	Muskegon,	Mich.	41
L13	Muskogee,	Okla.	32
H22	Nanticoke,	Pa.	26
F24	Nashua,	N. H.	31
L18	Nashville,	Tenn.	154
O16	Natchez,	Miss.	13
J18	New Albany,	Ind.	26
H23	Newark,	N. J.	442
I19	Newark,	Ohio	31
G24	New Bedford,	Mass.	113
L23	New Bern,	N. C.	12
G24	New Britain,	Conn.	68
H23	New Brunswick,	N. J.	35
G23	Newburgh,	N. Y.	31
F24	Newburyport,	Mass.	15
I18	New Castle,	Ind.	14
H20	New Castle,	Pa.	49
G24	New Haven,	Conn.	163
G24	New London,	Conn.	30
P16	New Orleans,	La.	459
I20	New Philadelphia,	Ohio	12
J19	Newport,	Ky.	80
G24	Newport,	R. I.	28
J23	Newport News,	Va.	34
H23	New York,	N. Y.	6930
G21	Niagara Falls,	N. Y.	75
H20	Niles,	Ohio	16
J23	Norfolk,	Va.	130
H23	Norristown,	Pa.	36
F23	North Adams,	Mass.	22
G24	Northampton,		

Cairo, Ill. 14
Calumet, Mich. 1
Cambridge, Ohio 15
Camden, N. J. 119
Canton, Ohio 105
Cape Girardeau, Mo. 16
Carbondale, Pa. 20
Carson City, Nev. 2
Casper, Wyo. 17
Cedar Rapids, Ia. 56
Centralia, Ill. 13
Chambersburg, Pa. 14
Champaign, Ill. 20
Charleston, S. C. 62
Charleston, W. Va. 60
Charlotte, N. C. 83
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Chester, Pa. 69
Cheyenne, Wyo. 17
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Cincinnati, Ohio 451
Clarksburg, W. Va. 29
Cleburne, Tex. 12
Cleveland, Ohio 900
Clinton, Ind. 8
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Coffeyville, Kan. 16
Cohoes, N. Y. 23
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Columbia, S. C. 52
Columbus, Ga. 43
Columbus, Ohio 291
Concord, N. H. 25
Connellsville, Pa. 13
Connersville, Ind. 18
Corning, N. Y. 16
Corpus Christi, Tex. 28
Corsicana, Tex. 15
Cortland, N. Y. 15
Coshocton, Ohio 11
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Dothan, Ala. 16
Dover, Del. 5
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Eastland, Tex. 5
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El Dorado, Ark. 22
Elgin, Ill. 16
Elkhart, Ind. 33
Elmira, N. Y. 47
Elwood, Ind. 102
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Enid, Okla. 26
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Escanaba, Mich. 15
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Fairmont, W. Va. 23
Fall River, Mass. 115
Fargo, N. D. 39
Faribault, Minn. 33
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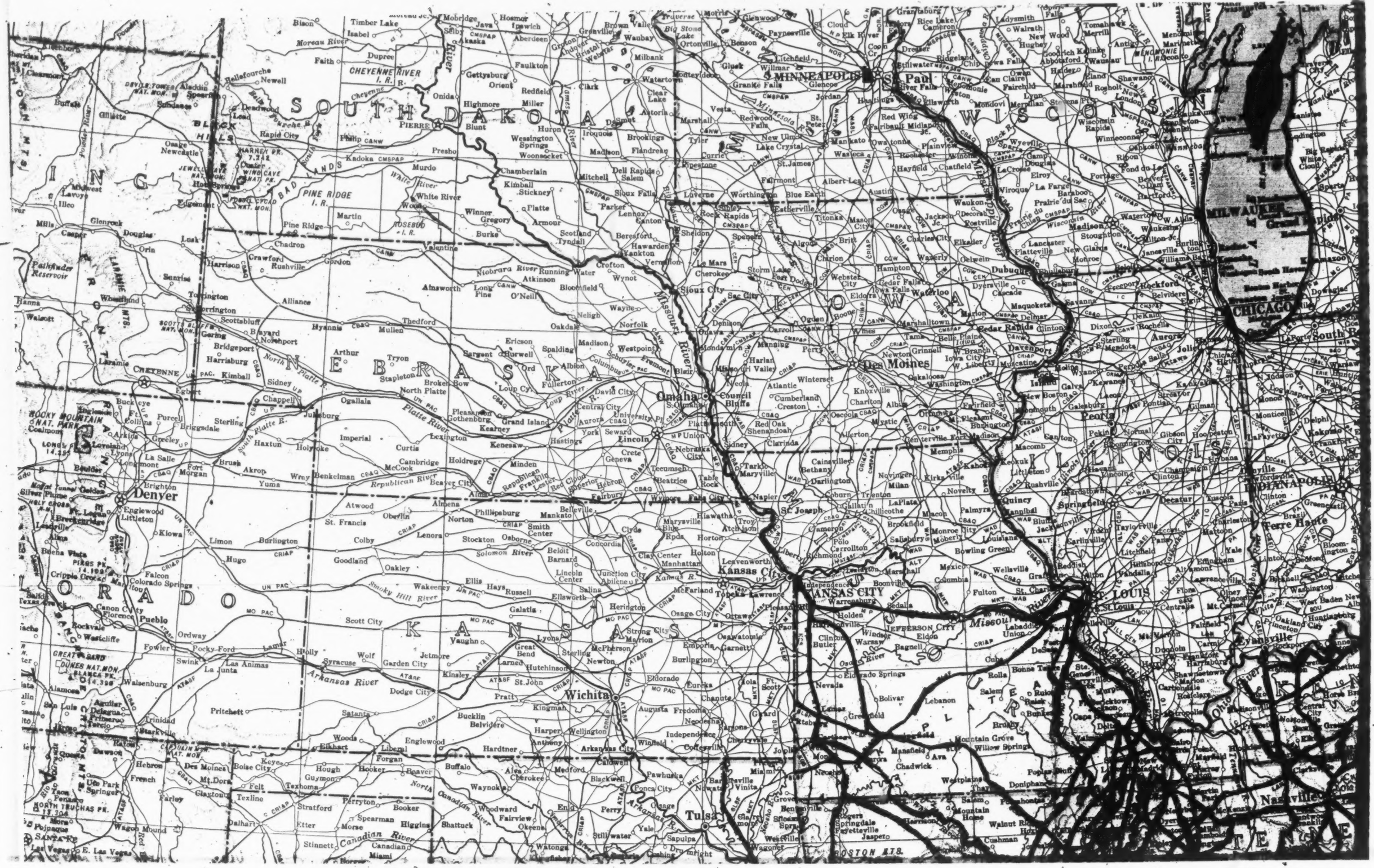
Fitchburg, Mass. 41
Flint, Mich. 156
Florence, Ala. 12
Florence, S. C. 15
Fond du Lac, Wis. 26
Fort Dodge, Ia. 22
Fort Lauderdale, Fla. 9
Fort Scott, Kan. 11
Fort Smith, Ark. 31
Fort Wayne, Ind. 115
Fort Worth, Tex. 163
Frankfort, Ind. 12
Frankfort, Ky. 14
Frederick, Md. 21
Freeport, Ill. 16


SOUTH DAKOTA
NEBRASKA
KANSAS
IOWA
ILLINOIS
WISCONSIN
MINNEAPOLIS
St. Paul
Des Moines
Omaha
Lincoln
Kansas City
Wichita
Tulsa
St. Joseph
Denver
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Cheyenne
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Sioux City
Davenport
Peoria
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St. Louis
Chicago
Milwaukee
Indianapolis
Evansville
Nashville
Missouri River
Platte River
Arkansas River
Canadian River
Republican River
Solomon River
Smoky Hill River
Niobrara River
Cheyenne River
Pine Ridge I. R.
Rosebud I. R.
Black Hills
Bad Lands
Pathfinder Reservoir
Rocky Mountain Nat. Park
Great Sand Dunes Nat. Mon.
Jefferson City
Boston Mts.

LAKE ONTARIO
LAKE ERIE
TORONTO
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Niagara Falls
Rochester
Syracuse
Albany
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NEW YORK
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Saginaw
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Ft. Wayne
Lima
Columbus
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Springfield
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Terre Haute
Evansville
Louisville
Nashville
Huntington
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Norfolk
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WASHINGTON D.C.
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Durham
RALEIGH
Wilmington
Norfolk
Cape Charles
CAPE CHARLES
Cape Henry
Cape Hatteras
Cape Lookout
Cape Fear
Ocean City
Salisbury
Franklin City
Chincoteague
Delaware Bay
Chesapeake Bay
Albemarle Sound
Pamlico Sound
MICHIGAN
OHIO
INDIANA
ILLINOIS
KENTUCKY
TENNESSEE
WEST VIRGINIA
VIRGINIA
PENNSYLVANIA
NEW YORK
NORTH CAROLINA
SOUTH CAROLINA
MARYLAND
DELAWARE
Lake Erie
Lake Michigan
Ohio River
Cumberland R.
Kanawha R.
Neuse R.
Pamlico R.
Cape Fear R.
Susquehanna R.
Delaware R.
Potomac R.
Rappahannock R.
James R.
Roanoke R.
Tennessee R.
Kentucky R.
Wabash River
Kankakee River
Au Sable River
Manistee River
Grand River
Muskegon River
Saginaw Bay
Grand Traverse Bay
Lake Simcoe
Lake Nipissing
Lake Huron
Lake Michigan
Lake Erie
Lake Ontario
Lake Superior
Lake Winnipeg
Lake of the Woods
Lake Winnipesaukee
Lake Champlain
Lake George
Lake Placid
Lake Memphremagog
Lake Chautauqua
Lake Keuka
Lake Seneca
Lake Cayuga
Lake Oneida
Lake Onondaga
Lake Erie
Lake Ontario
Lake Michigan
Lake Huron

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LAKE ERIE
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BUFFALO
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Williamsburg
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Martinsville
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Trenton
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Schenectady
Troy
Poughkeepsie
Newburgh
Kingston
Catskill Mts.
Adirondack Mts.
Lake George
Lake Champlain
Rutland
Burlington
Montpelier
Concord
Manchester
Nashua
Portsmouth
Lowell
Worcester
BOSTON
Providence
Fall River
New London
Hartford
Springfield
Pittsfield
Northampton
Greenfield
Bridgeport
New Haven
Stamford
Southampton
Montauk Pt.
Block I.
Martha's Vineyard I.
Nantucket I.
Cape Cod
Provincetown
Plymouth
Brockton
Quincy
Cape Cod Canal
Buzzards Bay
Vineyard Sound
Nantucket Sound
Cape Cod Bay
Gloucester
Salem
Lynn
Boston
Cape Ann
Cape Elizabeth
Portland
Augusta
Bangor
Waterville
Lewiston
Auburn
Rockland
Bath
Brunswick
Biddeford
Saco
Sanford
Kittery
Portsmouth
Dover
Exeter
Laconia
Berlin
Littleton
Lebanon
Hanover
Claremont
Keene
Brattleboro
Bennington
Rutland
Middlebury
Barre
Montpelier
Newport
St. Johnsbury
Derby Line
Rouses Point
Plattsburgh
Saranac Lake
Malone
Ogdensburg
Massena
Watertown
Carthage
Lowville
Boonville
Rome
Utica
Oneida
Cortland
Ithaca
Elmira
Corning
Hornell
Olean
Jamestown
Dunkirk
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Titusville
Meadville
Oil City
Franklin
Sharon
New Castle
Beaver Falls
Ambridge
Aliquippa
Monessen
Uniontown
Connellsville
Greensburg
Johnstown
Altoona
Bedford
Hollidaysburg
Huntingdon
Tyrone
Clearfield
DuBois
Ridgway
Emporium
Kane
Warren
Meadville
Erie
Conneaut
Ashtabula
Painesville
Lorain
Elyria
Sandusky
Fremont
Toledo
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Jackson
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Flint
Saginaw
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Midland
Mt. Pleasant
Alma
Big Rapids
Muskegon
Grand Rapids
Holland
Kalamazoo
Battle Creek
Benton Harbor
South Bend
Gary
Hammond
Michigan City
Chicago
Waukegan
Milwaukee
Racine
Kenosha
Green Bay
Oshkosh
Fond du Lac
Sheboygan
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Appleton
Wausau
Rhinelander
Marinette
Escanaba
Menominee
Iron Mountain
Ironwood
Houghton
Hancock
Sault Ste. Marie
Mackinaw City
Petoskey
Traverse City
Cadillac
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Zeeland
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Lebanon
Wilmington
Portsmouth
Ironton
Ashland
Huntington
Point Pleasant
Gallipolis
Ripley
Maysville
Ashland
Paintsville
Pikeville
Hazard
Jackson
Irvine
Richmond
Berea
Somerset
London
Corbin
Middlesboro
Harlan
Pineville
Barbourville
Williamsburg
Cumberland Gap
Morristown
Greeneville
Johnson City
Kingsport
Bristol
Abingdon
Wytheville
Pulaski
Radford
Blacksburg
Christiansburg
Roanoke
Salem
Lynchburg
Bedford
Rocky Mount
Martinsville
Danville
Farmville
Hopewell
Petersburg
Colonial Heights
Chesterfield
Richmond
Williamsburg
Yorktown
Newport News
Hampton
Norfolk
Portsmouth
Chesapeake
Suffolk
Franklin
Smithfield
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Ahoskie
Murfreesboro
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Weldon
Scotland Neck
Tarboro
Rocky Mount
Wilson
Goldsboro
Kinston
New Bern
Morehead City
Beaufort
Cape Lookout
Cape Hatteras
Ocracoke
Pamlico Sound
Albemarle Sound
Roanoke I.
Elizabeth City
Edenton
Hertford
Plymouth
Washington
Greenville
Rocky Mount
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Smithfield
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Fuquay-Springs
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Statesville
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Murphy
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Franklin
Highlands
Cashiers
Brevard
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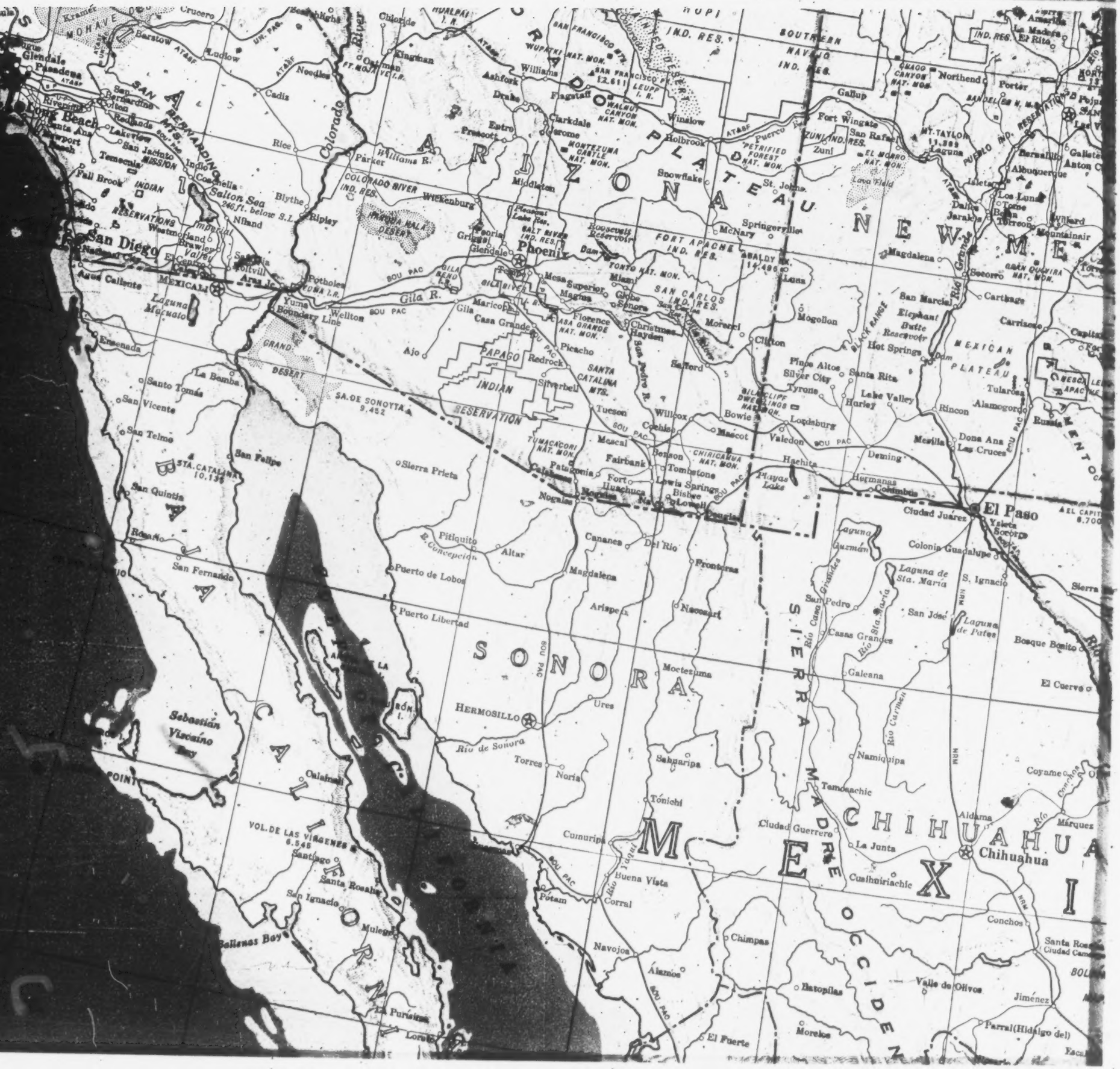
Hartsville
Bennettsville
Dillon
Marion
Conway
Myrtle Beach
Georgetown
Andrews
Hemingway
Kingstree
Manning
Summerton
Santee
Orangeburg
Bamberg
Barnwell
Aiken
North Augusta
Edgefield
Greenwood
Abbeville
Anderson
Clemson
Seneca
Walhalla
Westminster
Greenville
Spartanburg
Union
Laurens
Newberry
Columbia
Lexington
Batesburg
Leesville
Saluda
Edgefield
McCormick
Augusta
Waynesboro
Louisville
Sandersville
Dublin
Eastman
Hawkinsville
Cochran
Fort Valley
Perry
Macon
Milledgeville
Eatonton
Madison
Monticello
Jackson
Griffin
Thomaston
Barnesville
Zebulon
Forsyth
Gray
Dublin
Vidalia
Lyons
Swainsboro
Metter
Statesboro
Sylvania
Waynesboro
Millen
Springfield
Rincon
Savannah
Tybee I.
Hilton Head I.
Beaufort
Parris I.
Port Royal
Port Royal Sound
Broad River
Savannah River
Tybee Roads
Wassaw Sound
Ossabaw Sound
St. Catherines Sound
Sapelo Sound
Doboy Sound
Altamaha Sound
Brunswick
St. Simons I.
Jekyll I.
Cumberland I.
Fernandina
Amelia I.
Jacksonville
St. Augustine
Daytona Beach
Palm Coast
Flagler Beach
Ormond Beach
Deland
Orange City
Deltona
Sanford
Lake Monroe
Oviedo
Winter Park
Orlando
Kissimmee
St. Cloud
Lake Okeechobee
Clewiston
Belle Glade
Pahokee
Moore Haven
Labelle
Immokalee
Naples
Marco I.
Everglades City
Chokoloskee
Ten Thousand Islands
Cape Romano
Gulf of Mexico
Florida Bay
Key West
Marathon
Islamorada
Key Largo
Tavernier
Plantation Key
Upper Matecumbe Key
Lower Matecumbe Key
Long Key
Duck Key
Grassy Key
Big Pine Key
Little Pine Key
Sugarloaf Key
Cudjoe Key
Summerland Key
Boca Chica Key
Stock Island
Sombrero Key
Middle Keys
Lower Keys
Upper Keys
Dry Tortugas
Fort Jefferson
Tortugas Harbor
Loggerhead Key
Garden Key
Bush Key
Hospital Key
Long Key
Middle Key
Bird Key
Sand Key
Rebecca Shoal
Marquesas Keys
Boca Grande Key
Gasparilla I.
Pine I.
Sanibel I.
Captiva I.
Fort Myers
Fort Myers Beach
Punta Gorda
Port Charlotte
Englewood
Venice
Nokomis
Osprey
Sarasota
Bradenton
Anna Maria I.
Longboat Key
Lido Key
St. Armands Key
Siesta Key
Palmetto
Ellenton
Parrish
Myakka City
Arcadia
Wauchula
Zolfo Springs
Sebring
Avon Park
Lake Placid
Frostproof
Haines City
Lake Wales
Winter Haven
Bartow
Lakeland
Auburndale
Mulberry
Plant City
Dover
Brandon
Riverview
Ruskin
Sun City
Wimauma
Tampa
Tampa Bay
Hillsborough Bay
Old Tampa Bay
Clearwater
Dunedin
Tarpon Springs
Palm Harbor
Largo
St. Petersburg
Gulfport
Pinellas Park
Seminole
Indian Rocks Beach
Belleair
Clearwater Beach
Sand Key
Treasure I.
Madeira Beach
John's Pass
Redington Beach
Redington Shores
Indian Shores
Belleair Beach
Belleair Shore
Pass-a-Grille Beach
Shell Key
Weeki Wachee
Spring Hill
New Port Richey
Hudson
Port Richey
Hernando Beach
Homosassa
Crystal River
Inverness
Floral City
Citrus Springs
Dunnellon
Ocala
Silver Springs
Belleview
Summerfield
Lady Lake
The Villages
Leesburg
Eustis
Tavares
Mount Dora
Umatilla
Altoona
Astor
Sorrento
Mount Plymouth
Apopka
Zellwood
Mount Dora
Eustis
Tavares
Leesburg
Clermont
Groveland
Minneola
Montverde
Howey-in-the-Hills
Fruitland Park
Lady Lake
The Villages
Wildwood
Bushnell
Center Hill
Webster
Sumterville
Lake Panasoffkee
Coleman
Wildwood
Oxford


ARIZONA
NEW MEXICO
PLATEAU
MEXICO
SONORA
CHIHUAHUA
SIERRA MADRE OCCIDENTAL
Colorado River
Gila R.
Rio Grande
Salton Sea
246 ft. below S.L.
San Diego
Phoenix
Tucson
El Paso
Ciudad Juárez
Chihuahua
HERMOSILLO
Nogales
Yuma
Mexicali
Ensenada
Guaymas
Nacozari
Agua Caliente
Indian Reservations
Colorado River Ind. Res.
Fort Apache Ind. Res.
San Carlos Ind. Res.
Papago Indian Reservation
Gila Bend Ind. Res.
Salt River Ind. Res.
Navajo Ind. Res.
Hualpai Ind. Res.
Hopi Ind. Res.
Zuni Ind. Res.
Pueblo Ind. Reservation
Mohave Desert
Sonoran Desert
Grand Canyon
Petrified Forest Nat. Mon.
Walnut Canyon Nat. Mon.
Montezuma Castle Nat. Mon.
Tumacacori Nat. Mon.
Chiricahua Nat. Mon.
Gila Cliff Dwellings Nat. Mon.
Aztec Ruins Nat. Mon.
Casa Grande Ruins Nat. Mon.
Wupatki Nat. Mon.
Sunset Crater Nat. Mon.
El Morro Nat. Mon.
Chaco Canyon Nat. Mons.
Bandelier Nat. Mon.
Pecos Nat. Mon.
Gila Cliff Dwellings Nat. Mon.
Organ Pipe Cactus Nat. Mon.
Saguaro Nat. Mon.
Mt. Taylor 11,389
San Francisco Pk. 12,611
Humphreys Pk. 12,611
Leupp
Williams
Flagstaff
Winslow
Holbrook
Gallup
Fort Wingate
Zuni
Laguna
Albuquerque
Los Lunas
Socorro
Magdalena
Springerville
McNary
Show Low
Globe
Miami
Superior
Mesa
Florence
Casa Grande
Maricopa
Yuma
Wellton
Gila
Christmas
Hayden
Morenci
Clifton
Mogollon
Hot Springs
Silver City
Tyrone
Lake Valley
Hurley
Rincon
Las Cruces
Deming
Lordsburg
Bowie
Willcox
Cochise
Benson
Tombstone
Fairbank
Mascot
Valedon
Hachita
Huachuca
Lowell
Douglas
Agua Prieta
Sierra Prieta
Cananea
Del Rio
Fronteras
Arispe
Magdalena
Puerto de Lobos
Puerto Libertad
Pitiquito
Altar
Rosario
San Felipe
San Quintin
San Vicente
Santo Tomás
La Bamba
San Telmo
Ajo
Picacho
Redrock
Silverbell
Sierra Prieta
Sta. Catalina 10,136
Sa. de Sonoyta 9,452
Santa Catalina Mts.
Pinos Altos
Santa Rita
Tularosa
Alamogordo
Dona Ana
Mesilla
Las Cruces
Colonia Guadalupe
Ysleta
Socorro
Laguna Guzmán
Laguna de Sta. María
Laguna de Patos
Casas Grandes
San Pedro
San José
S. Ignacio
Bosque Bonito
Galeana
Moctezuma
Ures
Torres
Noria
Sahuaripa
Namiquipa
Tamosachic
Coyame
El Cuervo
Ciudad Guerrero
La Junta
Aldama
Marques
Cuauhtemiachic
Cumuripa
Buena Vista
Corral
Pótam
Tónichi
Río Yaqui
Río de Sonora
Río Sta. María
Río Carmen
Río Casas Grandes
Río Conchos
Conchos
Santa Rosalia (Ciudad Camargo)
Chimpas
Navojoa
Alamos
Estopilas
Valle de Olivos
Jiménez
Parral (Hidalgo del)
Moreles
El Fuerte
Sebastián Viscaino
Bahia
Calahuli
Vol. de las Vírgenes 6,545
Santiago
Santa Rosalia
San Ignacio
Mulegé
Ballenas Bay
La Purísima
Loreto
Point
Isla
Cedros
Rio Colorado
Williams R.
Bill Williams
Virgin R.
Muddy R.
Las Vegas
Boulder Dam
Lake Mead
Lake Mohave
Needles
Barstow
Ludlow
Cadiz
Kingman
Chloride
Oatman
Ft. Mojave I.R.
Parker
Blythe
Ripley
Niland
Indio
Coachella
Riverside
San Bernardino
Redlands
Lakeview
San Jacinto
Temecula
Fall Brook
Santa Ana
Long Beach
Pasadena
Glendale
Crucero
Kramer
Mojave
Prescott
Jerome
Clarkdale
Drake
Ashfork
Williams
Middleton
Wickenburg
Peoria
Glendale
Mesa
Gila Bend
Papago Desert
Imperial Valley
Brawley
El Centro
Holtville
Araz Jc.
Potholes
Yuma I.R.
Laguna Mercado
Boundary Line
Casa Grande
Picacho
Redrock
Silverbell
Tumacacori
Patagonia
Fort Huachuca
Lowell
Douglas
Nogales
Agua Prieta
Cananea
Pitiquito
Altar
Rosario
Puerto de Lobos
Puerto Libertad
San Fernando
Arispe
Magdalena
Del Rio
Fronteras
Nacozari
Moctezuma
Ures
Hermosillo
Rio de Sonora
Torres
Noria
Sahuaripa
Namiquipa
Tamosachic
Coyame
El Cuervo
Ciudad Guerrero
La Junta
Aldama
Marques
Chihuahua
Cuauhtemiachic
Cumuripa
Buena Vista
Corral
Pótam
Tónichi
Río Yaqui
Río de Sonora
Río Sta. María
Río Carmen
Río Casas Grandes
Río Conchos
Conchos
Santa Rosalia (Ciudad Camargo)
Chimpas
Navojoa
Alamos
Estopilas
Valle de Olivos
Jiménez
Parral (Hidalgo del)
Moreles
El Fuerte
Sebastián Viscaino
Bahia
Calahuli
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Yuma I.R.
Laguna Mercado
Boundary Line
Casa Grande
Picacho
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Silverbell
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Douglas
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Cananea
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Puerto de Lobos
Puerto Libertad
San Fernando
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Buena Vista
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Río de Sonora
Río Sta. María
Río Carmen
Río Casas Grandes
Río Conchos
Conchos
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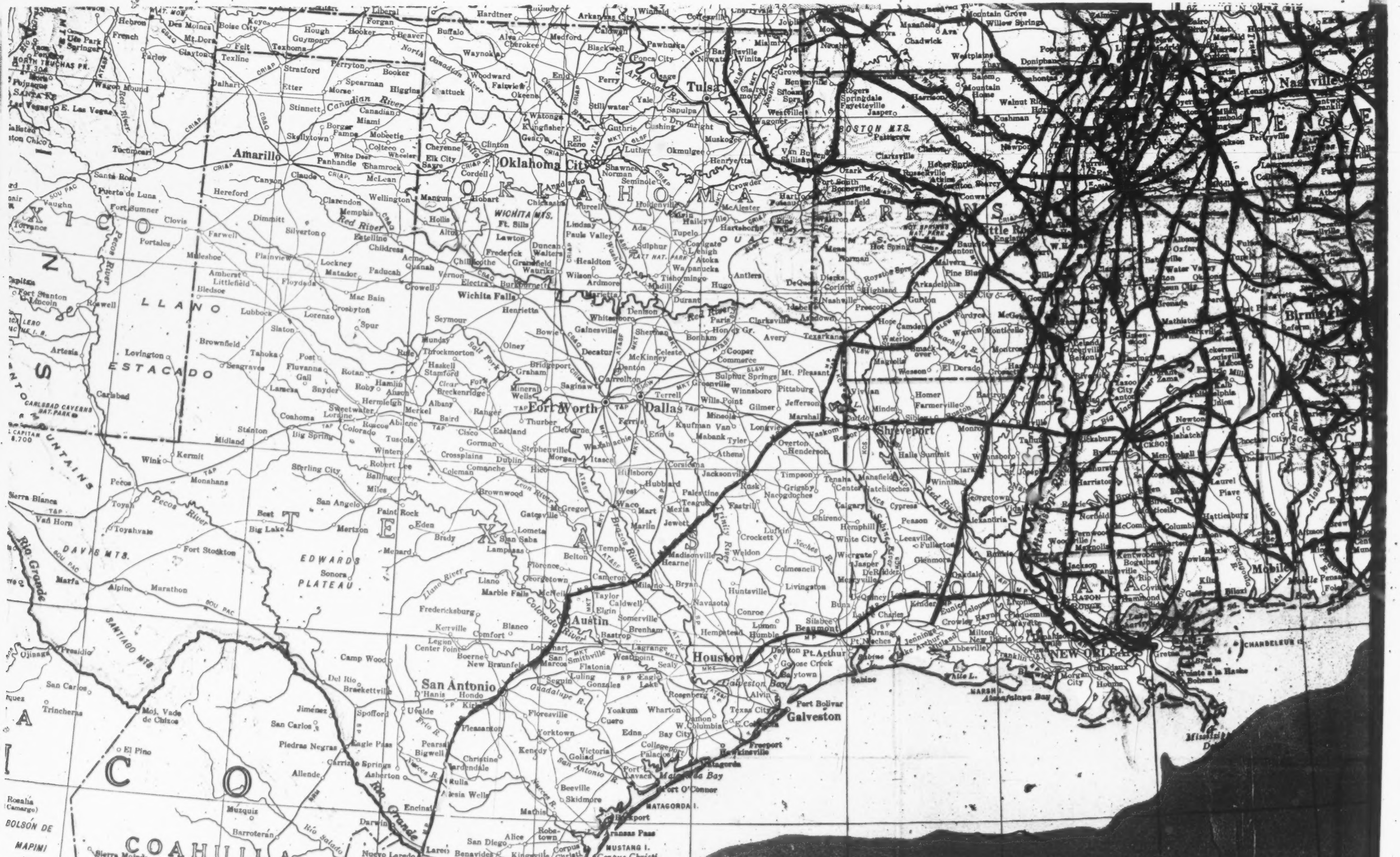
Alamos
Estopilas
Valle de Olivos
Jiménez
Parral (Hidalgo del)
Moreles
El Fuerte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Sam Rayburn Res.
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Edwards Plateau
Davis Mts.
Santiago Mts.
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Carlsbad Caverns Nat. Park
Guadalupe R.
San Antonio R.
Aransas Pass
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Mustang I.
Padre I.
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Jiménez
Moj. Vade de Chizos
El Pino
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Nuevo Laredo
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Crystal City
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Bayou Barataria
Bayou Plaquemine
Bayou Grand Caillou
Bayou Petit Caillou
Bayou Du Large
Bayou Cane
Bayou Blue
Bayou Gauche
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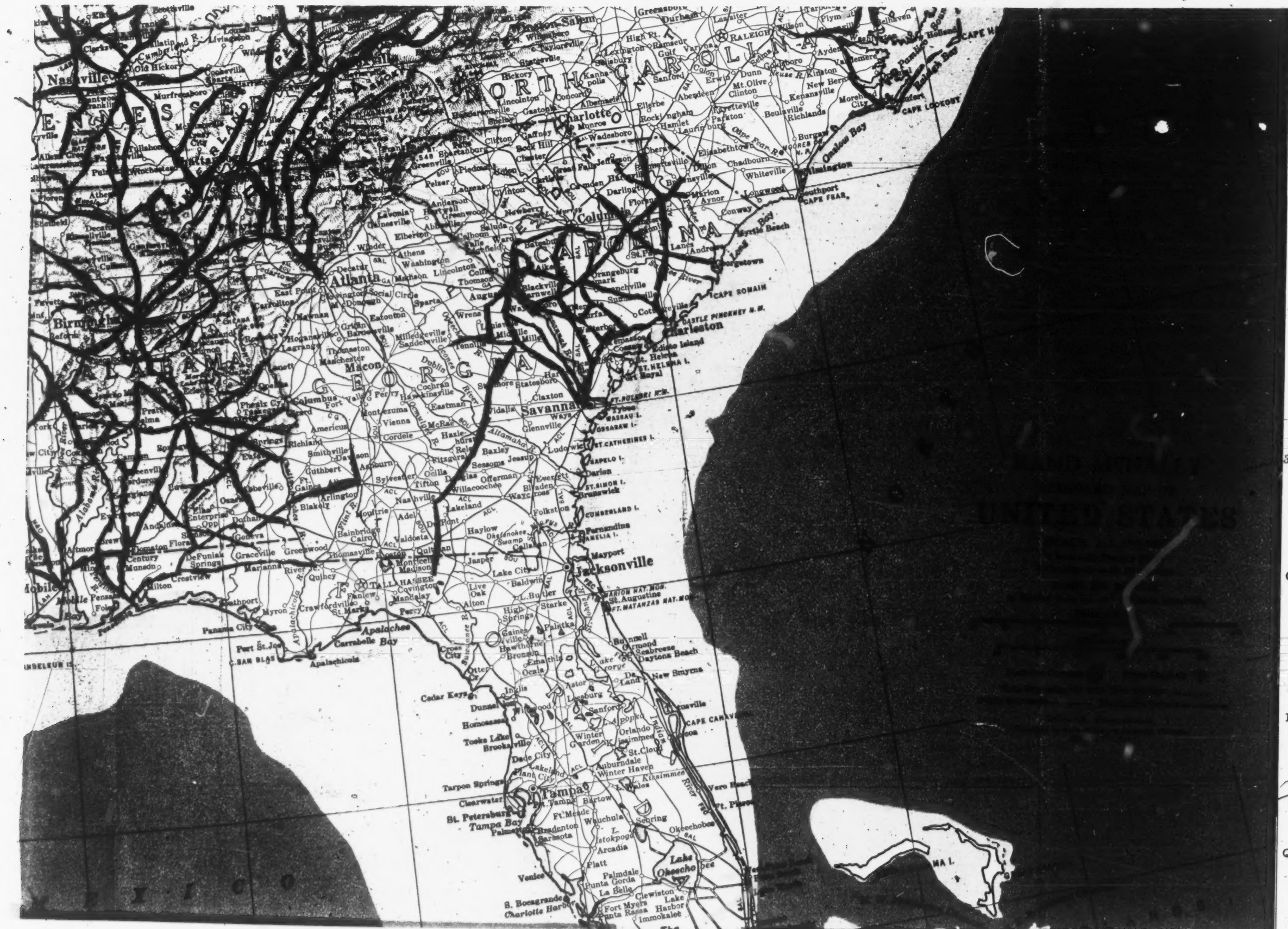
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Cape Fear
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Albemarle Sd.
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Lake Apopka
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Florida Keys
Key West
Gulf of Mexico
Atlantic Ocean
ALABAMA
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J14	Kansas City, Kan.	122
J14	Kansas City, Mo.	400
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I16	Kewanee, Ill.	17
R21	Key West, Fla.	13
G23	Kingston, N. Y.	28
L19	Knoxville, Tenn.	106
I18	Kokomo, Ind.	33
G15	La Crosse, Wis.	40
I17	La Fayette, Ind.	26
N19	Lagrange, Ga.	20
P15	Lake Charles, La.	16
Q21	Lakeland, Fla.	19
H20	Lakewood, Ohio	71
I19	Lancaster, Ohio	19
H22	Lancaster, Pa.	60
G18	Lansing, Mich.	78
H17	La Porte, Ind.	16
Q11	Laredo, Tex.	33
H16	La Salle, Ill.	13
O17	Laurel, Miss.	18
J14	Lawrence, Kan.	14
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I14	Leavenworth, Kan.	17
H22	Lebanon, Pa.	26
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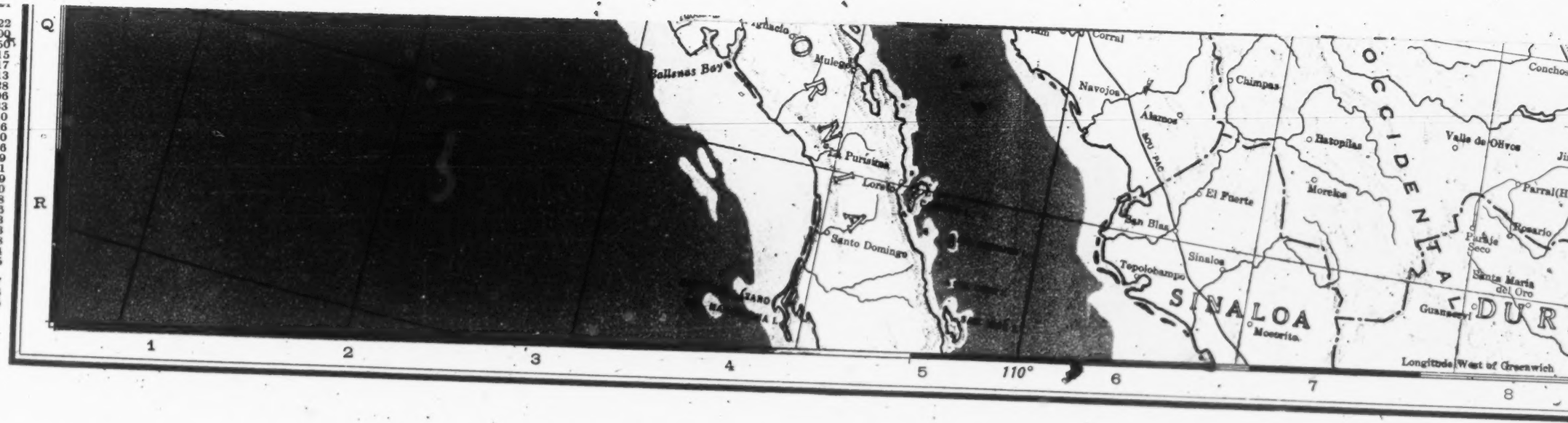

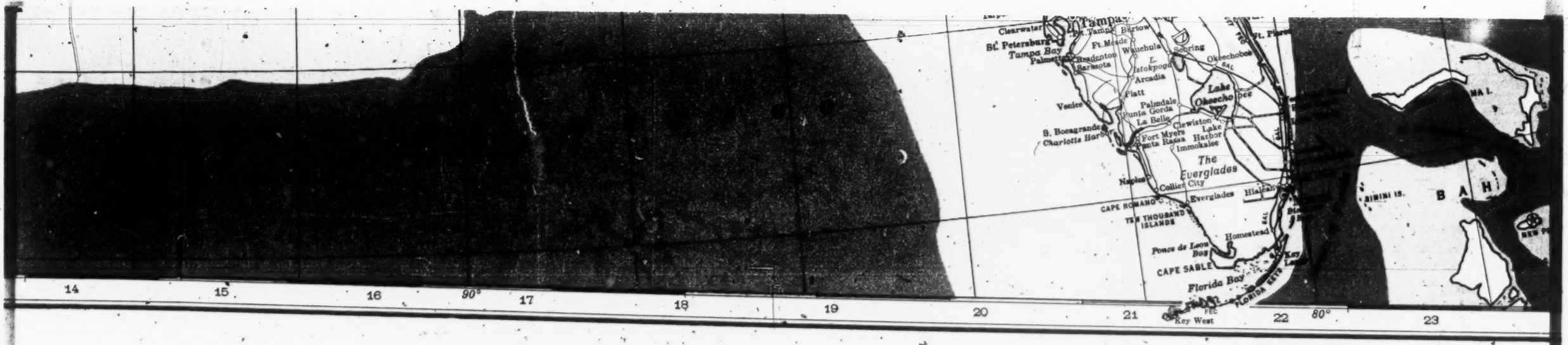
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Venice
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Punta Gorda
La Belle
Clewiston
Lake Harbor
Immokalee
S. Boca Grande
Charlotte Harbor
Fort Myers
Punta Rassa
The Everglades
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Rosalía (Camargo)
Sierra Mojada
Escalón
Mohovano
Tlahualilo
Mapimi
Sacramento
Torreón
Laguna de Mayrán
Sauceda
Reata
Monclova
Barroterán
Muzquiz
Allende
Río Salado
Lampazos
Guadalupe
Paredon
Monterrey
Nuevo Laredo
Laredo
Darwin
Encinal
Asherton
Río Grande
Zapata
Ciudad Camargo
Mission
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East
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Falfurrias
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San Diego
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Corpus Christi
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MUSTANG I.
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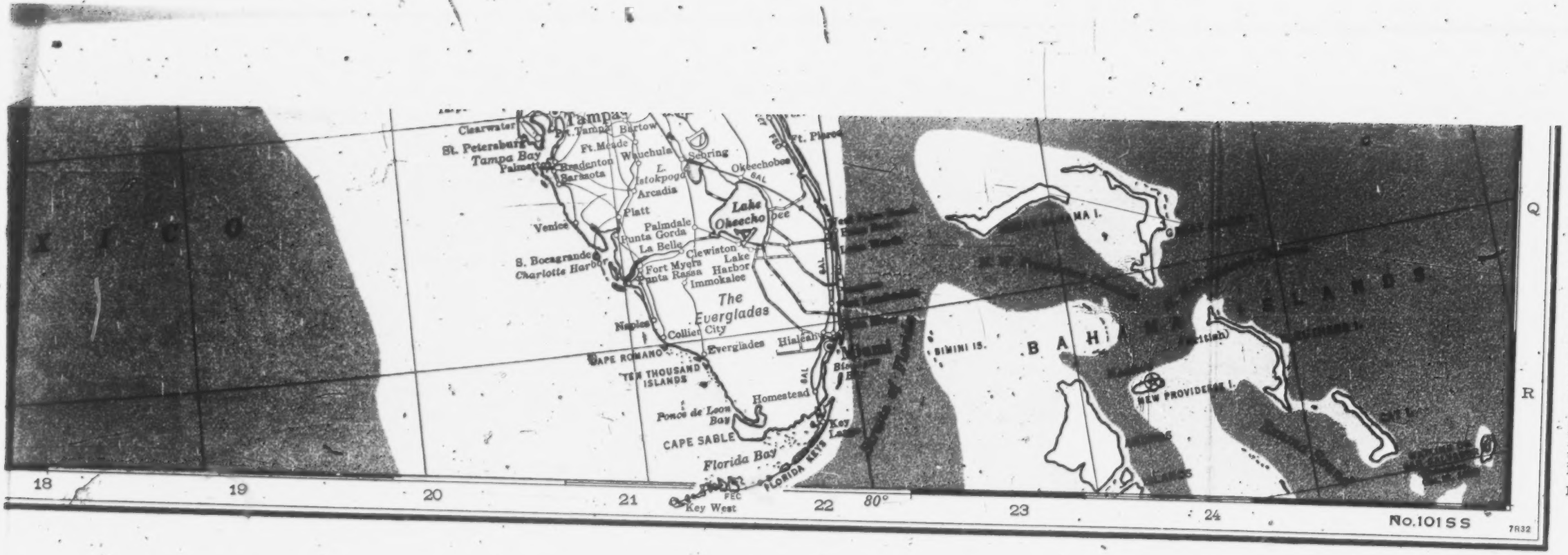

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F22	Watertown, N.Y.	32
E25	Waterville, Me.	15
H17	Waukegan, Ill.	33
G17	Waukesha, Wis.	17
F16	Wausau, Wis.	24
O20	Waycross, Ga.	16
G17	West Allis, Wis.	35
G24	Westfield, Mass.	20
Q22	West Palm Beach, Fla.	27
I20	Wheeling, W. Va.	62
K13	Wichita, Kan.	111
M12	Wichita Falls, Tex.	44
H22	Wilkes-Barre, Pa.	87
H22	Williamsport, Pa.	46
G24	Willimantic, Conn.	12
I23	Wilmington, Del.	107
L22	Wilmington, N.C.	32
K22	Wilson, N. C.	13
G15	Winona, Minn.	21
K21	Winston-Salem, N. C.	75
F24	Worcester, Mass.	195
H19	Wyandotte, Mich.	28
D3	Yakima, Wash.	22
H23	Yonkers, N. Y.	135
I22	York, Pa.	55
H20	Youngstown, Ohio	170
I20	Zanesville, Ohio	36

Coca-Cola

9 MILLION A DAY

EVEN Bright Angel Trail, in the Grand Canyon of Arizona, leads to a soda fountain and ice-cold Coca-Cola.

It had to be good to get where it is.

[fol. 458] [File endorsement omitted.]

[fol. 459] IN UNITED STATES DISTRICT COURT

In Equity. No. 690

STATE OF FLORIDA AND EUGENE S. MATTHEWS, MAMIE EATON-GREEN, AND TUCKER SAVAGE, as and Constituting Florida Railroad Commission, Complainants,

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, Respondents

Petition for Injunction

In Equity. No. 691

WILSON CYPRESS COMPANY AND WILSON LUMBER COMPANY OF FLORIDA, Complainants,

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, Respondents

Petition for Injunction

In Equity. No. 695

F. S. BUFFUM COMPANY, INC., Complainants,

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, Respondents

Petition for Injunction, Bill of Complaint and Supplemental Bill of Complaint

ORDER CONSOLIDATING CAUSES—Feb. 24, 1933

The three above stated causes came on this day on Petition for Injunction, the following counsel appearing:

H. P. Adair for The Wilson Cypress Co. et al.
F. C. Hillyer for F. S. Buffum Co., Inc.
T. T. Turnbull for The State of Florida.
J. V. Norman for The Wilson Lumber Co.
Elmer B. Collins for The United States.
J. Stanley Payne for The Interstate Commerce Commission.

Robt. C. Alston for The Atlantic Coast Line Railroad Co.
J. J. E. Anderson for The Georgia Public Service Commission.

Thereupon the following order of Consolidation was granted:

[fol. 460] "It appearing that the foregoing bills attack the same orders of the Interstate Commerce Commission and involve the same subject matter and depend upon the same evidence, all parties consenting, it is ordered that they be consolidated into one bill under the style first stated above, and that the case hereafter proceed as a single cause.

This 24th day of February, 1933.

Sam'l H. Sibley, Circuit Judge. E. Marvin Underwood, District Judge. Louie W. Strum, District Judge.

Mr. Adair thereupon moved the Court for leave to file Supplemental Bills of Complaint, which was granted by verbal order of the Court; and thereupon Mr. Alston moved the Court for leave to file Intervention on behalf of The Atlantic Coast Line Railroad Company, which was granted by verbal order of the Court; and Mr. Anderson, on behalf of The Georgia Public Service Commission, moved the Court for leave to Intervene, which was also granted by verbal order of the Court.

Thereupon the cause proceeded on the introduction of evidence and argument. After hearing the evidence and argument thereon, the Court thereupon filed the following Findings of Fact and Conclusions of Law:

[fol. 461] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

In Equity. No. 690

[Title omitted]

ANSWER OF UNITED STATES OF AMERICA TO SUPPLEMENTAL BILL OF COMPLAINT—Filed Feb. 24, 1933

United States of America, one of the defendants in the above-entitled cause, for answer to the supplemental bill filed therein against it answers and says:

I

United States admits for the purposes of this suit that the allegations contained in the opening paragraph and in paragraph 1 of the supplemental bill are true, with this exception: it denies the conclusion in said paragraph 1 that "the said Interstate Commerce Commission attempted to invade domain of the State of Florida and to disestablish the scale of lawful rates in force and effect for the transportation of logs" in intrastate commerce in Florida.

[fol. 462]

II

Answering paragraphs 2 and 3 of the supplemental bill, United States denies that the matters and things therein alleged are either relevant, material or competent to any issue which may properly be raised in this suit, and denies the jurisdiction of this Court to consider said allegations in determining whether the Commission's said order is lawful.

III

Answering paragraph 4, United States admits that on October 12, 1932, plaintiffs filed with said Commission their motion to set aside said order, and for further hearing, and that motion contained allegations substantially as alleged in said paragraph 4.

But United States denies that the mere fact that said Commission "permitted" said "newly reduced rates" to be filed and published constitutes, or may be construed as constituting, a determination or finding by said Commission that said rates are just, reasonable or lawful in any respect whatsoever.

IV

United States admits that the allegations contained in paragraphs 5 and 6 of the supplemental bill are true.

V

Answering paragraph 7 of the supplemental bill, United States admits that on November 21 and 22, 1932, said Commission held further hearings in its said docket No. 18364; [fol. 463] that at said hearing numerous tariffs publishing rates for the transportation of logs were introduced in

evidence; but United States denies that said tariffs constituted all the evidence introduced and received at said hearings, and for a full, complete and accurate summary of all the evidence received at said hearings the Court is respectfully referred to the summary of evidence set forth and contained in the Commission's said report of January 9, annexed as Exhibit A to the supplemental bill.

VI

United States admits that the allegations contained in paragraph 8 of the supplemental bill are true, and that Exhibits A and B to the supplemental bill are true copies of the Commission's said report and order of January 9, 1933, respectively. Further answering said paragraph 8, United States alleges that in its said report the Commission found (Exhibit A, sheets 15 and 16), among other things, as follows:

The record warrants the conclusion that truck competition and, to a lesser degree carrier competition, has been sufficiently compelling in the judgment of the responsible traffic officials of the various railroads operating in the western portion of southern territory to warrant the establishment experimentally of the low per car rates on logs hereinbefore referred to; that these reduced rates have not as yet succeeded in regaining for the railroad which established them any great amount of log traffic; that it is doubtful if the log traffic now moving by truck for the shorter distance, particularly 25 miles and under, can be regained by these or any other rates that the carriers could make; that there is but little competition between defendant and trucks for the movement of logs intrastate in Florida for distances over 25 miles and, in the judgment of defendant's responsible traffic official, it is not of sufficient importance to warrant the establishment or maintenance of subnormal rates in an effort to regain it; and that the circumstances and conditions which occasioned the establishment of the experimental reduced per car rates on logs by other railroads in a section of southern territory quite widely separated from that in which defendant operates are not present with respect to the intrastate log traffic over defendant's lines in Florida.

[fol. 464] VII

Answering paragraph 9, United States admits that on February 8, 1933, plaintiffs filed their petition with said Commission for further hearing, and that Exhibit C to the supplemental bill is a true copy thereof; and that said petition contained allegations substantially as set forth in said paragraph 9.

VIII

United States admits the allegations contained in paragraph 10 of the supplemental bill.

IX

Answering so much of the first sentence of paragraph 11 of the supplemental bill as re-avers the allegations of the original bill in this suit, United States hereby refers to, repeats and adopts its answer heretofore filed in this cause to said original bill.

Answering the remaining allegations of said paragraph 11, consisting of subdivisions (a) to (k), inclusive, United States denies that the allegations thereof are either relevant, competent or material to any issue which may properly be raised in this suit or considered by this Court in determining whether the Commission's said order is valid or lawful; and United States alleges that the matters, things and conclusions in said subdivisions (a) to (k), inclusive, are argumentative, and, even if true, are purely for consideration by the Interstate Commerce Commission in its capacity as an administrative tribunal.

[fol. 465] X

Answering paragraph 12 of the supplemental bill, United States disclaims any knowledge whatever of the allegations therein set forth.

XI

United States denies each and every allegation made and contained in paragraphs 13 and 14 of the supplemental bill.

Except as herein expressly admitted, United States denies each and every allegation contained in the supplemen-

tal bill and in the several separate paragraphs and subdivisions thereof.

Wherefore, having fully answered the supplemental bill of complaint, United States prays that the relief sought be denied and that both the supplemental bill of complaint and the original petition in said cause be dismissed for want of equity, with costs to the plaintiffs, and that it have the benefit of such other and further orders, decrees, or relief as may be just and proper.

Elmer B. Collins, Special Assistant to the Attorney General. Clint W. Hager, United States Attorney.

[fol. 466] *Duly sworn to by Elmer B. Collins. Jurat omitted in printing.*

[fol. 467] RECITAL AS TO ANSWER OF I. C. C.

NOTE: (Item 9). By agreement of Counsel and with the consent of the Court the answer of the Interstate Commerce Commission to the supplemental bill of complaint in Case No. 691, Wilson Cypress Lumber Company et al. v. United States et al., was taken as and stands for answer also to the supplemental bill of Complaint in Case No. 690 and 695.

[fol. 468] [File endorsement omitted.]

[fol. 469] IN UNITED STATES DISTRICT COURT

No. 690

[Title omitted]

MOTION OF ATLANTIC COAST LINE RAILROAD COMPANY TO DENY MOTION OF PLAINTIFFS TO FILE SUPPLEMENTAL BILL OF COMPLAINT—Filed Feb. 24, 1933.

Now comes Atlantic Coast Line Railroad Company and respectfully moves this court to deny the motion of The State of Florida and of Eugene S. Matthews, Mamie Eaton-Greene, and W. B. Douglass, as and constituting the

Florida Railroad Commission, to file a supplemental bill of complaint in this cause; and, if the said motion to file said supplemental bill be allowed, it moves the court to deny the relief therein sought, and for grounds of motion says:

[fol. 470] 1

The additional matters set up in the supplemental bill are not sufficient to justify this court in granting the relief prayed, for that:

(a) The supplemental bill which plaintiffs propose filing shows that all the matters and things therein mentioned have been considered by the Interstate Commerce Commission which reopened its order and report of July 5, 1932, for the purpose of receiving and considering evidence as to the same; and that upon sufficient evidence, the Interstate Commerce Commission has found that the matters and things set up in said supplemental bill do not warrant the changing of the decision made by said Commission in said report and order of July 5, 1932, in its docket No. 18364.

(b) That the record in this case shows that a motion to the Interstate Commerce Commission was filed by the plaintiffs herein on August 10, 1932, to postpone the effective date of the Commission's order entered July 5, 1932. Said motion was denied by said Commission by its order entered August 13, 1932; and then a motion by the plaintiffs herein was filed with the Commission for further hearing and reconsideration of said report and order of July 5, 1932, on August 17, 1932, and denied by order of the Commission entered August 25, 1932.

[fol. 471] (c) The original bill in this cause was filed by the plaintiffs herein in this court on September 9, 1932. The same came on for hearing on September 14, 1932; and after said hearing, and on October 21, 1932, the order of the Interstate Commission of July 5, 1932, as amended July 28, 1932, was suspended by the Commission and the proceeding thereunder reopened for the purpose of further hearing and for the purpose of "receiving evidence respecting any change in the rates on logs since the close of the last hearing herein, the circumstances connected with and the conditions which occasioned such changes, and

whether such circumstances and conditions, or any of them, are present with respect to the Florida intrastate log rates of defendant."

(d) That the said reopened hearing was had on November 21-22, 1932; and the Commission, on full and ample evidence, has determined the issues against the plaintiffs herein, and has reaffirmed its previous findings.

(e) That thereafter, F. S. Buffum Company, Inc., an intervenor before the Interstate Commission in said proceeding, its docket No. 18364, filed its petition with the Commission for postponement of the effective date of the order and for reconsideration thereof. Said motion was considered by the Commission and denied on February 7, 1933.

[fol. 472] (f) On or about February 8, 1933, Wilson Cypress Company and Wilson Lumber Company of Florida filed with the Interstate Commission their petition seeking to have the proceeding reopened for further hearing and consideration, and to have the order of the Commission of July 5, 1932, annulled and set aside. On the same date, the plaintiffs herein filed their petition with the Commission, praying that the proceeding be reopened for further hearing and consideration, and that the order of the Commission of July 5, 1932, be set aside or that the effective date thereof be postponed, and for further relief. Said petitions were considered by the Interstate Commission and denied on February 13, 1933.

2

The record in this proceeding in this court, including the plaintiffs' supplemental pleadings shows that the action of the Interstate Commerce Commission was based on ample, relevant and controlling testimony; and that the Cummer scale of rates have been determined to be and are, unjust, unreasonable and confiscatory. These proceedings are, in effect, efforts to require the Atlantic Coast Line Railroad Company to continue in operation rates which are unjust, unreasonable and confiscatory.

[fol. 473] 3

This respondent respectfully prays that the motion to file said supplemental bill be denied, and if the same be

allowed, that the prayers thereof be denied; and that the order of the Interstate Commerce Commission of July 5, 1932, as amended July 28, 1932, be allowed to go into effect on February 25, 1933, as ordered by the Interstate Commission.

Respectfully submitted, Carl H. Davis, F. B. Grier, W. E. Kay, Alston, Alston, Foster & Moise, Attorneys for Atlantic Coast Line Railroad Co.

February 24, 1933.

[fol. 474] [File endorsement omitted]

[fol. 475] IN UNITED STATES DISTRICT COURT

No. 690

[Title omitted]

ANSWER OF ATLANTIC COAST LINE RAILROAD COMPANY TO SUPPLEMENTAL BILL OF COMPLAINT—Filed Feb. 24, 1933

To the Honorable the Judges of the District Court in and for the Northern District of Georgia, Atlanta Division:

Now comes Atlantic Coast Line Railroad Company, one of the defendants named in the above stated cause, and without waiving its motion that the Court deny the motion of the State of Florida and Eugene S. Matthews, Mamie Eaton-Greene and W. B. Douglass, as and constituting The Florida Railroad Commission, to file said supplemental bill and its motion to dismiss said supplemental bill, if the same should be allowed, answers the same and for answer says:

[fol. 476] 1

Respondent admits that orators filed their original bill in this cause on September 9, 1932 against the United States of America and the Interstate Commerce Commission, seeking to set aside and annul the order of the Interstate Commerce Commission, entered on July 5, 1932, amended on the 28th day of July, 1932 in its Docket No. 18364, wherein the Commission fixed rates for intrastate

transportation of certain classes of logs over the Atlantic Coast Line Railroad Company, intrastate in the State of Florida for distances of 170 miles or less; that the said cause came on for hearing before this court on September 14, 1932, and was taken under consideration by this court and briefs were filed thereon by Atlantic Coast Line Railroad Company, the United States of America, the Interstate Commerce Commission, and by the complainants.

2

This respondent alleges that the complainants filed with the Interstate Commerce Commission a motion to reopen the proceeding pending before it in its Docket No. 18364, and especially its order of July 5, 1932; and to grant a rehearing; and that in said motion a great many tariffs of reduced rates on carload lots, were set up by the said complainants. The said tariffs of reduced rates included if not [fol. 477] all, practically all, of the railroads mentioned in paragraph 2 of this supplemental bill, and all, or practically all of the territory referred to therein. Said petition for re-opening and for further hearing by the complainants was granted on the 21st day of October, 1932, and the cause was assigned for hearing on the 10th day of November, 1932. Said further hearing was for the

"sole purpose of receiving evidence respecting any change in the rates on logs since the close of the last hearing herein, the circumstances connected with and conditions which occasioned such changes, and whether such circumstances and conditions, or any of them, are present with respect to the Florida intrastate log rates of the defendant."

In the meantime the Commission's order of July 5th, 1932, as amended as of July 28, 1932, was suspended until the further order of the Commission. The said order of the Commission entered on the 21st day of October, 1932 was entered upon petitions of Wilson Cypress Company and Wilson Lumber Company of Florida, as well as on the petition of the complainants herein; and F. S. Buffum Company, Inc. was permitted to intervene and be treated as a part to the proceeding, and it did intervene and did act as a party to said proceeding.

(a) The rates referred to in the supplemental bill as the "newly reduced rates" are expressed in carload lots; that is, they are applicable to carloads regardless of weight, size or capacity of the cars. A car of 60,000 pounds capacity [fol. 478] and loaded to that capacity brings the same revenue and only the same revenue as a car of 120,000 pounds capacity and loaded to its capacity. The Interstate Commerce Commission has never, so far as this respondent is informed and believes, approved any of the above mentioned tariffs, but said tariffs were filed, and no objections were made thereto, and they went into effect without suspension. The method of so stating rates in carload lots is condemned by the Interstate Commerce Commission and by the Supreme Court of Florida; and such method of rate-stating and application work unjust discrimination not only against interstate commerce, but as well, as between shippers and commodities.

All or practically all of the tariffs refer-ed to by the complainants in this supplemental bill are subject to conditions and limitations beyond those set out in their supplemental bill. Said supplemental bill does not completely set out the rates which are referred to therein or the tariffs therein mentioned. Respondent avers that practically all of those tariffs carry transit rates; that all, or some of them, are limited in duration; that all of them are emergency or experimental rates and were made under special circumstances. The rates show clearly that all of said tariffs apply to logs only for "dressing, stacking, creosoting, or further manufacture and re-shipment". They do not apply to the general hauling of logs. They are limited in dis- [fol. 479] tances. With rare exceptions they apply to a limited number of stations on the respective lines. They do not supplant local rates.

The usual method of applying the so-called transit rates under those tariffs is as follows:

(1) A shipper desires to ship logs from point X on the line of the carrier which has issued this transit rate, to point Y on the lines of the same carrier. At point Y the logs are to be manufactured into lumber or into the various kinds of products into which logs may be manufactured.

(2) The shipper pays the carrier the local (not the transit rate) rate from point of origin (X) to transit point (y) and preserves the waybills showing payments, weights, dates, etc.

(3) After the logs have been manufactured into one of the many products into which they may be manufactured, the shipper ships the manufactured product to the point of destination of this latter product, shipping the same over the lines of the carrier over which the logs moved.

(4) The carrier bills the shipper on the outbound manufactured material from the transit point (Y) to point of destination, at the rate shown in the filed tariffs. The shipper pays that rate and then the carrier accepts a claim against it in favor of the shipper for the difference between the local rate paid by the shipper and the net transit rate on the rough material which moved from X to Y.

[fol. 480] (5) The manufactured product which is shipped out from the transit point must bear a percentage of relation in weight to the weight of the rough material. To illustrate:

If logs have been manufactured into lumber, the manufactured product must be 33⅓% of the weight of the logs. If it has been manufactured into kegs, their weight must be 21% of the weight of the logs. If it is manufactured into headings for slack barrels the weight of the manufactured product must be 20% of the weight of the logs. If the logs are manufactured into flooring, chemically treated, the weight of the manufactured product shipped out must be 18% of the weight of the logs. The tariffs make a great many more gradations.

(6) Some of the tariffs filed by certain of the railroads authorize the shipper to enter into a contract to perform the obligations imposed upon him by the application of the tariffs covering the transit arrangement. Such tariffs require that the shipper shall give bond conditioned upon the performance by the shipper of the obligations of those tariffs. After such contract has been entered into and bond given, the carrier allows the shipper to make preliminary settlement on the basis of the transit rates on the rough material rather than on the local rates, subject to the performance by the shipper of the obligations imposed upon him by the tariffs prescribing the transit rates.

[fol. 481] (b) Referring to each of the tariffs set out as Schedules 1, 2 and 3, in paragraph 3 of the plaintiffs' supplemental bill of complaint, respondent alleges:

At the hearing on November 21-22, 1932, all of the tariffs mentioned in paragraph 3 of said supplemental bill except, as respondent believes, tariff I. C. C. A-9212 issued by the Missouri-Pacific Railroad and tariff I. C. C. A-659, supplement No. 115 "Glenn for a/c T. A. & G. Ry.", were introduced in evidence and witnesses were examined in reference thereto. Other tariffs in addition to those listed in said supplemental bill were also offered and received in evidence. The Commission considered all of said tariffs, not only in the limited manner in which they were pleaded, but in their completeness; that is, the Commission considered each and every term and condition thereof, and also the circumstances in connection therewith and the conditions which occasioned the filing of same. There was no limitation upon the evidence offered for the purpose of showing the change in the rates on logs since the close of the previous hearing before the Commission nor as to the circumstances connected therewith and the conditions which occasioned such changes; nor as to whether such circumstances and conditions, or any of them, were present with respect to the Florida intrastate log rates over the Atlantic Coast Line.

[fol. 482] (c) Referring to the schedule of rates marked "Schedule 4" as set out in paragraph 3 of plaintiffs' supplemental bill of complaint, respondent avers:

(1) Plaintiffs refer to rates of the Louisville & Nashville Railroad under tariff I. C. C. No. 16022, supplement 19. The rates provided for in said tariff apply only to raw materials shipped from point of origin to the manufacturing point, when the products manufactured therefrom move out over the lines of the Louisville & Nashville Railroad in the proportions set out in said tariff. Said tariff is applicable for distances not in excess of 100 miles. It does not apply to all points on the L. & N.'s system. It does not displace local rates. This tariff was put into effect in circumstances and conditions exactly similar to those considered by the Commission in the reopened hearing had on November 21-22, 1932. The rates provided for in said tariff expire August 6, 1933, unless sooner cancelled, changed or extended.

(2) Plaintiffs refer to certain rates of the Atlantic Coast Line Railroad Company provided for in its tariff I. C. C. No. B-2745) and in rule 127 thereof. The tariff referred to is A. C. L. R. R.'s Lumber Transit Tariff No. 12, which cancels A. C. L. R. R.'s Lumber Transit Tariff No. 11, I. C. C. No. B-2639, and the scale of rates referred to in Rule [fol. 483] 127 was originally published in Supplement No. 23 to A. C. L. R. R. I. C. C. tariff No. B-2639, effective September 8, 1932, which was prior to the reopened hearing before the Commission had on November 21-22, 1932. The rates provided for by this tariff do not apply to logs. They are transit rates applicable to certain forest products, other than logs, which move to Montgomery over the A. C. L.'s lines for creosoting and other treatment and which products, after such treatment, move to market from Montgomery in a back haul over the lines of the A. C. L. The statement of the rates shown by said tariff as made by the plaintiffs in the supplemental bill is incorrect. The Atlantic Coast Line charges, in addition to the net transit rates therein quote, 2½ cents per 100 pounds upon the shipments covered thereby.

(3) Plaintiffs refer to Supplement No. 1 of the above mentioned tariff I. C. C. No. B-2745) published by Atlantic Coast Line, effective Dec. 10, 1932, fixing rates on certain products. Atlantic Coast Line states that said tariff does not apply to logs. The said tariff was put into effect on August 29, 1932, which was before the date of the rehearing before the Interstate Commission, and Supplement No. 1 only added some additional stations thereto. The said Supplement No. 1 specifically designates the rates as "extra charges for back or out-of-route hauls, which are in addition to through rates and stoppage charges."

[fol. 484] The rates as stated in plaintiffs' supplemental bill are not the rates which are assessed on the original inbound movements but represent the net transit rates to which are added the transit charge of 2½ cents per 100 pounds.

(4) Plaintiffs refer to certain rates of the Central of Georgia Railway in its tariff I. C. C. No. 2851, effective September 27, 1932, to Augusta and Waynesboro, Ga. The rates referred to in said tariff are applicable only when the raw material shipped in over the Central of Georgia's lines

has been manufactured and the manufactured product is shipped out over the same lines in the proportions set out in the tariff. The circumstances and conditions under which this tariff went into effect were the same as those considered by the Interstate Commission in its reopened hearing had on November 21-22, 1932.

(5) Plaintiffs refer to rates of the Norfolk & Southern Railroad under its tariff I. C. C. No. A-760. This tariff provides for transit rates and does not apply to logs.

(6) Plaintiffs refer to rates by the Georgia and Florida Railroad Company under its tariff I. C. C. No. 558, effective May 6, 1931. This tariff was in effect long before the petitions before the Commission for reopening were filed. This [fol. 485] tariff applies only to logs which are shipped over the Georgia and Florida's lines to the transit point and the products manufactured therefrom are reshipped over the same lines in the proportions described in the tariff. These rates do not apply to all stations and do not supplant local rates. The rates under this tariff are on a parity with the rates which have been adjudged by this court, in the cases claiming restitution from Atlantic Coast Line Railroad Company, to be unjust, unreasonable and confiscatory.

(7) Plaintiffs refer to rates of the Savannah & Atlantic Railway under its tariff I. C. C. No. 115, effective July 14, 1930. This tariff was in effect long prior to the reopened hearing before the Commission had on November 21-22, 1932. The rates stated in this tariff apply only when the products manufactured from the inbound logs are reshipped via the Savannah & Atlanta Railway's lines in accordance with the terms of the tariff, and apply only to three stations and are limited to distances of 75 miles.

(8) Plaintiffs refer to rates of the Seaboard Air Line Railway in its tariff I. C. C. No. 7528, supplement 8. This tariff covers rates from stations between Branchville, Va. and Littleton, North Carolina (including these two stations), and between Severn, N. C. and Lewiston, N. C. (including these two places) to Boykins, Virginia. The rates [fol. 486] under this tariff expire June 30, 1933, unless sooner cancelled, changed or extended. The maximum distance to which the rates under this tariff apply is 44.7 miles;

and they apply to one destination from a limited number of stations.

Plaintiffs also refer to rates under this same tariff, supplement 9. The rates prescribed by this tariff apply from one point of origin to one destination—Fitz Siding, N. C. to Norfolk, Va., 61 miles.

(9) Plaintiffs refer to Southern Railway rates under its tariff I. C. C. No. 10425, supplement 7. The rates under this tariff expire December 3, 1933, unless sooner cancelled, changed or extended. They apply to logs, etc., from Southern Railway stations to Knoxville, Tenn., from C. N. — & T. P. stations to Dayton, Tenn. and from Southern Railway stations to Fayette, Tenn. The rates under this tariff were published to meet truck competition.

All of the above mentioned tariffs and rates which are referred to in plaintiffs' supplemental bill in paragraph 3, under "Schedule 4" and which are in addition to those which were specifically set up in the reopened hearing before the Interstate Commerce Commission on November 21-22, 1932, were issued under the same kind of circumstances and conditions as were those submitted at said reopened hearing. The rates fixed in those tariffs, if applied [fol. 487] to the Florida territory over the lines of the Atlantic Coast Line Railroad Company, would be unjust, unreasonable and confiscatory. All or nearly all of them are transit rates applicable to limited distances. They do not supplant the local rates and apply between limited stations.

4

The answer to paragraph 3 is answer to paragraph 4 of said supplemental bill of complaint.

5

The supplemental bill referred to in paragraph 5 of this supplemental bill now under consideration, did not come on for hearing for the reason that the Interstate Commerce Commission entered its order of October 21, 1932, hereinbefore referred to, as is set out in paragraph 6 of this supplemental bill.

6

The reopened hearing provided for by said order of the Interstate Commerce Commission in its Docket No. 18364,

which was entered on the 21st day of October, 1932, was set for hearing on November 10, 1932, at ten o'clock A. M. at the Hotel Mayflower, Jacksonville, Florida. The time for said rehearing was changed to November 21, 1932. On said date the said reopened hearing was had at the time and place aforesaid.

[fol. 488] It was presided over by E. J. Hoy, Esq., Examiner. The complainants in this proceeding were represented by counsel at said rehearing, and introduced oral and written testimony; examined and cross-examined witnesses and also introduced a large number of exhibits. There were sixteen witnesses examined. Appearances were entered for The Florida Railroad Commission, the State of Florida, Wilson Cypress Company, Wilson Lumber Company of Florida, F. S. Buffum Co. Inc., Southern Cypress Manufacturing Association, Jacksonville Traffic Bureau and the Atlantic Coast Line Railroad Company. The hearing continued until six thirty o'clock P. M. on November 22nd. The oral testimony delivered at that hearing, as officially reported, covered 354 pages, besides the exhibits. Arguments were had on behalf of all the parties and as officially reported cover about 50 pages.

The Commission considered all of the evidence, oral and documentary and all of the arguments; and on January 9, 1933 filed its report on the further hearing, and entered its order thereon in which it ordered "that the order heretofore entered in this proceeding on October 21, 1932, suspending the operation of the order of July 5, 1932 as amended by order of July 28, 1932, until the further order of the Commission, be, and is hereby, vacated and set aside as of February 11, 1933. Thereafter the aforesaid order [fol. 489] of July 5, 1932 as amended by order of July 28, 1932 shall remain in full force and effect until the further order of the Commission."

The last mentioned order was amended by the Commission on January 19, 1933, so as to set aside the order entered on October 21, 1932 as of February 25, 1933, and to provide that thereafter the order previously "entered in this proceeding on July 5, 1932 as amended by order of July 28, 1932, remain in full force and effect until the further order of the Commission."

6a

As hereinbefore alleged, at said reopened hearing, the Commission considered all the tariffs mentioned in said supplemental bill of complaint as set out in paragraph 3, schedules 1, 2 and 3, with the two exceptions hereinbefore noted.

6b

The Commission, through Mr. Commissioner Meyer filed its report on said reopened hearing on January 9, 1933. Copy of that report is attached to said supplemental bill and reference is made to it.

It is shown in said report that the tariffs under consideration are rarely ever system-wide. They apply to limited parts of the lines as well as to limited distances; and that the rates on the lines issuing those tariffs are "not uni- [fol. 490] form.".

"The per car rates of the Illinois-Central System apply to approximately 30 manufacturing points east of the Mississippi River, 2 of which are in Tennessee, 2 in southern Louisiana, and the remainder in Mississippi; those of the Seaboard Air Line and the Central of Georgia to Montgomery only; those of the Western of Alabama to Montgomery and Selma; those of the Southern to Mobile, Selma, and York, Ala., Chattanooga and Memphis, Tenn., and Laurel and Corinth, Miss.; those of the Mobile & Ohio to Columbus, Corinth, and Meridian, Miss., Humboldt and Jackson, Tenn., and Mobile and Whistler, Ala.; those of the Columbus, & Greenville to Columbus, Greenville, Grenada, and West Point, Miss.; and those of the Gulf, Mobile & Northern, St. Louis-San Francisco east of the Mississippi River, and Nashville, Chattanooga & St. Louis to all points on those lines, although in practical effect those of the Gulf, Mobile & Northern and St. Louis-San Francisco apply only to manufacturing points, their application being dependent upon an outbound movement of manufactured products," etc.

The rates under those tariffs do not supplant the local log rates of those lines prior to the issue of the special rates under those tariffs. The Commission found that those rates were established

"primarily as an experiment to meet actual truck competition which the carriers' investigations showed to exist. * * * Carrier competition also had a considerable influence in the establishment of these rates."

[fol. 491] The Commission also found that:

"It is clear from the record that the object of the southern lines in establishing these per car rates was not merely to meet the truck competition on the logs, but was to be assured at the same time of receiving the outbound movement of the manufactured product; and that while these rates standing alone would not be attractive to these carriers from a revenue standpoint, they are attractive when coupled with the rates for the outbound movement of the manufactured product."

The Commission, in its report of January 9, 1933, further analyzed these rates as follows:

"Some of the per car rates of the southern carriers are published as transit rates and others as local or proportional rates. All, except those of the Nashville, Chattanooga & St. Louis and some of those of the Southern, apply only if the manufactured product moves outbound over the line of the carrier which moves the logs inbound. In some instances the tariffs provide that, upon the shipper giving satisfactory bond to forward the outbound manufactured product over the line of the carrier transporting the logs, the charges originally collected on the logs will be these per car rates; in other instances they provide that the original charges will be based on the local rates and, upon satisfactory evidence of the outbound movement of the manufactured product over the line of the carrier which moved the logs inbound, refund will be made to the basis of these per car rates. The local log rates in effect prior to the establishment of these per car rates are still in effect and are applicable to the movement of logs to points to which the per car rates are not applicable, also to points to which they are applicable if the tariff provisions referred to above are not complied with.

[fol. 492] "The rates of the Nashville, Chattanooga & St. Louis and those of the Southern to Mobile, Selma, York and Chattanooga are local rates and their application is

not dependent upon the outbound movement of the manufactured products over their lines."

The Commission made an extensive analysis of the evidence and of the effect which the evidence showed these rates had produced upon the transportation of logs and also upon the truck competition in Florida.

The Commission also found that the freight traffic manager for the Atlantic Coast Line Railroad Company testified:

"That there has been no substantial change in conditions in Florida since the former hearing; that the movement of logs by truck in the territory served by defendant, including Florida, is negligible and not sufficient to warrant reductions in rates to save such traffic from the trucks;"

and that it

"could not be regained by any rates defendant might make because in most instances the distances from the woods to the railroad stations represent such a large percentage of the distances to the mills as not to justify transfer from the trucks to cars."

From July 1, 1930 to July 31, 1931 the decrease in the log traffic over the Atlantic Coast Line was 792 carloads, or 24.4 per cent, as found by the Commission. The Commission also found that:

[fol. 493] "The decrease in defendant's Florida lumber traffic during the same period was even greater. From July 1, 1930 to July 31, 1931, defendant transported 15,949 carloads of lumber, shingles, and lath originating in Florida, whereas during the subsequent 13 months it transported but 9,672 carloads, a decrease of 6,277 carloads, or 39.4 per cent. Defendant also shows that the decrease in its Florida lumber traffic has been substantially the same as the decrease in the lumber traffic over its entire line, over all Class I carriers in the southern region, and over all class I carriers in the United States. For example from July 1, 1930, to June 30, 1931, defendant's Florida lumber traffic amounted to 15,130 carloads, an average of 3,782 for each quarter year, and during the following 9

months the quarterly average was 2,604 carloads, a decrease of 1,178 carloads, or 31 per cent. The corresponding percentage reductions in the lumber traffic over defendant's entire line and of the carloads of lumber originated by all class I carriers in the southern region and by all class I carriers in the United States were 27, 28 and 30 respectively."

6c

The Commission reviewed the contention of the complainants in this cause and of the other shippers who are referred to in the Commission's report as "the Florida intervenors", to the effect that transportation conditions are substantially similar throughout southern territory. The Commission then found:

[fol. 494] "Transportation conditions are not substantially similar throughout southern territory. In our prior report on further hearing we specifically found that the circumstances and conditions surrounding the transportation of these logs intrastate in Florida were not on the whole as favorable as the circumstances and conditions surrounding the interstate movement of logs over defendant's lines. Therein we also pointed out that the less favorable operating conditions in the Florida peninsula than in the remainder of southern territory have given rise to the general practice of permitting the addition of arbitraries to the rates on interstate traffic to and from points in that territory. We referred to Southern Class Rate case in which we prescribed class rates for that part of the hauls within the Florida peninsula that were 15 per cent higher than the basis prescribed for the remainder of southern territory. In that proceeding we stated that if and when we were called upon to fix maximum reasonable commodity rates to and from Florida, we would not be bound by what had been done with respect to the class rates. Since then we have in several cases prescribed commodity rates with relatively higher arbitraries for the hauls within Florida than were prescribed in the Class Rate case. In Rates on Chert, Clay, Sand & Gravel, 140 I. C. C. 85, and Petroleum and Its Products, 171 I. C. C. 286, the rates prescribed for the hauls in Florida were approximately 40 per cent higher than for the remainder of southern territory."

[fol. 495] The Commission also found that:

"Even if transportation conditions were similar in Florida as on the lines of the carriers that have established the per car rates, competitive conditions are not similar, as has been pointed out. The carriers that have established the per car rates have done so voluntarily as an experiment in an endeavor to regain traffic that was moving by truck and thereby increase their revenues, not only on the logs to the mills but on the outbound manufactured products from the mills, their per car rates being conditioned upon an outbound movement of the manufactured products in nearly all instances."

No condition mentioned in any of the territory referred to and no rates prescribed by any of the tariffs referred to were left unconsidered by the Interstate Commission. The findings of the Commission in its reopened hearing, as in the preceding hearings, were, and are, amply supported by evidence, which not only justified, but required the conclusions made by the Commission in its order and report of January 9, 1933.

All of the findings of fact made by the Commission in its said report, and herein set out, are alleged by this respondent to be true and correct as therein stated, and are by this respondent pleaded as facts.

7

The answer to paragraph 7 is the answer to paragraph 8 of plaintiffs' supplemental bill of complaint.

8

Respondent admits that on February 8, 1933, after said petition of F. S. Buffum Company, Inc. had been denied by the Commission, the plaintiffs in this cause filed their [fol. 496] petition with the Interstate Commerce Commission for further hearing and reconsideration of said cause before said Commission. At the same time Wilson Cypress Company and Wilson Lumber Company of Florida filed their petition with the Commission in which they set up certain additional tariffs, then and now called "newly reduced rates". The tariffs referred to in paragraph 9 of this supplemental bill of complaint have been hereinbefore

referred to. All of said tariffs and other allegations of said petitions were considered by the Commission and were by it denied.

9

Answering paragraph 10 of said supplemental bill, respondent admits that no final judgment or decree of this court has been entered in the original suit in this cause.

10

(a) Answering the allegations of paragraph 11 of plaintiffs' supplemental bill Atlantic Coast Line Railroad Company alleges that the aforementioned "newly reduced rates" are not in effect in southern and southwestern territories throughout the country. Only rarely do they apply throughout any one system. They are limited in application to stations and to distances. They do not supersede the local tariffs. They do not apply in any part of the [fol. 497] State of Florida south of the line made by the Louisville & Nashville Railroad Company's line and the Seaboard Air Line Railway Company's line from Pensacola to Jacksonville. None of them applies in that territory of the State of Florida which has been hereinbefore described and which is referred to in the report of January 9, 1933, of the Commission as being sharply differentiated from the other southern territory and which differentiation has been made by the Interstate Commission in this particular case, on the rehearings in this case, and as well, in the Class Rate case and in Rates on Chert, Clay, Sand & Gravel, 140 I. C. C. 85, and Petroleum and Its Products, 171 I. C. C. 286; all of which is more fully set out in the report of the Commission in its Docket No. 18364, and hereinbefore quoted.

This differentiation is noted not only by the Commission in its report on the reopened hearing, but as well in its report of July 5, 1932 (146 I. C. C. 717).

The said rates are all experimental and are made for the purpose of meeting truck competition and in some instances not only truck competition but rail as well. The application of said rates has not produced satisfactory results to the carriers who have put them into effect.

[fol. 498] While the Atlantic Coast Line Railroad Company owns a majority vote of the shares of capital stock

of the Louisville & Nashville Railroad Company, it has never exercised and does not now exercise any control over its traffic policies. This has been made known to the Interstate Commission in other cases as well as in this one.

Respondent is not advised as to whether or not any of the so-called "newly reduced rates" apply over the Central of Georgia Railway in Florida, but it avers that the Central of Georgia has all but no mileage in the State of Florida. It simply has the stub end of a line which runs two (2) miles south of the Alabama-Florida line.

None of the rates which are referred to as the "newly reduced rates" are applicable in Florida below the line which divides the State for rate-making purposes and in the southern part of which the higher rates apply, as has been hereinbefore pointed out.

(b) The report of the Interstate Commerce Commission on the second reopened hearing, which report is dated January 9, 1933, fairly and fully states the tariffs, their limitations and conditions.

[fol. 499] (c) The rates which are called the "newly reduced rates" have not been authorized by the Interstate Commerce Commission. Tariffs were filed evidencing those rates. No complaints were lodged against them. The Interstate Commission's jurisdiction to fix minimum rates is limited, and those rates became effective without action by the Commission.

This court has previously held, in the cases claiming restitution against Atlantic Coast Line Railroad Company, that the Cummer scale of rates is unjust, unreasonable and confiscatory. The "newly reduced rates" are made upon a basis which is likewise unreasonable, unjust and confiscatory as to those roads upon which they may be imposed. They are also made upon a carload basis without regard to weight, which lends itself to discrimination and to inexactness of charges and treatment, and if said rates were imposed upon this carrier in the territory herein involved they would be all the more unjust, unreasonable and confiscatory.

(d) Without admitting the correctness of the table of rates contained in subparagraph (d) of paragraph 11 of plaintiffs' supplemental bill, it is respectfully submitted that the said table shows how unjust, unfair and unreason-

able are the rates sought to be imposed upon the Atlantic Coast Line by this proceeding.

[fol. 500] (e) The allegations of subparagraph (f) of paragraph 11 of plaintiffs' supplemental bill, in so far as it alleges that the so-called "newly reduced rates" are in some instances transit rates, are admitted. In fact, practically all of said rates are transit rates. The exceptions to this are relatively small and in such exceptions little, if any, traffic moves. The Cummer scale of rates is not a scale of transit rates.

(f) Answering the allegations of subparagraph (g) of plaintiffs' supplemental bill, respondent alleges that the carriers by rail and water throughout the United States did institute proceedings before the Interstate Commerce Commission by application filed June 17, 1931, which became known as the "Fifteen Per Cent. case, 1931". The opinion of the Commission in that case was rendered on October 16, 1931. The Commission did add to the transportation charges on certain commodities. This Respondent says that the interstate rates for transporting logs between Florida and Georgia were fixed by the Interstate Commission in its Docket No. 18364 on August 2, 1928, and became effective February 8, 1929. The said interstate rates had been in effect some time prior to the making of the report in the Fifteen Per Cent. Case. The intrastate rates involved in this cause are on the level with and on the basis of the interstate rates fixed as aforesaid on August 2, 1928, and which have been in effect since February 8, 1929.

[fol. 501] (g) Answering the allegations of subparagraph (h) of paragraph 11 of plaintiffs' supplemental bill of complaint, respondent says that the tariff referred to therein as Atlantic Coast Line Railroad Company's tariff G. F. O. 256, was originally issued effective August 15, 1932. The reissue of December 5, 1932, was for the purpose of simplifying the tariff. This tariff was originally published to meet truck and rail competition at one mill—West Marion, South Carolina mill. The Atlantic Coast Line was promised by said mill the outbound movement of the manufactured products equal to the proportion applicable to the logs brought in by it. No logs moved under this tariff and it has been cancelled.

[fol. 502] (h) The allegations of subparagraph (i) of paragraph 11 of plaintiffs' supplemental bill are denied. The Interstate Commission has found in its report on the reopened proceeding, and in other causes, that the territory involved in this cause is not as favorably situated from a transportation standpoint as other territories in the southeastern part of the country.

11

Answering paragraphs 13 and 14 of plaintiffs' supplemental bill, respondent says that said paragraphs are argumentive statements of law and each conclusion therein drawn is incorrect. Respondent further says that the Interstate Commerce Commission acted on ample evidence and with full authority; that said Commission has violated no provision of the statutes or of the Constitution of the United States; and that the plaintiffs are not entitled to a trial de novo upon any of the things set up in their said supplemental bill.

Wherefore, respondent having answered the allegations of said supplemental bill, prays *said* the same be dismissed and the prayers thereof be denied; that the injunction and restraining order prayed for in said supplemental bill be refused and that this respondent have such other and further relief as may be meet and proper.

Carl H. Davis, F. B. Grier, W. E. Kay, Alston, Alston, Foster & Moise, Attorneys for Atlantic Coast Line Railroad Co.

February 24, 1933.

[fol. 503] *Duly sworn to by J. W. Perrin. Jurat omitted in printing.*

[fol. 504] [File endorsement omitted.]

[fol. 505] IN UNITED STATES DISTRICT COURT

No. 690

[Title omitted]

PETITION TO INTERVENE IN THE ABOVE STATED CAUSE BY GEORGIA PUBLIC SERVICE COMMISSION—Filed Feb. 24, 1933

To the Honorable the Judges of the United States District Court:

Now comes Georgia Public Service Commission, and respectfully represents unto this Honorable Court that it was the petitioner before the Interstate Commerce Commission in the proceeding under its Docket No. 18364, out of which the reports and orders of the Interstate Commission complained of in this proceeding originated; and prays to be allowed to intervene in this cause.

Respectfully submitted, Georgia Public Service Commission, by J. J. E. Anderson, Special Atty.

[fol. 506] [File endorsement omitted]

[fol. 507] IN UNITED STATES DISTRICT COURT

No. 690

[Title omitted]

MOTION OF GEORGIA PUBLIC SERVICE COMMISSION, INTERVENOR, TO DENY THE MOTION OF PLAINTIFFS TO FILE SUPPLEMENTAL BILL OF COMPLAINT—Filed Feb. 24, 1933

Now comes Georgia Public Service Commission, intervenor, and respectfully moves this court to deny the motion of the State of Florida and the members of the Florida Railroad Commission, to file a supplemental bill of complaint in this cause; and, if the said motion to file said supplemental bill be allowed, it moves the court to deny the relief therein sought, and for grounds of motion says:

[fol. 508] 1

The proceedings in this case show that all of the matters and things which are set out in the supplemental pleadings have been considered by the Interstate Commerce Commission which reopened its order and report of July 5, 1932 for the purpose of receiving and considering evidence as to the same; and that upon sufficient evidence, the Interstate Commission has found that the matters and things set out in said supplemental bill do not warrant the changing of the decision made by said Commission in said report and order of July 5, 1932, in its Docket No. 18364.

2

The record in this proceeding in this court, including the plaintiff's supplemental pleadings shows that the action of the Interstate Commerce Commission was based on ample, relevant and controlling testimony; and that the Cummer scale of rates has been determined to be unjust, unreasonable and confiscatory.

[fol. 509] 3

This intervenor respectfully prays that the motion to file said supplemental bill be denied, and if the same be allowed, that the prayers therof be denied; and that the order of the Interstate Commerce Commission of July 5, 1932 as amended July 28, 1932, be allowed to go into effect on February 25, 1933 as ordered by the Interstate Commission.

Respectfully submitted, Georgia Public Service Commission, by J. J. E. Anderson, Special Atty.

February 24, 1933.

[fol. 510] [File endorsement omitted]

[fol. 511] IN UNITED STATES DISTRICT COURT

No. 690

[Title omitted]

ANSWER OF GEORGIA PUBLIC SERVICE COMMISSION, INTERVENOR, TO SUPPLEMENTAL BILL OF COMPLAINT—Filed Feb. 24, 1933

To the Honorable the Judges of the United States District Court:

Now comes Georgia Public Service Commission, intervenor in the above stated cause, and without waiving its motion that the Court deny the motion of the State of Florida, and the members of the Florida Railroad Commission to file said supplemental bill and its motion to dismiss said supplemental bill, if the same should be allowed, answers the same and for answer says:

1

This intervenor does not deem it necessary to answer the various allegations of said supplemental bill in detail. Intervenor states that the findings of the Interstate Commerce Commission in its report of August 2, 1928 and in [fol. 512] its report on the reopened proceedings, of July 5, 1932, and in its report and order on the second reopened hearing, of January 9, 1933, in this proceeding, known as its Docket No. 18364, are all based on ample and controlling evidence, much of which is wholly uncontradicted.

2

The findings of the Interstate Commission in said hearings represent the legislative action of the Commission on facts submitted to it after due notice to all parties concerned and in which all of the parties were permitted to offer evidence, to file briefs and to make arguments. All of the matters were considered with painstaking care over a long period of time. The Interstate Commission's findings on those facts are conclusive.

The Interstate Commission in its first report in this cause, of August 2, 1928, established not only certain intrastate rates on logs for application in Florida, but also interstate rates for the transportation of the same kind of logs between points in Florida and Georgia. Those intrastate rates have since been reaffirmed by the Interstate Commission, and there has been no contest over the interstate rates.

This intervenor avers that there is, in its judgment, no reason why the intrastate rates involved in this proceeding, on logs over six feet in length, in Florida, should differ from interstate rates on the same kind of logs moving from points in Florida to points in Georgia; and that as hereinbefore stated, the said interstate rates have not been contested.

[fols. 513 & 514]

3

Intervenor represents that this situation — been an unsettled one for now about eight years and has caused this intervenor to suspend on the 25th day of May, 1925 a schedule of intrastate rates in Georgia which it had issued on April 15, 1925. That schedule of rates was comparable to and almost in exact conformity with the interstate rates put into effect by the Interstate Commission in this proceeding, applicable to the transportation of certain kinds of logs between points in Florida and points in Georgia.

4

This intervenor prays that the injunction prayed for in said supplemental bill be denied and that the orders of the Interstate Commerce Commission be allowed to become effective February 25, 1933.

Respectfully submitted, Georgia Public Service Commission, by J. J. E. Anderson, Special Atty.

February 24, 1933.

[fol. 515] IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

In Equity. No. 691

WILSON CYPRESS COMPANY, WILSON LUMBER COMPANY OF FLORIDA, Petitioners,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, Defendants

BILL OF COMPLAINT—Filed Sept. 9, 1932

To the Honorable the Judge of the District Court of the United States for the Northern District of Georgia, Atlanta Division:

Petitioners, Wilson Cypress Company and Wilson Lumber Company of Florida, respectfully represent:

I

Petitioners are each corporations having their principal offices respectively in Palatka and Perry, Florida, and each is extensively engaged in the business of manufacturing and selling lumber, with mills located on the line of the Atlantic Coast Line Railroad Company within the State of Florida.

II

Petitioners bring this suit in equity against the United States of America under an act of Congress approved October 22, 1931, known as the "District Court Jurisdiction [fol. 516] Act," (38 Stat. 1. 219), to enjoin, set aside and annul a certain order entered by the Interstate Commerce Commission, hereinafter called "The Commission," an administrative tribunal created by Act of Congress of February 4, 1887, and whose duties and powers are defined in such act and amendments thereto and supplements thereof, said order being dated July 5, 1932, in a proceeding known as Docket No. 18364, Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, and instituted by the Georgia Service Commission, a public tribunal of the

State of Georgia, created by the laws of Georgia and having its legal residence in and being a resident of the Northern District of Georgia.

III

The Atlantic Coast Line Railroad Company owns and operates various lines of railway in the States of Georgia and Florida. For the transportation of such logs wholly within the State of Florida, as aforesaid, the Atlantic Coast Line Railroad Company voluntarily established in the year 1914 and thereafter voluntarily continued in effect and now charges a certain mileage scale of rates, known as the "Cummer Scale," which, for varying distances up to 170 miles, provides varying rates "per car of 50,000 pounds, excess in proportion, to be loaded and unloaded by owner and not to be unloaded on the railroad's right of way."

IV

In its complaint filed with the Commission on May 3, 1926, the Georgia Public Service Commission alleges that the rates on logs, in carloads, from points in Florida to destinations in Georgia, were unjust and unreasonable in violation of the provisions of Section 1 of the Interstate Commerce Act, and, as compared with rates on logs within the State of Florida, were unjustly discriminatory and unduly prejudicial, causing undue and unreasonable advantage, preference and prejudice as between Florida shippers in intrastate commerce, on the one hand, and Georgia shippers in interstate commerce, on the other hand, and undue, unreasonable and unjust discrimination against interstate commerce, in violation of the provisions of Sections 3 and [fol. 517] 13 of the Interstate Commerce Act.

V

Thereupon such complaint was served by the Interstate Commerce Commission upon the Atlantic Coast Line Railroad, which thereafter, and in due course, filed with the Interstate Commerce Commission its answer thereto and in such answer the railroad denied that there was or had been any violation on its part of the Interstate Commerce Act, and demanded that "it be hence dismissed".

The Interstate Commerce Commission, also, in compliance with Section 13, (3) of the Interstate Commerce Act,

notified the State of Florida and the Florida Railroad Commission of the proceedings, and that Commission upon the subsequent hearing appeared in defense of the Florida intrastate rates.

VI

Thereafter a number of petitions of intervention were permitted, including the petitions by each of the petitioners herein, except the Wilson Lumber Company of Florida, which was later permitted to intervene, as hereinafter appears, and hearings were had before an Examiner of the Commission at which evidence was presented.

In the course of said proceeding the complainant, Georgia Public Service Commission, averred that the end sought to be achieved under the complaint was an extension of the then effective intrastate Florida log rate (Cummer Scale) interstate into Georgia and took the position of record that the proceeding was "not a revenue case". In the production of its evidence the defendant, Atlantic Coast Line Railroad, disclaimed any contention that the then effective intrastate Florida log rate (Cummer Scale) was not compensatory and stated as its position of record that it had not made and was not making any proposal to revise those intrastate rates.

Thereafter the report of said Examiner was filed and the case was heard on brief and argument.

That thereafter on, to-wit, August 2, 1928, Division 4 of said Interstate Commerce Commission rendered its re-
[fol. 518] port and order in said proceeding.

That in and by such report and order it was found and concluded by said Division 4 of said Interstate Commerce Commission that the interstate rate on logs published by the Atlantic Coast Line Railroad Company of Georgia destinations on its line from Florida origins on its lines north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs for distances not exceeding 170 miles were, and would be, unjust and unreasonable to the extent that they exceeded, or might exceed, a distance scale of rates therein prescribed, which rates said Division 4 found were and would be reasonable; and which rates said Atlantic Coast Line Railroad Company was required to establish on or before October 10, 1928.

That in and by such report the Florida intrastate rates (Cummer Scale) were found to result "in undue prefer-

ence and advantage of shippers of intrastate traffic within the State of Florida, in undue prejudice to shippers of interstate traffic from points in the State of Florida to points in the State of Georgia, and in unjust discrimination against interstate commerce", and in and by said order said Atlantic Coast Line Railroad Company was required to establish carload rates for logs (except walnut, cherry and cedar) in intrastate commerce "within the State of Florida" which should be the same as the rates prescribed by the Interstate Commerce Commission as reasonable for transportation in interstate commerce from points in the northern portion of Florida to destinations in Georgia.

VII

The order of the Commission entered as aforesaid, was, by its terms, effective on or before the 10th day of October, but by subsequent orders the effective date of said order was extended to February 9, 1929. Numerous parties, including these plaintiffs, filed petitions for a reopening of said case as to rates between points in Florida and for further argument and consideration, and filed briefs in support of said petitions, but the Commission, by an order [fol. 519] entered on the 1st day of November, 1928, overruled and denied all of said petitions.

VIII

On November 24, 1928, the Brooks-Scanlon Corporation, Wilson Cypress Company and Cummer Cypress Company filed their bill of complaint against the United States of America and the Interstate Commerce Commission in the United States District Court for the Northern District of Georgia, Atlanta Division, In Equity, being Case No. 511, and styled Brooks-Scanlon Corporation, et al., plaintiff, v. United States of America and Interstate Commerce Commission, defendants, wherein said petitioners, having exhausted their administrative remedies, sought to annul, vacate and set aside said report and order of the Interstate Commerce Commission and to enjoin the enforcement thereof insofar as such report and order in any way dealt with the Florida intrastate rates on logs of the Atlantic Coast Line Railroad Company, therein involved, and affecting the shipments of logs under such rates to said pe-

titioners from the points of shipment in Florida to their lumber mills in Florida, on the ground that said report and order were arbitrary, unreasonable, invalid and unlawful, and would cause irreparable injury and damage to the petitioners and constituted an unlawful invasion of the sovereign rights of the State of Florida, reserved to it under the Constitution of the United States and of the citizens of the State of Florida, and that the Commission was without jurisdiction to enter the same.

IX

On November 26, 1928, petitioner, Wilson Lumber Company of Florida, filed its bill of complaint against the United States of America in this court, In Equity, being case No. 512, styled Wilson Lumber Company of Florida, plaintiff, v. United States of America, defendant, wherein said petitioner alleged that the Commission's order aforesaid was null and void and that it had no adequate remedy at law and therefore prayed for a temporary injunction restraining the Interstate Commerce Commission and the [fol. 520] United States of America from enforcing the terms of the order aforesaid, requiring the Atlantic Coast Line Railroad to increase its rates on logs between points in the State of Florida and asking that upon final hearing of said case a decree be entered adjudging said order to be in all respects null and void, and ordering same to be abrogated, cancelled and set aside and permanently enjoining the Interstate Commerce Commission and the United States from taking any steps to enforce said order.

X

On November 27, 1928, the State of Florida and A. S. Wells, E. S. Mathews and Mamie G. Eaton, as constituting the Florida Railroad Commission, filed a bill of complaint in this court, being case No. 514, In Equity, against the United States of America and the Interstate Commerce Commission, styled State of Florida, et al. v. United States, et al., wherein said petitioners alleged that said report and order of the Commission in respect to Florida intrastate rates of the Atlantic Coast Line Railroad on logs were arbitrary and unreasonable and beyond the power of the Interstate Commerce Commission, and wholly invalid and

unlawful, for various reasons set forth in said bill of complaint, and instituted said proceeding for the purpose of annulling, vacating and setting aside such report and order of the Commission and to enjoin the enforcement thereof insofar as such report and order required the Atlantic Coast Line Railroad Company to establish, put in force and maintain rates for the transportation of logs (except walnut, cherry and cedar), in carloads, minimum weight 40,000 pounds, in intrastate commerce within the State of Florida which should be the same as those prescribed by the Commission as reasonable for the transportation in interstate commerce from points in the State of Florida to destinations in the State of Georgia, for the reason that said report and order of the Commission was invalid and unlawful because, under the facts of record in such proceedings before the Commission, there was no constitutional right or warrant for the exercise or attempt by the Commission to exercise any Federal power in derogation of or superior to the right and power of the State of Florida in respect to the regulation of intrastate commerce sought to be affected by such order, and because there was no substantial [fol. 521] evidence before the Commission showing or attempting to show that there was any undue or unjust preference or advantage of Florida shippers or communities, or any undue or unjust prejudice or disadvantage to Georgia shippers in violation of Sections 3 and 13 of the Interstate Commerce Act, or any facts sufficient to constitute unjust discrimination against interstate commerce in violation of the provisions of Section 13 of said Act, and that the action of said Commission constituted an unlawful invasion of the sovereign rights of the State of Florida reserved to it by the Constitution of the United States and of the citizens of the State of Florida, and that said Commission was without jurisdiction to enter said order.

XI

The said three suits were consolidated and heard before a court of three judges as required by the applicable statute.

This Court in its opinion, construed the order of the Interstate Commerce Commission insofar as it was applicable to intrastate rates in Florida as being limited to points of origin on the Atlantic Coast Line Railroad in the northern

part of Florida, as the Interstate Commerce Commission had confined its order to those points or origin in fixing interstate rates, and this court, in the course of its opinion, stated that a construction that the order complained of fixed intrastate rates for the whole of Florida "would probably nullify the order". Thereupon this Court sustained said order upon this narrower construction and decrees were entered on, to-wit, January 17, 1929, in said three suits dismissing the bills.

Thereafter on, to-wit, February 7, 1929, effective February 8, 1929, said Interstate Commerce Commission, without notice to your petitioners and without any investigation or proceeding whatsoever, amended its order with respect to intrastate rates, "for the purpose of clarification" by substituting for the phrase "within the State of Florida" the words, "Within and throughout the entire State of Florida, without exception".

Petitions for rehearing and for leave to file supplemental bills in said three suits were then presented to this Court and were granted and said supplemental bills were filed. [fol. 522] Answers were filed by the United States of America to said supplemental bills of complaint and Atlantic Coast Line Railroad Company was permitted to intervene and file its answer to said supplemental bills.

On the 17th day of April, 1929, after the rehearing, orders were entered dismissing both the original and supplemental bills of complaint and denying the relief prayed in each of said three suits.

This Court upheld the amended order of the Interstate Commerce Commission solely upon the ground that the order was aimed at a discrimination "against *general* interstate commerce", caused by intrastate rates which were so low as to throw an undue burden upon the interstate revenues of the carriers.

The aforesaid suits, including the pleadings, evidence, orders and decrees therein, appear of record in this Court and reference thereto is hereby prayed and the same is in its entirety made a part hereof by reference as though the same were set forth herein in haec verba.

XII

Thereafter said three cases were duly appealed to the Supreme Court of the United States and an opinion ren-

dered therein by said Supreme Court of the United States on, to-wit, the 5th day of January, A. D. 1931, wherein said Supreme Court concluded that the portion of the order of the Interstate Commerce Commission with respect to intrastate rates (being the portion of said order under review in said three suits) was not supported by the findings of the Interstate Commerce Commission, and that that part of the order must be set aside. That the decrees of this Court were accordingly reversed.

XIII

That thereafter the mandates of the Supreme Court of the United States reversing the decrees of this Court having been produced in each of said cases, this Honorable Court on, to-wit, March 7, 1931, entered in each of said three suits its order adjudging that all parts of the said order of the Interstate Commerce Commission which prescribed or attempted to prescribe rates for the transportation of logs in intrastate commerce in the State of Florida on the lines of the Atlantic Coast Line Railroad Company [fol. 523] were invalid and unlawful, and such parts of said order of the Interstate Commerce Commission were thereby enjoined, set aside and annulled.

XIV

At or about the time of the last mentioned order of this Court, said Georgia Public Service Commission and said Atlantic Coast Line Railroad Company filed with said Interstate Commerce Commission simultaneously motions to reopen said proceeding, viz., the proceeding described as "Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, Interstate Commerce Commission Docket No. 18364."

The motion of the Georgia Public Service Commission recited the filing of its original complaint, the issuance of the order of the Interstate Commerce Commission, the attack upon that order in the courts, and the reversal of the judgment of this Court by the Supreme Court. The motion quotes that portion of the opinion of the Supreme Court which declares the basic or essential findings required to support the order of the Interstate Commerce Commission to be lacking and which declares that if the facts as to intrastate transportation of logs in Florida are

such as to justify an order as to intrastate rates, the Interstate Commerce Commission is still at liberty to make such determinations as the situations may require. The motion then requests the Interstate Commerce Commission to reopen the proceedings and to make the determinations required by the situation and to issue such report and to make such findings and orders, "as will result in removing the discriminations set out in the original petition". The motion prays that the Commission make such findings and issue such orders as it may deem requisite or necessary "to fully accomplish the purposes of the original petition and of this motion", and that the Interstate Commerce Commission prescribe just, reasonable, non-discriminatory and non-prejudicial interstate rates from all points in Florida to all destinations in Georgia and that the measure of such rates be no higher than the rates concurrently in effect for the same kind of property moving in intrastate commerce in the State of Florida.

The motion of the Atlantic Coast Line Railroad Com- [fol. 524] pany recited the filing of the original complaint by Georgia Public Service Commission before the Interstate Commerce Commission, the order entered by the Interstate Commerce Commission, and the decisions of this Court and of the Supreme Court upon the attack upon the order of the Interstate Commerce Commission, and quoted the same portion of the opinion of the Supreme Court which had been quoted in the motion of the Georgia Public Service Commission to reopen the proceedings. This motion likewise averred that the Florida Railroad Commission was undertaking to enforce the Cummer Scale and that petitions had been filed in this Court in the three suits pending in this Court above mentioned asking for an order directing restitution to be made by said Atlantic Coast Line Railroad Company to the lumber companies and shippers in the State of Florida on account of shipments of logs made after February 8, 1929, such restitution to be based upon the difference between the Cummer Scale of rates and the scale of rates prescribed by the Interstate Commerce Commission. And said motion averred that the sums whereof restitution was requested as aforesaid were in excess of $200,000.00. Said motion prayed the following relief:

"(a) * * * that this Commission proceed to make such further findings and issue such further reports and orders in this cause as it may deem to be requisite or necessary.

"(b) That this Commission prescribe such intrastate rates in Florida for the transportation of logs over the lines of this movant, for distances up to 170 miles and for distances beyond said 170 miles, as may be lawful.

"(c) That this Commission issue such other and further reports, findings and orders as this Commission may deem proper."

Neither of said motions asserted in issuable form, or indeed asserted at all, that the level of the Florida intrastate rates were so low as to constitute a revenue burden either upon interstate commerce or upon the general revenues of the carrier.

Replies to said motions were filed by the State of Florida, Florida Railroad Commission and interveners, Brooks-Scanlon Corporation, Wilson Cypress Company and Cummer Cypress Company. On or about April 6, 1931, the Interstate Commerce Commission, upon consideration of said motions and replies, ordered that said proceeding be [fol. 525] reopened for further hearing. By order of April, 28, 1931, the Commission permitted your petitioner, Wilson Lumber Company of Florida, to intervene and be treated as a party to said proceedings.

XV

That the complainant, Georgia Public Service Commission, offered no evidence whatever to prove any revenue burden on interstate commerce caused by the application of the Florida intrastate scale of rates (Cummer Scale) and thereupon, the Examiner having ruled that the issue of undue burden upon interstate commerce was involved in the proceeding, a motion was made by the interveners to dismiss that portion of the complaint which under such ruling was construed as alleging that said Florida intrastate scale of rates unduly burdened interstate commerce. That the Examiner ruled that he had no authority to dismiss the complaint and thereupon the defendant was per-

mitted to introduce evidence designed to prove affirmatively this allegation of the complaint made against the defendant. That said motion to dismiss was insisted upon before the Interstate Commerce Commission and denied by it in its report and order of July 5, 1932, hereinafter referred to.

That on, to-wit, May 14, 1931, and prior to the first hearing in said reopened proceeding, your petitioners and other intervening shipper defendants therein made written demand upon the Atlantic Coast Line Railroad Company that it produce at said first hearing a statement of the number of cars, total tonnage and charges applicable thereto covering the transportation of logs of the tariff description involved in said proceeding, moving in intrastate commerce in Florida during the following periods:

February 1, 1926, to January 31, 1927.
February 1, 1927, to January 31, 1928.
February 1, 1928, to January 31, 1929.
February 1, 1929, to January 31, 1930.
February 1, 1930, to January 31, 1931.

[fol. 526] That a similar statement as to such logs moving in interstate commerce from Florida to Georgia during the same periods was included within the same demand. That said written demand likewise requested a statement showing the gross earnings of the Atlantic Coast Line Railroad Company for the transportation of logs of the tariff description involved in said proceedings, interstate as well as intrastate, over all or any parts of its railroad lines wherever situate during the years ending respectively January 31, 1927, January 31, 1928, January 31, 1929, January 31, 1930, January 31, 1931. That likewise in said written demand it was stated that if it was not practicable to furnish the data last mentioned except by calendar years, that then that data be furnished for the calendar years 1926, 1927, 1928, 1929 and 1930. That copy of said written demand was furnished to the Interstate Commerce Commission and the Georgia Public Service Commission.

That the information so demanded was never furnished nor was any part of it ever furnished, save and except that said Atlantic Coast Line Railroad Company furnished a statement showing the number of cars, total tonnage and charges applicable to the transportation of such logs within the State of Florida for the period beginning February 9,

1929, and ending January 31, 1931, viz., the period of the effectiveness of the order of the Interstate Commerce Commission, without said statement being divided in any way into any other periods of time and save and except that upon said demand being insisted upon in the course of the proceedings the Atlantic Coast Line Railroad Company admitted of record that there had been no interstate movement of such logs from Florida to Georgia "except possibly an occasional car load".

That the Atlantic Coast Line Railroad Company refused to furnish the information so demanded and your petitioners and other intervening shipper defendants in due course moved said Interstate Commerce Commission to require said Atlantic Coast Line Railroad Company to produce the data so demanded as aforesaid for use in said proceeding. That said Interstate Commerce Commission refused to require said Atlantic Coast Line Railroad Company to furnish said information or any of it.

[fol. 527] That in the course of said proceeding formal motion was made that said Interstate Commerce Commission require said Atlantic Coast Line Railroad Company to furnish information showing the number of cars of logs transported by it intrastate in Florida during the years 1926, 1927, and 1928, and the revenue received by it for such transportation. That said Interstate Commerce Commission by its order made on to-wit, July 7, 1931, denied said motion. A copy of said order is filed herewith, as part hereof and marked "Exhibit A". That all of said information so demanded and sought to be required and said information, save and except to the limited extent as hereinabove stated, has never been furnished or produced in said proceeding and the data and information so demanded and sought is not in evidence in said proceeding.

That there is no evidence in said proceeding anywhere showing the amount of revenue which had been derived by the Atlantic Coast Line Railroad Company from the Florida intrastate traffic in logs of the tariff description involved in said proceeding under the Florida intrastate rates, (Cummer Scale).

XVI

After said hearings and on or about December 12th, 1931, certain Examiners of the Interstate Commerce Commission to whom said proceedings had been assigned did

file, submit and serve upon all interested parties a report in which it was proposed that the Interstate Commerce Commission should find: that the interstate rates previously prescribed and then in effect were not unreasonable; that the Florida intrastate rates were not shown to be unduly prejudicial to Georgia shippers and localities engaged in interstate commerce in the State of Georgia; but that the Florida intrastate rates (Cummer Scale) were and for the future would be unjustly discriminatory against interstate commerce and that such discrimination should be removed by the establishment of a special rate from Hines, Florida, to Palatka, Florida, of not less than 5.5 cents per hundred pounds, minimum 50,000 pounds, and by the establishment of intrastate rates between all other points on the Atlantic Coast Line Railroad in Florida which should be the same as the intrastate rates previously prescribed [fol. 528] in the report and order of August 2, 1928, of the Interstate Commerce Commission.

Said report quoted from the opinion of the Supreme Court the following language which was used in striking down the former order of the Interstate Commerce Commission:

"The Commission made no findings as to the revenue which had been derived by the carrier from the traffic in question, or which could reasonably be expected under the increased rates, or that the alteration of the intrastate rates would produce, or was likely to produce, additional income necessary to prevent an undue burden upon the carrier's interstate revenues and to maintain an adequate transportation service."

Said Examiners being apparently unable to make these basic and essential findings, and thereby tacitly admitting that the evidence did not support such findings, averred that the Supreme Court's statement as to the absence of those findings, "was made as a suggestion of what might have been appropriate findings to support the conclusion", and averred, "These suggested findings were merely illustrative; there is nothing in the opinion that would warrant the conclusion that such findings, and no other, were essential preliminary findings of fact."

The proposed report accordingly did not propose that the Interstate Commerce Commission should make those

findings, the absence of which caused the Supreme Court to condemn the former order, and the evidence is not and was never present upon which those findings could be made.

XVII

Thereafter exceptions were filed to said proposed report by your petitioners and by the State of Florida and the Florida Railroad Commission and certain other intervening shipper defendants, and in due course the proceeding came on to be orally argued on, to-wit, February 3, 1932, before the entire Interstate Commerce Commission at Washington, D. C. At such argument there appeared counsel for said Georgia Public Service Commission, for said Atlantic Coast Line Railroad Company, for your petitioners, and for the State of Florida and the Florida Railroad Commission.

[fol. 529] Thereafter on July 5, 1932, said Interstate Commerce Commission rendered its certain report and order in said proceeding, a copy of said report and order being hereto attached and marked "Exhibit B", and made by reference a part hereof.

In that report the Interstate Commerce Commission found that the interstate rates from Florida to Georgia prescribed by its former order of August 2, 1928, and thereafter continuously in effect were reasonable. The report recited that in the original hearing it had been shown that there was no actual movement of logs from Florida to Georgia, and that during the period of more than two years from February 8, 1929, to about April 10, 1931, when the interstate rates from Florida to Georgia and the Florida intrastate rates were on a parity there was no movement from Florida to Georgia, except possibly an occasional carload. The report recites that it is impossible to say whether a movement from Florida to Georgia will develop in the future and that, since the Florida intrastate rates are by the new order again being put on a parity with the interstate rates, no finding in reference to undue prejudice against persons and localities in interstate commerce was necessary and the report expressly declines to make any finding in that regard. Your petitioners aver that there has never been any evidence of the movement of even a single carload of logs from Florida to Georgia, whether the rates were on a parity or not, and no evidence upon which

it could be assumed that there will ever be such a movement. Your petitioners further aver that the interstate rates from Florida to Georgia theretofore prescribed and thereafter and now in effect were only applicable from points in Northern Florida to points in Georgia as has been hereinabove set forth.

Said report of said Interstate Commerce Commission further found that the Florida intrastate rates involved in the proceeding were, and for the future would be unjustly discriminatory against interstate commerce, and that such unjust discrimination could and should be removed by the establishment between all points on the Atlantic Coast Line Railroad in Florida for distances of 170 miles or less of rates which should be not less than the same rates previously prescribed by the order of August 2, 1928, [fol. 530] for the intrastate transportation of logs in Florida. And your petitioners aver that said finding was made, notwithstanding the fact that said Interstate Commerce Commission failed to make the findings which the Supreme Court had declared to be essential to justify the invasion of the domain of the State of Florida, and in lieu thereof had attempted to substitute for such findings doubtful, ambiguous and indefinite conjectures none of which have been made to clearly appear or to appear at all by the evidence, and notwithstanding the fact that it had not been made to clearly appear or to appear at all by the evidence that the jurisdictional findings prescribed by the Supreme Court could be made, and notwithstanding the fact that the findings which the Commission purported to make were not supported by the evidence.

That the order accompanying said report (without any effective date being fixed therefor) directed that the Atlantic Coast Line Railroad Company cease and desist from practicing the discrimination found in the report to exist in the relation of intrastate and interstate rates and to establish rates on logs in intrastate commerce "within and throughout the State of Florida" for distances of 170 miles or less which should be the same as those rates theretofore prescribed in the order of August 2, 1928, as aforesaid, for the transportation of logs in intrastate commerce in Florida and in interstate commerce from points in Northern Florida to points in Georgia.

XVIII

That thereafter on, to-wit, July 28, 1932, without notice or hearing, said Interstate Commerce Commission made its order amending its report and order of July 5, 1932, and therein ordered that the effective date thereof shall be "on or before September 15, 1932". That a copy of said order of July 28, 1932, is hereto attached and marked "Exhibit C" and made by reference a part hereof.

Thereafter your petitioners herein, on August 10th, moved the Commission for postponement of the effective date of said order to November 15, 1932, but said motion was denied by the Commission on August 13, 1932.

[fol. 531] XIX

On or about the 18th day of August, 1932, your petitioners herein filed with the Commission their petition for further hearing and reconsideration of the aforesaid proceeding, and on or about August 24, 1932, the State of Florida and the Florida Railroad Commission filed a similar petition. The Commission, on the 25th day of August, 1932, denied said petitions for further hearing and reconsideration.

XX

Wherefore, having exhausted their administrative remedies, your petitioners herein respectfully institute this proceeding for the purpose of annulling, vacating and setting aside said report and order of July 5, 1932, as amended as aforesaid, of said Interstate Commerce Commission, and to enjoin the enforcement thereof.

XXI

And your petitioners aver that said report and order, as amended as aforesaid, are arbitrary and unreasonable, beyond the power of the Interstate Commerce Commission and wholly invalid and unlawful.

XXII

Said report and order, as amended as aforesaid, are unlawful for the following several reasons, among others:

(1) Because under the facts of record in said proceeding before the Interstate Commerce Commission there was no

constitutional right or warrant for the exercise of or attempt to exercise any federal power in derogation of or superior to the power and authority of the State of Florida in respect to the regulation of intrastate commerce sought to be affected by said order.

(2) Because the findings declared by the Supreme Court of the United States to be essential pre-requisites to the making of a valid order of the character here attempted to be made by the Interstate Commerce Commission have not been made and cannot be made by the Interstate Commerce Commission upon the evidence that was before it in said proceeding.

(3) Because the basic essential and jurisdictional facts [fol. 532] necessary to justify the invasion of the domain of the State of Florida have not been made to clearly appear in the said report or findings of the Interstate Commerce Commission.

(4) Because the basic essential and jurisdictional facts necessary to justify the invasion of the domain of the State of Florida have not been made to clearly appear in the evidence before said Commission.

(5) Because the findings of fact upon which the Interstate Commerce Commission relied to justify its order prescribing intrastate rates were not warranted and/or made to clearly appear by the evidence before said Commission.

(6) Because said Interstate Commerce Commission made no finding supported by evidence of the essential facts as to the Florida intrastate traffic in logs and the revenue therefrom, and as to the effect of the intrastate rates both as existing and prescribed, upon the income of the said Atlantic Coast Line Railroad Company, which would justify the conclusion that said order was needed to avoid an undue burden on the revenues of said carrier and a consequent interference with the maintenance of an adequate transportation system.

(7) Because the Interstate Commerce Commission made no finding of the amount of revenue which had been derived in the past by the Atlantic Coast Line Railroad Company from the particular traffic in question under the existing intrastate rate (the Cummer Scale).

(8) Because it did not and does not clearly appear that the evidence warranted a finding of the amount of revenue which had been derived in the past by said Atlantic Coast Line Railroad Company from the particular traffic in question under the existing intrastate rate (Cummer Scale).

(9) Because the Interstate Commerce Commission made no finding of the amount of revenue which can be reasonably expected to be derived from the traffic in question under the increased intrastate rate which the Interstate Commerce Commission has ordered established.

(10) Because it did not and does not clearly appear that [fol. 533] the evidence warranted a finding of the amount of revenue which can be reasonably expected to be derived from the traffic in question under the increased intrastate rate which the Interstate Commerce Commission ordered established.

(11) Because the Interstate Commerce Commission made no finding that the application of the existing intrastate rate (Cummer Scale) resulted in an impairment of the income of the carrier which caused an undue burden upon the carrier's interstate revenues and obstructed the maintenance of an adequate national transportation system.

(12) Because it did not and does not clearly appear that the evidence warranted a finding that the application of the existing intrastate rate (the Cummer scale) resulted in an impairment of the income of the carrier which caused an undue burden upon the carrier's interstate revenue and obstructed the maintenance of an adequate national transportation system.

(13) Because the Interstate Commerce Commission made no finding that an undue burden upon the carrier's interstate revenues and obstruction to the maintenance of an adequate national transportation service existed which was of such character and consequence that it was the affirmative duty of the Interstate Commerce Commission as an important step in maintaining an adequate national railway system to remove such burden and obstruction.

(14) Because it did not and does not clearly appear that the evidence warranted a finding that any undue burden upon the carrier's revenues and obstruction to the main-

tenance of an adequate national transportation service existed which was of such character and consequence that it was the affirmative duty of the Interstate Commerce Commission as an important step in maintaining an adequate national railway system to remove such burden and obstruction.

(15) Because the Interstate Commerce Commission made no finding that the alteration of the intrastate rates would produce, or was likely to produce, an additional and greater amount of income, and made no finding that such additional [fol. 534] and greater amount of income was necessary to prevent an existing undue burden upon the carrier's interstate revenues and necessary to maintain an adequate transportation service.

(16) Because it did not and does not clearly appear that the evidence warranted a finding that the alteration of the intrastate rates would produce or was likely to produce, an additional and greater amount of income and it did not and does not clearly appear that the evidence warranted a finding that such additional and greater amount of income was necessary to prevent an existing undue burden upon the carrier's interstate revenues and necessary to maintain an adequate transportation service.

(17) Because the Interstate Commerce Commission made no finding of the quantity or extent of any burden upon the interstate revenues of the carrier caused by the application of the existing Florida intrastate rate.

(18) Because it did not and does not clearly appear that the evidence warranted a finding of the quantity or extent of any burden upon the interstate revenues of the carrier caused by the application of the existing Florida intrastate rate.

(19) Because the Interstate Commerce Commission by indirection seeks to determine the reasonableness per se of the Florida intrastate rate (the Cummer Scale), a thing which the Supreme Court has declared lies with the state authority and not with the Interstate Commerce Commission.

(20) Because no complaint was made and no evidence offered by the complainant of a revenue burden upon interstate commerce.

(21) Because the Interstate Commerce Commission has thereby sought to regulate internal concerns of the State of Florida as if unjust discrimination against interstate commerce in violation of Section 13 existed when there was not submitted to the Interstate Commerce Commission by any party to the proceeding before it any case or controversy of such character, and there was no other pending proceeding or order of investigation of such Commission involving any such subject matter.

[fol. 535] (22) Because the same are not appropriate to the case and not just to the parties to be affected, they were not made following the forms of law, nor were they adapted to the end sought to be attained in said proceeding before said Interstate Commerce Commission.

(23) Because in making the same the Interstate Commerce Commission considered and gave effect to rate comparisons.

(24) Because in making the same the Interstate Commerce Commission considered and gave effect to statements of system revenue returns, and to the relation of log traffic and log revenue to total traffic and total revenue.

(25) Because in making the same the Interstate Commerce Commission considered and gave effect to system average costs.

(26) Because in making the same the Interstate Commerce Commission considered and gave effect to cost studies and other matters which were incompetent and insufficient to furnish the basis for any such report and order.

(27) Because in making the same the Interstate Commerce Commission considered and gave effect to studies of out-of-pocket costs of transportation wherein there were included charges to operating expenses not authorized by the Classification of Operating Revenues and Operating Expenses of Steam Roads as prescribed by the Interstate Commerce Commission.

(28) Because in making the same the Interstate Commerce Commission considered and gave effect to its own cost study, Appendix E of said report, which was formulated from matters dehors the record, without submitting the same in evidence and without affording an opportunity

to cross-examine the author thereof and to offer evidence in rebuttal thereof and thereby deprived these petitioners of the full and fair hearing to which they are entitled by the Act.

(29) Because your petitioners were not afforded a fair opportunity to be heard respecting the justice of the same.

(30) Because in making the same the Interstate Commerce Commission considered and gave effect to studies of transportation costs which charged to the costs of Florida intrastate log transportation the full statutory return of five and three-quarters per cent while contemporaneously [fol. 536] the return actually earned by the carrier was far less.

(31) Because the rates prescribed therein to be applicable to Florida intrastate log transportation are far in excess of all demonstrated costs, taxes, and the full statutory return of five and three-quarters per cent, and are extortionate.

(32) Because said Interstate Commerce Commission has attempted to prescribe intrastate rates in Florida applicable to territory for which no interstate rates have been prescribed and in which no general investigation of rate levels, whether on interstate or intrastate traffic, has been made.

(33) Because the intrastate rates prescribed in said proceeding before the Interstate Commerce Commission are broader in their scope than the interstate rates prescribed in said proceeding, and are beyond the scope of the issues raised in said proceeding.

(34) Because it did not and does not clearly appear in said proceeding before the Interstate Commerce Commission that there was or is any unjust discrimination against interstate commerce in violation of Section 13 of the Interstate Commerce Act.

(35) Because in said proceeding the Interstate Commerce Commission did not find any facts sufficient to constitute an unjust discrimination against interstate commerce in violation of Section 13 of the Interstate Commerce Act.

(36) Because said action of said Interstate Commerce Commission constitutes an unlawful invasion of the sover-

eign rights of the State of Florida reserved to it by the Constitution of the United States and of these petitioners, citizens of said State of Florida, and is without any warrant or authority of or under the Constitution of the United States; and further that the said Interstate Commerce Commission was and is without jurisdiction to enter its said order.

(37) Because, said action of said Interstate Commerce Commission constitutes an unlawful exercise of power by the Interstate Commerce Commission and is without warrant or authority of or under the Constitution of the United States.

[fol. 537] XXIII

Petitioners aver and charge that they have invested many hundreds of thousands of dollars in their mills in Florida and have arranged for the manufacture of lumber by their said mills from logs to be transported by the Atlantic Coast Line Railroad Company; that the effect of the order of the Interstate Commerce Commission is to require that the rates for transportation of such logs to said mills by the Atlantic Coast Line Railroad Company be more than doubled and that it will be impossible for petitioners to pay such rates and operate their mills except at such heavy loss that their ability to operate such mills and to continue their business will be seriously impaired, if not destroyed, and that unless the enforcement of said order is by this Honorable Court enjoined, petitioners will be irreparably injured and damaged in their business and will be deprived of their property by the enforcement of an unlawful order of the Interstate Commerce Commission, and that the damage which will be thus inflicted upon petitioners will be irrreparable and cannot be compensated for nor adequately redressed by any suit or suits at law, and petitioners have no plain, complete or adequate remedy at law available to them in the premises.

Wherefore, your petitioners respectfully pray as follows:

(a) That process may issue against the defendants, United States of America, and Interstate Commerce Commission, an administrative tribunal of the United States, with service thereof and of this bill of complaint in the

manner prescribed by statute in such cases made and provided.

(b) That upon the filing of this bill the Judge of this Court call to his assistance two other judges, one of whom shall be a Circuit Judge; that this Honorable Court will examine the evidence taken before said Interstate Commerce Commission and determine for itself, independently of any determinations or findings of said Interstate Commerce Commission, whether or not such facts warranting such findings, which are pre-requisite to the jurisdiction of [fol. 538] the Interstate Commerce Commission to invade the domain of the State of Florida, have in fact been made to clearly appear by the evidence.

(c) That this Court order, adjudge and decree that the said report and order of said Interstate Commerce Commission of July 5, 1932, as amended, are beyond the authority of said Interstate Commerce Commission and are without warrant in law and null and void and that said report and order, as amended, be set aside and annulled.

(d) That this Court will grant to your petitioners herein an interlocutory order, setting aside and enjoining the enforcement of said order of July 5, 1932, as amended, of said Interstate Commerce Commission, and that such interlocutory order continue in force until further order of this Court.

(e) That upon final hearing this Court will make and enter a decree and order herein annulling, setting aside and enjoining the said order, as amended, of said Interstate Commerce Commisison and permanently enjoining the enforcement thereof.

(f) That your petitioners may have such other and further relief in the premises as to the Court shall seem meet and just and as equity may require.

And your petitioners will ever pray, etc.

J. V. Norman, Richard H. Hill, August G. Gutheim, Chas. E. Cotterill, H. P. Adair, C. G. Ashby, Attorneys for Petitioners.

[fol. 539] *Duly sworn to by J. V. Norman. Jurat omitted in printing.*

[fol. 540] EXHIBIT "A" TO COMPLAINT

At a General Session of the INTERSTATE COMMERCE COMMISSION, Held at Its Office in Washington, D. C., on the 7th Day of July, A. D. 1931

No. 18364

GEORGIA PUBLIC SERVICE COMMISSION

v.

ATLANTIC COAST LINE RAILROAD COMPANY

Order

Upon consideration of motion of intervener Wilson Lumber Company made during the progress of the further hearing had on June 10, 11, and 12, 1931, that defendant be required to furnish information showing the number of cars of logs transported by it intrastate in Florida during the years 1926, 1927, and 1928, and the revenue received by it for such transportation:

It is ordered, That said motion be, and it is hereby, denied.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fols. 541-601] EXHIBIT "B"

Report of the Commission on further hearing omitted, printed side page 39 ante.

[fol. 602] Exhibit "C" omitted, printed side page 100, ante.

[fol. 603] [File endorsement omitted.]

[fol. 604] IN UNITED STATES DISTRICT COURT

In Equity. No. 691

[Title omitted]

PETITION FOR LEAVE TO INTERVENE—Filed Sept. 14, 1932

To the Honorable the Judges of Said Court:

Now comes Atlantic Coast Line Railroad Company, and respectfully represents unto this Honorable Court as follows:

1

Petitioner is a common carrier by railroad, operating in the States of Florida, Georgia, Alabama, North Carolina, South Carolina and Virginia.

2

The subject matter of this litigation concerns rates for services to be performed by it and it is interested in the issues of this case.

Wherefore, Atlantic Coast Line Railroad Company prays that it be allowed to intervene in this cause.

Respectfully submitted, Carl H. Davis, W. F. Kay, Alston, Alston, Foster & Moise, Attorneys for Atlantic Coast Line Railroad Company.

[fol. 605] The foregoing petition of Atlantic Coast Line Railroad Company to intervene in the above stated cause is granted.

This 14 day of September, 1932.

Sam. H. Sibley, United States Circuit Judge. E. Marvin Underwood, U. S. District Judge. Louie W. Strum, U. S. District Judge.

[fol. 606] [File endorsement omitted.]

[fol. 607] IN UNITED STATES DISTRICT COURT

MOTION TO DISMISS AND ANSWER—Filed Sept. 14, 1932

To the Honorable the Judges of Said Court:

Now comes Atlantic Coast Line Railroad Company, an intervenor in the above-mentioned cause, and with leave of the court, pleads to the said cause:

1

Motion to Dismiss:

Intervenor moves the court to dismiss the petition of the petitioners on the following grounds:

I. Said petition sets forth no sufficient reason why the orders of the Interstate Commerce Commission should be enjoined. On the other hand it shows that the said orders and report of the Commission, as set forth in said petition, should be sustained.

II. Because the facts set out in the report and found and established by the Commission therein on July 5, 1932 in its Docket No. 18364, in the case of Georgia Public Service Commission versus Atlantic Coast Line Railroad Company; which report and orders thereon are set out in the [fol. 608] bill in this cause, show that there were constitutional rights and warrant *and* for the exercise of federal power which has been exercised by the Commission.

III. For that said bill and the exhibits thereon show that the Interstate Commerce Commission has made adequate findings of fact to sustain its said orders. The said findings of fact are shown by the petition and report to have been sustained by competent and sufficient evidence.

IV. For that the basic, essential and jurisdictional facts necessary to justify and sustain the act of the Commission have been made clearly to appear in the report and findings of the Commission; and the findings of fact made by the Commission were warranted and demanded by the evidence before the Commission.

V. For that the bill shows that the Commission did make findings supported by evidence as to the essential facts as to Florida intrastate rates on logs and the revenue therefrom, as to the effect of the intrastate rates, both as existing and prescribed, on the income of the Atlantic Coast Line Railroad Company, which did justify the aforementioned orders.

VI. For that the findings of fact by the Commission as set out in its said report and orders were and are sufficient to require and justify the report and orders.

Wherefore intervenor prays that the said bill be dismissed.

[fol. 609] Intervenor answers bill of petitioners and for answer thereto says:

1

Intervenor admits the allegations of paragraphs 1, 2, 3, 4, and 5 of the bill.

2

Intervenor admits that a number of petitions of intervention were permitted in said cause by the Interstate Commerce Commission, and that this includes the Wilson Cypress Company, and later the Wilson Lumber Company of Florida.

This Intervenor denies so much of paragraph six of said petition as is set out in the second cause of said paragraph 6.

Further answering the same, Intervenor says that this court, in its previous decision, has held against the contention that this cause proceeded before the Interstate Commerce Commission as though it were not a revenue case, and the Supreme Court of the United States likewise held against that position. This statement in the pleadings is based upon the oral statement made by the Chairman of the Georgia Public Service Commission in opposition to the introduction of certain evidence, which objection was overruled. This court dealt with that fact in its decision rendered January 17, 1929 in the case of State of Florida vs. United States, 30 Fed. (2), 116-120, saying,

"We do not think the oral statement attributed to the chairman of the Georgia Commission during the examiner's hearing, to the effect that he desired the lowering of [fol. 610] the interstate rate, rather than the raising of the intrastate rate, either changed the issues or limited the action of the Interstate Commerce Commission. Neither the examiner nor the counsel in their subsequent arguments before the Commission understood that the claim of discrimination by the intrastate rates against interstate commerce had been eliminated."

See also 282 U. S. 194.

The remaining allegations of said paragraph 6 are admitted.

3

The allegations of paragraph 7 are admitted.

4

The allegations of paragraphs 8, 9, 10, and 11 are admitted.

[fol. 611] 5

This intervenor admits the allegations of paragraph 12, which refers to the decision of the Supreme Court of the United States and its contents. Said decision is reported in *the* 282 U. S., 194

6

Answering paragraph 13, intervenor admits that the mandates of the Supreme Court of the United States were entered on March 7, 1931, and refers to the order of the court entering said mandates and the contents thereof.

7

Answering paragraph 14, this intervenor admits that the Georgia Public Service Commission and the Atlantic Coast Line Railroad Company filed motions to reopen said proceeding before the Interstate Commerce Commission, its Docket No. 18364. The said motions are referred to for the contents thereof. Said motions were sufficient in form and substance to fully invoke the jurisdiction of the Interstate Commerce Commission, under each and every part of Section 13 of the Act known as the Act to Regulate Commerce.

It is denied that neither of said motions asserted that the level of the Florida intrastate rates was so low as to constitute a revenue burden upon interstate commerce.

It is admitted that replies to said petition were filed.

[fol. 612] 8

The allegations of paragraph 15 are denied by intervenor, except as hereinafter stated:

Intervenor admits that a request was made upon it that it produce at the hearing which was held in Jacksonville, Florida on June 10-12, 1931, a statement of the number of

cars, total tonnage, and charges applicable thereto covering transportation of logs of the tariff description involved in these proceedings, moving over a period of five years, beginning February 1, 1926 and ending January 31, 1931. This demand by the Florida Railroad Commission was dated May 16, 1931.

A like demand was made by the other contestants dated May 14, 1931. The Atlantic Coast Line Railroad Company replied under date of May 21, 1931 in part as follows:

"While we expect to submit at this hearing certain data concerning the movement of logs by the Atlantic Coast Line Railroad Company, and the revenue derived thereon, we regret that we are not in a position to compile and furnish the information requested in your respective letters. The records of the movement of logs during the yearly periods referred to by you have not been kept upon the basis of a separation of the interstate and intrastate movements, nor of the separation as between the several classes or length of logs handled. Neither during the periods referred to, nor at the present time, is it the practice of shippers to indicate in their bills of lading the class of logs offered for [fol. 613] shipment, except in the case of cedar logs, upon which special rates have been applied. For these reasons, the underlying data necessary to compile the statements which you request is not available. In addition, it would not be practicable to compile this information within the time available even if it could be obtained by an examination of the original records of the company."

This demand was then submitted to the Interstate Commerce Commission by the Florida Commission and the various shippers on May 29, 1931. Reply was made thereto by the Atlantic Coast Line Railroad Company, setting up that it had no records from which that data could be compiled; and also that the subpoena requested was not for the production of any document or paper then in the hands of the Coast Line Company but sought rather to compel it, through subpoena, to prepare and compile certain statements; and in addition the request related to a miscellaneous mass of *omfpr, atopm* very large in volume, with no indication whatever as to the extent, if any, of the relevancy thereof to any issue in the proceeding.

The Commission denied the request for that it was not in compliance with the rule 13(b) of the rules of practice of the Interstate Commerce Commission for that it did not specify what books, papers or documents of the defendant (Atlantic Coast Line Railroad Company) were desired; and also because the application did not show that the books, papers or documents sought would be of service in the determination of the proceedings. The Interstate Com- [fol. 614] mission then called attention to the fact that

"defendant expects to submit certain data concerning the movement of logs over its lines and the revenues derived therefrom and it may well be that such data will be sufficiently complete and satisfactory to all parties and to the Commission that additional data will not be deemed necessary."

The hearing proceeded on June 10, 11 and 12, 1931 in Jacksonville and was adjourned to Washington, D. C. and further hearings were held on July 20 and 21, 1931. The Atlantic Coast Line Railroad Company submitted a great deal of data by way of exhibits and oral testimony as to many phases of transportation of logs. No further demand was made upon the Coast Line Company for this data and no further effort was made by the petitioners to have the Commission issue a subpœna duces tecum covering the matters and things mentioned. Furthermore, neither the notice or application for subpœna duces tecum stated that the matters and things required were within the power of the Atlantic Coast Line Railroad Company to furnish. The demand was not for the furnishing of certain [fol. 615] papers, but was for the statement of a great deal of data which the Atlantic Coast Line had not made and which it could not make from its records.

9

Answering paragraph 16, it is admitted that certain Examiners of the Interstate Commerce Commission, before whom the said proceedings had been assigned, submitted and served a tentative report.

The statement as to the contents of the said report is substantially correct.

The remainder of the allegations of said paragraph are denied.

[fol. 616] 10

Answering paragraph 17 of said bill, intervenor admits that exceptions were filed and the proceeding came on to be argued before the entire Commission on February 3, 1932; that on July 5, 1932, the Interstate Commerce Commission rendered its report and order in said proceeding, copy of which is attached to said bill marked "Exhibit B". The contents of said report are shown by the report itself.

The Commission did find that the Cummer scale of rates was and for the future would be unjustly discriminatory against interstate commerce, and directed the removal of said discrimination by putting into effect a scale of rates which are the same, mile for mile, as the interstate scale of rates prescribed by the Commission for the movement of logs between Florida and Georgia. The conclusions of the Commission were supported by intermediate findings, all of which are set out in said report. Said findings of the Commission are clear and unambiguous. The findings contained in said report were sufficient in all respects to sustain the Commission's order.

11

The allegations of paragraph 18 of said bill are admitted by the intervenor. The rates prescribed by the order of the Commission have not been put into effect, but in due course, will go into effect September 15, 1932.

[fol. 617] 12

Answering paragraph 19 of said bill the allegations thereof are admitted by this intervenor.

13

Answering paragraph 20 of said bill, intervenor says that the allegations thereof are conclusions of law and require no answer.

14

Answering paragraph 21 of said bill, intervenor denies the allegations thereof.

15

Answering paragraph 22 of said bill, intervenor says that each and every allegation of each and every sub-

paragraph thereof is denied, except as hereinafter stated. Answering each subparagraph intervenor says:

(1) The facts in the record of this case before the Interstate Commerce Commission show that the Cummer scale of rates are unjust and unreasonable and that the rates under the Cummer scale were insufficient to pay a fair proportionate share of the cost of maintaining an adequate railway system.

(2) The findings of the Interstate Commission are in exact accord with the Wisconsin case reported in 257 U. S. at page 563, and with the many cases which follow it; and in accordance with the rules laid down by the Supreme Court of the United States when this particular case was before that Court in the case of Florida versus United States, 282 U. S. 194, especially at pages 210 and 211.

[fol. 618] (3), (4), (5), (6), (7), (8), (9), (10), (11) and (12). Intervenor denies the domain of the State of Florida has been invaded. The State of Florida has never had the right to make an intrastate rate which discriminates against interstate commerce or against persons and places and classes of traffic moving in interstate commerce, and any undertaking on the part of the State of Florida to do so was and has been at all the times herein involved, violative of the commerce clause of the Constitution of the United States;

There was no conflict of evidence before the Interstate Commission as to the relation of the Cummer scale of rates to many other rates including the rates on interstate shipments of logs from points in Florida to points in Georgia where the circumstances and conditions were substantially the same; nor was there any conflict as to the relation of the Cummer scale of rates to the rates on logs in other territories served by the Atlantic Coast Line; nor as to its relation to the rates on the same kind of logs over the Seaboard Air Line Railway and the Georgia and Florida Railway in the State of Florida; nor was there any controversy as to the relation of the Cummer scale of rates to the rates on other commodities having similiar transportation characteristics. The rates under the [fol. 619] Cummer scale are less than half of the rates under the interstate scale fixed by the Commission for movement of logs between Florida and Georgia; and they

are from one-third to one-half of the rates fixed on brick, lime, cement, cullet and other like things.

There was much evidence given before the Interstate Commission as to this relationship by this intervenor and by the Georgia Public Service Commission. There was no evidence offered before the Commission conflicting with that offered by this intervenor as to the mathematical ascertainment of the cost of handling logs intrastate in Florida, which ascertainment showed the cost of handling a car of logs to be substantially more than the revenue derived therefrom under the Cummer scale of rates.

This intervenor asserts that the evidence offered before and received by the Interstate Commission as to the unreasonableness of the Cummer scale of rates and as to its discrimination against interstate commerce was ample, conclusive and uncontradicted.

In addition, this intervenor says that the exhibits and evidence of the witness Perrin showed the total movement of logs during the two years from February 8, 1929, to [fol. 620] January 31, 1931, and the revenue derived therefrom. The evidence also showed the number of cars and tons of logs hauled for the years 1926-1930, both inclusive. It showed the total traffic in cars and tons and the log traffic for the years 1928, 1929 and 1930, and the per cent of log traffic to the total traffic for the system and for the State of Florida for those years. It also showed the total revenue, the log revenue and the per cent of log revenue to the total revenue for those three years. The log traffic was 7.0% of the total traffic in 1928 while the log revenue was 1.9% of the total revenue for that year; the log traffic was 5.0% of the total traffic for 1929 while the revenue from logs for that years was only 1.5%; and the log traffic in 1930 was 4.0% of the total traffic while the log revenue was only 1.3% of the total revenue for 1930.

The evidence before the Commission showed that if the Cummer scale of rates had been in effect during the years 1929 and 1930 uniformly on interstate and intrastate traffic throughout its system, there would have been a reduction in the revenue of this intervenor of $675,381.21.

[fol. 621] The evidence also showed that there were 21,913,000,000 feet of pine timber standing in Florida in July, 1931.

The Interstate Commerce Commission's scale of rates on logs was in effect from February 8, 1929 to January 31, 1931. During that period 18,602 carloads of logs moved intrastate in Florida producing gross freight revenues of $571,508.94. If the Cummer scale of rates had been effective the movement of those 18,602 carloads of logs under it would have produced $290,283.19 less than that actually collected.

The Interstate Commerce Commission found that this intervenor lost money on each carload of logs hauled by it intrastate in Florida under the Cummer scale of rates, and the evidence justified and required that finding; and therefore this log traffic did not bear its fair proportionate share of the cost of maintaining the railway system. The Commission found this was true even before anything was taken into consideration for taxes and for return on investment.

(13), (14) (15), (16), (17), (18), (19), and (20). To each of these subparagraphs of paragraph 22 of said bill intervenor answers by denying the allegations thereof. What has been said above is repeated in further answer thereto.

[fol. 622] The Commission not only found that the rates under the Cummer scale were unreasonable, but also found that the traffic moving under those rates does not pay its "fair proportionate share" of maintaining this intervenor's railway system. It found that:

"The record shows the low earnings of defendant; the low earnings on its log traffic as compared with its earnings on other low-grade commodities; the much lower earnings on its Florida log traffic than on its interstate log traffic; and the much lower level of the Cummer scale than of other scales applicable interstate and intrastate throughout the south."

It then found:

"These facts and the cost evidence clearly warrant the conclusion that the traffic moving under the Cummer scale does not pay its 'fair proportionate share' of operation and maintenance alone'."

The Commission meant by that the log traffic moving under the Cummer scale of rates did not pay the cost of moving it even before taxes and return on investment were taken into consideration.

The reasonableness or unreasonableness of the rates was not found by the Commission and then left there, but was found by the Commission as an element for use in determining whether or not that traffic to which those rates were applicable, carried its fair proportionate share of the costs.

[fol. 623] (21) and (22). The allegations of subparagraphs 21 and 22 of paragraph 22 are denied by this intervenor.

(23), (24), (25), (26), (27), (28), (29), (30), (31), and (32). Intervenor denies the allegations of each of these subparagraphs of paragraph 22 except as hereinbefore admitted or which may be herein now admitted.

Intervenor says that rate comparisons were used by the Interstate Commerce Commission; they were proper for it to use; they are used in almost every case where the reasonableness of rates is tested; the United States Supreme Court has recognized rate comparison as the proper method of ascertaining the reasonableness of rates, and especially is this true when the Interstate Commission makes an interstate rate for the same commodity in the same territory.

The Commission did give effect to system revenue returns, but it did so after it had, at great length and with great care, ascertained that the costs per unit in Florida are higher than the average for the entire road or system including Florida. It states that the costs per unit in Florida do not include anything for joint facility and equipment rents; and do not include the cost of transporting non-revenue or company freight. The Commission found:

[fol. 624] "But since it is indisputable that unit costs are higher in Florida than elsewhere on the system, it seems clear that system unit costs may be used to find a cost that may be said to be less than the cost in Florida."

The Commission in making its findings, did not give effect to any matter or thing that was not in evidence in this case.

This intervenor further avers that thorough and careful investigation was made by the Interstate Commerce Commission as to the handling of logs throughout the State of Florida.

(33) Answering subparagraph 33 of paragraph 22 of said bill, this intervenor denies that the rates prescribed

are beyond the issues raised in said proceeding, and further alleges that it is not important that the intrastate's rates prescribed in this proceeding are broader in their scope than the interstate rates prescribed in said proceeding. Intervenor avers that there is a scale of interstate rates applicable to that part of the State of Florida not covered by the interstate rates prescribed by the Commission in this proceeding.

[fol. 625] (34), (35), (36), (37). Each of these subparagraphs of paragraph 22 is denied. What has already been said above further answers each of them.

16

Answering paragraph 23 of said bill this intervenor says that the allegations contained therein have been carefully considered by the Interstate Commerce Commission. It is further alleged that the petitioners will not be injured by the charging of a reasonable rate by this intervenor for the service rendered by it in the hauling of logs, but intervenor will be irreparably injured by the charging of a low and unreasonable rate. Intervenor denies that it will be impossible for petitioners to pay the rates prescribed by the Commission in this proceeding, and operate their mills except at such heavy loss that their ability to operate such mills and to continue their business will be seriously impaired, if not destroyed. The mills of petitioners were operated under the same scale of rates prescribed in the proceeding for the two year period beginning February 8, 1929, and ending January 31, 1931.

[fol. 626] 17

Intervenor respectfully avers that this cause has been pending before the Interstate Commerce Commission and the courts for more than six years. The Interstate Commission has twice found that the rates under the Cummer scale are unjust and unreasonable. It has twice found that they are discriminatory against interstate commerce. Its first finding was sustained by this court. The judgment of this court was set aside by the Supreme Court of the United States because the Interstate Commission did not make sufficient intermediate findings. It was not set aside because of lack of evidence.

After that the cause was reopened before the Interstate Commission and was tried again practically de novo, al-

though all of the evidence in the previous case was before the Commission. The Commission reaffirmed its previous finding that the rates under the Cummer scale were unjust and unreasonable. It made intermediate findings in great detail, some of which have been referred to here and all of which are set out in the Commission's report of July 5, 1932.

The Commission found there was an interference with the accomplishment of the purpose of Congress because of a disparity of intrastate rates as compared with interstate rates and it proceeded to end that disparity by directly removing it; and it was specifically authorized so to do in the case of Florida v. United States, 282 U. S. at page [fol. 627] 211, and it has been authorized so to do in many other cases by the Supreme Court of the United States, especially in the Wisconsin case and the New York Passenger case, both of which are referred to and approved by the Supreme Court in the Florida case which was the appeal to the Supreme Court from this Court in this particular case.

18

Intervenor avers that the Interstate Commerce Commission has carefully considered this subject and all of the evidence offered, and in compliance with the law has made its findings that the rates under the Cummer scale are unreasonable and discriminatory against interstate commerce; that they did not bear their fair proportionate share of the cost of operation and maintenance; that they did not pay the cost of rendering the service required to be rendered; all of which was amply justified and required by the evidence in this case.

Wherefore, this intervenor respectfully prays that the prayers of petitioners be denied and that the order of the Interstate Commerce Commission complained of in this cause be not enjoined but that the same be allowed to go into effect in due course.

Respectfully submitted, Carl H. Davis, W. E. Kay, Alston, Alston, Foster & Moise, Attorneys for Atlantic Coast Line Railroad Company.

[fol. 628] *Duly sworn to by J. W. Perrin. Jurat omitted in printing.*

[fol. 629] [File endorsement omitted.]

[fol. 630] IN UNITED STATES DISTRICT COURT

In Equity. No. 691

[Title omitted]

ANSWER OF INTERSTATE COMMERCE COMMISSION—Filed Sept. 14, 1932

The Interstate Commerce Commission, defendant in the above-entitled suit, hereinafter called the Commission, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the petitioners' bill of complaint contained, for answer thereunto, or unto so much of such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering paragraphs I and II of the bill of complaint, the Commission admits, for the purpose of this suit, that the allegations therein contained are true.

II

Answering paragraphs III to VII, both inclusive, of the bill of complaint, the Commission admits that Division 4 of the Commission made and entered the report and order dated August 2, 1928, referred to in paragraph VI of the bill of complaint, in a proceeding before the Commission entitled No. 18364, Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, 146 I. C. C. 717, and the Commission refers the court to the text of said [fol. 631] report and order for full, complete, and accurate information concerning the contents of said report and order and for description of the proceedings before the Commission upon which said report and order were based.

III

Answering paragraphs VIII to XI, both inclusive, of the bill of complaint, the Commission admits that bills were filed in this court to enjoin, set aside and annul said order of August 2, 1928, and that the court, specially constituted as required by statute, sustained the validity of said order

and entered a decree dismissing the bills for want of equity. The opinions of the court are reported as State of Florida v. United States, 30 F. (2) 116 and 31 F. (2d) 580.

IV

Answering paragraphs XII and XIII of the bill of complaint, the Commission admits that upon appeal to the Supreme Court of the United States the aforesaid decree of this court was reversed, Florida v. United States, 282 U. S. 194.

V

Answering paragraph XIV of the bill of complaint, the Commission admits that shortly after the decision of the Supreme Court annulling the aforesaid order of August 2, 1928, the Commission, upon petitions filed by complainant and defendant, reopened the aforesaid proceeding, and, thereafter issued a report and order, dated July 5, 1932, a copy of which report and order are attached to and made a part of the bill of complaint as Exhibit B; that said report is published at 186 I. C. C. 157, and the Commission refers the court to said report and order for full, complete, and accurate information concerning the contents of said report and order and for a description of the further proceedings before the Commission upon which [fol. 632] said report and order were, and are, based; that at further hearings in said reopened proceeding a large volume of testimony and other evidence bearing upon the matters covered by said report and order was submitted to the Commission for consideration; that at said hearings and subsequently, both orally and in briefs filed in said proceeding, questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of the parties thereto by their counsel, whereupon the Commission determined said matters and entered and served upon the parties to said proceeding the aforesaid report and order of July 5, 1932; that said report and order included the Commission's findings of fact, decisions, conclusions, orders, and requirements in the premises, and that, upon the evidence aforesaid and upon the evidence submitted at the original hearings in said proceeding, and as shown in and by said report, the Commission made the findings and stated the conclusions upon which said order is based.

VI

Answering paragraph XV of the bill of complaint, Commission admits, as stated in its report on rehearing, 186 I. C. C. 157, at page 159, that at the further hearing the Florida interveners moved that the complaint should be dismissed as to the issue whether the Florida intrastate rates cause unjust discrimination against interstate commerce, and that, for the reasons stated in said report, said motion to dismiss was denied.

Further answering said paragraph XV the Commission admits that certain motions were made in the proceeding upon rehearing to require the Atlantic Coast Line Railroad Company to produce information showing the total volume of the Florida log traffic for a number of years prior to the date of the Commission's original order of August 2, 1928, and that the Commission denied said motions.

Further answering said paragraph XV the Commission alleges that the findings and conclusions in said report of [fol. 633] July 5, 1932, were and are, and that each of them was and is, fully supported and justified by the evidence submitted to the Commission in said proceeding as aforesaid.

VII

Answering paragraph XVI of the bill of complaint the Commission admits that after the final hearings in said proceeding the Commission's examiners made and issued a proposed report which was served upon the parties but alleges that said proposed report did not constitute the report of the Commission, and that the conclusions of the Commission differed in part from those of the examiners.

VIII

Answering paragraph XVII of the bill of complaint the Commission admits that after the proposed report of the examiners was served upon the parties the defendant and the interveners filed exceptions thereto and that subsequently the case was orally argued before the Commission. The Commission neither admits nor denies the allegations in said paragraph XVII relating to the contents of the Commission's report of July 5, 1932, but refers the court to the text of the report itself and to the Commission's order of the same date.

IX

Answering paragraph XVIII of the bill of complaint the Commission admits that on July 28, 1932, it issued a supplemental order in said proceeding, a copy of which is attached to the bill of complaint and made a part thereof as Exhibit C. The Commission further admits that on August 10, 1932, petitioners herein moved the Commission for postponement of the effective date of said order to November 15, 1932, and that said motion was denied by the Commission on August 13, 1932.

[fol. 634] X

Answering paragraphs XIX and XX of the bill of complaint, the Commission admits that the allegations therein contained are true.

XI

Answering paragraph XXI of the bill of complaint, the Commission denies the allegations of said paragraph.

XII

Answering paragraph XXII of the bill of complaint the Commission denies that said order of July 5, 1932, is unlawful for the reasons, or for any of the reasons, set forth in said paragraph.

Further answering said paragraph XXII, the Commission alleges that in making said report and order of July 5, 1932, it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance, and condition called to its attention on behalf of the parties in said proceeding by their counsel.

The Commission further alleges that said order of July 5, 1932, was not made or entered either arbitrarily or unjustly, or contrary to the relevant evidence, or without evidence to support it; that in making said order the Commission did not exceed the authority which had been duly conferred upon it, or exercise that authority in an unreasonable manner; and the Commission denies each of and all the allegations to the contrary contained in the bill of complaint.

XIII

Answering paragraph XXIII of the bill of complaint, the Commission denies that said order of July 5, 1932, will cause petitioners either irreparable damage or irreparable injury unless said order is enjoined and set aside by the court.

[fol. 635] Except as herein expressly admitted the Commission denies the truth of each of and all the allegations contained in the bill of complaint in so far as they conflict either with the allegations herein or with either the statements or conclusions of fact included in said report and order of July 5, 1932, which report and order are hereby referred to and made a part hereof.

All of which matters and things the Commission is ready to aver, maintain, and prove as this honorable court shall direct, and hereby prays that said bill of complaint be dismissed.

Interstate Commerce Commission, by J. Stanley Payne, Assistant Chief Counsel. Daniel W. Knowlton, Chief Counsel, Of Counsel.

Duly sworn to by Patrick J. Farrell. Jurat omitted in printing.

[fol. 636] [File endorsement omitted.]

[fol. 637] In United States District Court

No. 691

[Title omitted]

Temporary Restraining Order—Filed Sept. 14, 1932

This cause came on to be heard this September 14th A. D. 1932, before the Honorable Samuel H. Sibley, Circuit Judge, the Honorable E. Marvin Underwood, District Judge, and the Honorable Louie W. Strum, District Judge, and it appearing to the Court and the Court finding that the bill of complaint herein was filed in this cause on to-wit, September 9th, 1932, the purpose whereof was and is to enjoin, restrain and annul an order of the Interstate Commerce Commission entered July 5th, 1932 as amended

by said Interstate Commerce Commission July 28th, 1932 insofar as relates to intrastate rates in Florida, said order as amended as aforesaid having been entered by said Interstate Commerce Commission in that certain proceeding entitled Georgia Public Service Commission, complainant, versus Atlantic Coast Line Railroad Company, defendant, and being Interstate Commerce Commission Docket 18364, and it further appearing to the Court and the Court finding that in due course the Honorable E. Marvin Underwood Judge of the United States District Court for the Northern District of Georgia, Atlanta Division, did duly call to his assistance the Honorable Samuel H. Sibley, Circuit Judge, and the Honorable Louie W. Strum, District Judge, pursuant to Acts of Congress in such cases made and provided, [fol. 638] upon the request of the complainants in this cause, and the said cause was duly and regularly set by and before said Court constituted of said three Judges as aforesaid, to be heard on September 14th, 1932 at 10:00 o'clock A. M. upon application of the complainants for a temporary stay or suspension of said order of said Interstate Commerce Commission, and for a temporary restraining order and injunction restraining and enjoining the said order and the effect thereof, and it further appearing to the court and the Court finding that there are important questions of law and fact to be considered and determined in said cause and that unless the said order be temporarily enjoined and restrained that irreparable injury will result to the interested shippers within the State of Florida, and it also appearing from the sworn bill of complaint and from the affidavits of L. F. Shore and Ralph Hunt filed in said cause and submitted to this Court that irreparable damage will result to petitioners and the shippers of logs in Florida in that the operations of divers manufacturers of lumber will be substantially hindered, delayed, and embarrassed and such manufacturers subjected to substantial loss and damage on that account, it is thereupon,

Considered, ordered and adjudged by the Court that the said order of the Interstate Commerce Commission dated July 5th, 1932, as amended by said order of July 28, 1932, as aforesaid, insofar as the same relates to intrastate rates in Florida, be and the same hereby is temporarily stayed and suspended until sixty (60) days from the date hereof or until the further order of the Court.

[fol. 639] In open court this the 14th day of September, A. D. 1932, at 6.07 o'clock p. m.

Samuel H. Sibley, Circuit Judge. E. Marvin Underwood, District Judge. Louie W. Strum, District Judge.

[fol. 640] [File endorsement omitted]

[fol. 641] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

In Equity. No. 691

[Title omitted]

ANSWER OF UNITED STATES OF AMERICA—Filed Sept. 22, 1932

United States, one of the defendants in the above-entitled cause, for answer to the bill of complaint filed therein against it answers and says:

I

United States admits for the purposes of this suit that the allegations contained in paragraphs I, II, III, IV and V of the bill are true.

II

United States admits that the allegations made and contained in paragraphs VI to XIII, both inclusive, of the bill are true, with this exception: it denies that the second subdivision of said paragraph VI contains a complete or accurate statement of the position of the Georgia Public Service Commission at said hearing, and respectfully refers the Court to the original complaint of said Georgia Commission and the testimony presented by it at said hearing, all [fol. 642] of which are now of record before this Court, the same having been introduced at the hearing held herein on September 14.

III

Answering paragraph XIV of the bill, United States admits that motions to reopen the proceedings before said Interstate Commerce Commission were filed by the Georgia Public Service Commission and the Atlantic Coast Line

Railroad Company, and admits that replies to said motions were filed by the State of Florida, Florida Railroad Commission, Brooks Scanlon Corporation, Wilson Cypress Company and Cummer Cypress Company, and admits further that said proceedings were reopened by said Commission, and that Wilson Lumber Company of Florida was by it permitted to intervene as a party to said proceedings, but United States denies that said paragraph XIV contains a full and complete description or statement of the matters and things set forth in said motions and respectfully refers the Court to said motions as filed with the Commission and as introduced in evidence before this Court.

IV

Answering paragraph XV of the bill, United States denies all the allegations thereof with these exceptions: (1) it admits that petitioners, or some of them, made the formal motions described in said paragraph XV, and that said motions were denied; and (2) it admits that petitioners, or some of them, demanded and sought to have said Commission require certain information with respect to revenue [fol. 643] produced from transportation of logs by the Atlantic Coast Line Railroad as described in said paragraph, and that said Commission declined to make such requirement upon the Atlantic Coast Line Railroad Company, but United States denies that there is no evidence in the record adduced before the Interstate Commerce Commission concerning the revenues produced from intrastate traffic in logs under the Florida intrastate rates (the Cummer scale).

V

Answering paragraph XVI of the bill, United States admits that the proposed report was prepared by examiners of said Commission and served upon parties to the proceeding, but alleges that all the allegations of said paragraph XVI are irrelevant and immaterial inasmuch as the proposed report of said examiners is not the opinion or report of the Commissioners, and it is neither official nor binding upon either it or the parties to said proceeding.

VI

Answering paragraph XVII of the bill, United States admits that exceptions were filed to the report proposed by

the examiners, that the oral argument was heard by the Commissioners, at which the parties to the proceeding, including petitioners, appeared and submitted such argument as they desired; that on July 5, 1932, said Interstate Commerce Commission rendered its report and order, and that Exhibit B to the bill is a true copy thereof. Answering the remainder of said paragraph XVII, United States respectfully refers the Court to said Exhibit B for a full [fol. 644] and complete statement of the matters, things and conclusions stated and reached by the Commission therein.

VII

United States admits the allegations of paragraphs XVIII, XIX and XX of the bill.

VIII

United States denies all the allegations made and contained in paragraphs XXI, XXII and XXIII of the bill; and denies that said order entered by the Commission on July 5, 1932, is unlawful or invalid for the reasons set forth in said paragraphs, or any of them, or for any other reason; and United States particularly denies that petitioners will suffer irreparable or other legal damage or injury if said order is enforced or is not enjoined by this Court.

Except as herein expressly admitted, United States denies each and every allegation made and contained in the bill of complaint, and each of the several paragraphs thereof.

Wherefore, having fully answered the bill of complaint, United States prays that the relief therein prayed be denied and the bill of complaint dismissed with costs to the petitioners, and that it have the benefit of such other and further orders, decrees, or relief as may be just and proper.

Elmer B. Collins, Special Assistant to the Attorney General. Clint W. Hager, United States Attorney. John Lord O'Brian, the Assistant to the Attorney General.

[fol. 645] *Duly sworn to by Elmer B. Collins. Jurat omitted in printing.*

[fol. 646] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

In Equity. No. 691

[Title omitted]

SUPPLEMENTAL BILL OF COMPLAINT—Filed Feb. 24, 1933

To the Honorable Judges of the District Court in and for the Northern District of Georgia, in Chancery Sitting:

Wilson Cypress Company, a corporation, and Wilson Lumber Company of Florida, a corporation, by their undersigned attorneys, with leave of Court first had and obtained, bring this their Supplemental Bill of Complaint herein against the United States of America and Interstate Commerce Commission and Atlantic Coast Line Railroad Company, defendants. Thereupon your orators complain and say:

[fol. 647] 1. That heretofore, to-wit: on September 9th, 1932, your orators filed in this cause their bill of complaint hereafter called the "original bill" against United States of America and Interstate Commerce Commission, defendants herein, wherein and whereby they sought to annul, set aside and enjoin that part of the order entered by said Interstate Commerce Commission in its Docket No. 18364, dated July 5, 1932, as amended July 28, 1932, wherein and whereby the said Interstate Commerce Commission attempted to invade the domain of the State of Florida and to dis-establish the scale of lawful rates in force and effect for the transportation of logs, except walnut, cherry and cedar, in carloads, minimum weight 50,000 pounds, excess in proportion (herein called the Cummer Scale) upon the lines of the Atlantic Coast Line Railroad Company in intrastate commerce in Florida and to require said Atlantic Coast Line Railroad Company, a common carrier and subject to the jurisdiction and regulation of the State of Florida, to establish, put in force and maintain a certain other scale of rates for the transportation of such logs prescribed in and by the terms of said order.

The said cause came on to be heard in said City of Atlanta before the Honorable Samuel H. Sibley, United States

[fol. 648] Circuit Judge, and the Honorable Louie W. Strum and the Honorable E. Marvin Underwood, United States District Judges, on motion of your orators after due notice to the said defendants for an order of this Court staying said order of the Interstate Commerce Commission pending this proceeding pursuant to the laws of Congress in such cases made and provided; that at such hearing the said Atlantic Coast Line Railroad Company by order of this Court was permitted to intervene in said cause and did intervene therein and filed its answer to the original bill of complaint; that thereafter answers were duly filed by the defendants, United States of America and Interstate Commerce Commission, and certified copies of the proceedings had by and before the said Interstate Commerce Commission in said docket No. 18364 were duly filed in evidence in said proceeding; and that on, to-wit: September 14, 1932, this Court did make and enter in said cause its order wherein and whereby the said order of the Interstate Commerce Commission and the effect thereof was duly stayed until further order of the Court, but not to exceed sixty days from the date thereof. That no final judgment or decree of this Court has been entered in nor have any issues in the original suit been determined by this Court.

[fol. 649] 2. That thereafter, to-wit, on October 12th, 1932, your orators filed with said Interstate Commerce Commission in said proceeding before it a motion to set aside the said order of said Interstate Commerce Commission and for further hearing in and reconsideration of said proceeding, and in and by said motion averred that after July 5, 1932 (the date of said order of the Interstate Commerce Commission), and prior to September 15, 1932, the date on which said order of the Interstate Commerce Commission was by its terms to become effective, at least seven railroad carriers doing business in the Southern territorial rate group and operating within and between seven different Southern states, including Florida, had filed with said Interstate Commerce Commission and said Commission had permitted to become effective a scale of rates (hereinafter sometimes referred to as the Newly Reduced Rates) for the transportation of logs which was substantially lower than the rates theretofore obtaining for application upon the lines of such carriers, and that such

scale of rates was and is a mileage scale expressed in lump sum terms per carload, regardless of weight, and was and is upon the basis hereinafter set forth and was and is published in the tariffs hereinafter described by the carriers hereinafter named, viz:

[fol. 650]

Distance	Rate per car regardless of weight
25 miles and less	$12.00
50 miles and over 25 miles	15.00
75 miles and over 50 miles	17.50
100 miles and over 75 miles	20.00

Authorities for Rates

Railroad tariff No.	I. C. C. tariff No.	Issued by	Application
10956	B–860	M.&O.R.R.	From stations on the M.&O.R.R. to Columbus, Corinth, Miss., Humbolt, Jackson, Tenn. Meridian, Miss., Mobile, Ala., Wickliffe, Ky., and Whistler, Ala.
590–R	7789	I.C.R.R.	From stations on the I.C.R.R. to Corinth, Miss., Dyersburg, Tenn., Fernwood, Granada, Jackson, Miss., Jackson, Tenn. McComb, Pickens, Miss., Ponchatula La., Water Valley, Miss.
602–M	7810	Y.&M.V.R.R.	From stations on the Y.&M.V.R.R. to Charleston, Clarksdale, Miss., Denham Springs, La., Gloster, Greenville, Greenwood, Grenada, Hickory, Holcomb, Jackson, Kings, Lambert, Meridian, Natchez, Philips, Stevenson, Tehula, Trotters Point, Vicksburg and Yazoo City, Miss.
3	3284–A	N.C.&St.L. Ry.	Applies on interstate traffic between points on the N.C.&St.L. Ry.
6	Rate Issue	N.C.&St.L. Ry.	Applies on Tennessee State Traffic between points on the N.C.&St.L. Ry.
6	A–10425 Supp. 5	Sou. Ry.	From points in Alabama, Georgia and Tennessee to Chattanooga, Tenn. (Note 1).
3155–F	9019	St.L.S.F. Ry.	Between stations on the St. L.S.F. Ry. in Alabama, Florida and Mississippi (Note 2).
*	2848	Cent. of Ga. Ry.	Between stations on Cent. of Ga. Ry. and Montgomery, Ala. (Note 3).

NOTE 1. Sou. Ry.—25 miles and less, 50 cents per car more than above scale; all other distances the same as above scale.

NOTE 2. St. L. S. F. Ry.—100 miles and over 75, $2.50 per car more than above scale; all other distances the same as above scale.

NOTE 3. Cent. of Ga. Ry.—$2.50 per car more than above scale for all distances

* This tariff (No. 2848) was republished by I.C.C. No. 2867-G.F.O. Special 140-A, effective intrastate Jan. 23, 1933, and interstate Feb. 23, 1933, which extends application of rates to shipments to Dothan, Ala., from points between Eagle Pond, Ga., and Florala, Ala., inclusive of Lakewood, Fla.

[fol. 651] And in and by said motion and petition for rehearing it was further averred that at or about the same time the Newly Reduced Rates were permitted by the Interstate Commerce Commission and became effective, similar rates applicable to the transportation of logs in the Southwestern territory (that is to say, in the territory west of the Mississippi River) were published by divers railroad carriers doing business in Southwestern territory and filed with the said Interstate Commerce Commission and likewise permitted by said Commission and became effective in the Southwestern territory; that among the tariffs naming such Reduced Rates applicable in the Southwest as aforesaid are the tariffs hereinafter described, issued by the railroads and applicable as hereinafter set forth:

Railroad tariff No.	I. C. C. tariff No.	Issued by	Application
5683-AA	A-8212	Mo. Pac. R.R.	Between points on Mo. Pac. R.R. in Arkansas and Louisiana, Missouri, Oklahoma and Texas.
31134-N	C-12130	C.R.I.&P. Ry.	Between points on the C.R.I. & P. Ry. in Arkansas and Louisiana.
2915-B	4676	St.L.S.W. Ry.	Between points on the St.L.S.W. Ry. in Arkansas, Louisiana and Missouri. (Applies on cars of 90,000 lbs. or less, excess loads to be charged proportionately).
1485-A	9346	St.L.S.F. Ry.	Between points on the St. L.S.F. Ry. in Arkansas and between points in Arkansas and points in Missouri.

[fol. 652] That the reduced rates so established in the Southwestern territory as aforesaid are per carload rates regardless of weight and are identical in level with the Newly Reduced Rates established in the Southern Rate group as aforesaid, save that in Southwestern territory the rate per car for the transportation of distances of 100 miles and over 75 miles is $22.50 per car, and that on the St. L.-S. F. Ry., the said rates are applicable on cars of 90,000 pounds or less, excess loads to be charged proportionately.

3. That on, to-wit, October 12th, 1932, and after the filing of said motion and petition for rehearing before said Interstate Commerce Commission your orators presented for filing in this cause a supplemental bill of complaint wherein your orators set forth said Newly Reduced Rates and in and by said supplemental bill it was further alleged that, as soon as possible after learning of said newly reduced rates, your orators had filed with said Interstate Commerce Commission, said motion and petition for rehearing, and

your orators prayed this Court to stay the operation and effect of said order of the Interstate Commerce Commission until said motion for rehearing should have been acted upon by said Commission, and until the further order of this Court, and that in the event said Interstate Commerce Commission should refuse to set aside its said order that this Court would decree said order to be invalid and unlawful, and enter a decree enjoining said order. That at the time of presenting said supplemental bill of complaint to this Court your orators moved this Court for leave to file the same and said motion was set for hearing on October 22, 1932, before said Court.

[fol. 653] 4. That on, to-wit, October 21, 1932, said Interstate Commerce Commission entered its order reopening the proceedings in its said Docket No. 18364, and assigned said proceeding for further hearing for the purpose of receiving evidence respecting any change in the rates on logs since the close of the previous hearing therein, the circumstances connected with and the conditions which occasioned such changes, and whether such circumstances and conditons, or any of them, were present with respect to the Florida intrastate log rates of the Atlantic Coast Line Railroad Company, and further suspending the operation of its said order of July 5, 1932, as amended July 28, 1932, until its further order. That thereupon, said order being brought to the attention of the Court, this Court cancelled said hearing set for October 22, 1932, upon the above-mentioned motion for leave to file said supplemental bill, and no further proceedings were had in this cause.

5. That on November 21 and 22, 1932, said further hearing before said Interstate Commerce Commission, under its said Docket No. 18364, was held. That at said hearing in said proceeding, in addition to the numerous tariffs publishing said Newly Reduced Rates hereinabove mentioned and described, there were filed in evidence certain other tariffs (only discovered by your orators after the filing of said motion and petition for rehearing) publishing said Newly Reduced Rates applicable in said Southern territory. That said additional tariffs were recently—in many instances after the presentation of said supplemental bill—filed with said Interstate Commerce Commission by seven railroad carriers doing business in said Southern terri-

torial rate group and operating within and between six [fol. 654] different Southern states, and said Interstate Commerce Commission has permitted to become effective the scale of rates therein published, said scale of rates being a mileage scale expressed in lump sum terms per carload, regardless of weight, (being the same as the Newly Reduced Rates hereinabove set forth) as follows:

Distance	Rate per car regardless of weight
25 miles and less	$12.00
50 miles and over 25 miles	15.00
75 miles and over 50 miles	17.50
100 miles and over 75 miles	20.00

and said scale of rates being published in the tariffs hereinafter described by the carriers hereinafter named, viz:

I. C. C. tariff No.	Supplement No.	Issued by	Application
A-10472		Sou. Ry.	From Sou. Ry., A. G. S. and C. N. O. & T. P. stations in Ga. and Ala. to to Chattanooga, (Note 1) and from Sou. Ry. stations in Miss., Ala. & Tenn. to Corinth, Miss.
A-659	115	Glenn for a/c T.A.&G. Ry.	From T. A. & G. stations to Chattanooga and Gadsden, Ala. (Note 1).
A-10448	2	Sou. Ry.	From Sou. Ry. stations between Memphis, Tenn. and Corinth, Miss., to Memphis, Tenn.
A-10425	6	Sou. Ry.	From all Sou. Ry. stations in Ala. to Mobile and Selma, and from Sou. Ry. stations in Ala. and from A.G.A. stations in Ala. and Miss. to York, Ala. (Note 2).
7789		Ill. Cent. R.R.	From stations on the G.&S.I. to Jackson, Miss., and Laurel, Miss.
3101		N.O.&N.E. R.R.	From N.O.&N.E. stations to Laurel, Miss., (Note 3).
36	6 and 8	Columbus & Greenville R.R.	From all stations on the C.&G. to Columbus, Greenville, Grenada, and West Point, Miss. (Note 4).
A-7638		S.A.L. Ry.	From S.A.L. stations in Ala. between Omaha, Ga., and Montgomery, Ala. (Note 2).
[fol. 655]			
A-129		W. Ry. of Ala.	From all stations on W.R. of A. to Montgomery, Ala. and Selma, Ala. (Note 2).
1137		G.M.&N. R.R.	Between all G.M.&N. stations intrastate in Mississippi (Note 5).
A-10467		Sou. Ry.	To Charleston, S. C. from Augusta, Ga. and Edgefield, Park Hill, Baynham, Columbia, Hardeeville, Denmark, Bath, Kingville, May, Orangeburg and Sumter, S. C. (Note 6).

Rates on conduits, cross arms, cross-ties, fence posts, lumber, paving blocks, piling, poles and timber.

NOTE 1. Sou. Ry. rates to Chattanooga and Gadsden—25 miles and less 50 cents per car more than above scale, all other distances same as above scale.

NOTE 2. S.A.L. Ry. rates to Montgomery, W. Ry. of Ala. rates to Montgomery and Selma, Sou. Ry. rates to Mobile, Selma and York—$2.50 per car more than above scale for all distances.

NOTE 3. N.O.&N.E.R.R. rates to Laurel, Miss.—25 miles and less are 50 cents more than above scale, and 100 miles and over 75 miles are $2.50 more than above scale, other distances same as above scale.

NOTE 4. Columbus & Greenville R.R. scale extends over 100 miles as follows:

125 miles and over 100 miles	$22.50 per car
150 miles and over 125 miles	25.00 per car
170 miles and over 150 miles	27.50 per car

NOTE 5. G.M.&N.R.R. rates—100 miles and over 75 miles $2.50 per car more than scale, all lesser distances same as above scale.

NOTE 6. This Sou. Ry. scale to Charleston is not a per car, regardless of weight, scale. It is published on a basis of cents per hundred pounds as follows:

	Per hundred pounds
From Augusta, Ga. and from Edgefield, Park Hill, Columbia, Hardeeville, Kingville and Sumter, S. C. to Charleston, S. C.	2 cents
From Baynham, Bath and May, S. C. to Charleston, S. C.	1½ cents
From Denmark and Orangeburg, S. C. to Charleston, S. C.	1 cent

[fol. 656] 6. That thereafter, to-wit, on January 9, 1933, said Interstate Commerce Commission, in its second report on further hearing, affirmed all of the findings in its report on further hearing and by its order of January 9, 1933, in said proceeding, as amended by its order of January 19, 1933, vacated its order of October 21, 1932, and ordered that after February 25, 1933, the aforesaid order of July 5, 1932, as amended by said order of July 28, 1932, should remain in full force and effect until the further order of said Commission. That a copy of said second report on further hearing and order of January 9, 1933, and a copy of said amendatory order dated January 19, 1933, are attached hereto and marked Exhibits "A" and "B" respectively, and made a part hereof.

7. That on, to-wit, February 8th, 1933, your orators filed their petition with said Interstate Commerce Commission praying for further hearing in said proceeding before said Commission, a copy of said petition being hereto attached and marked "Exhibit C" and made by reference a part hereof. That, as is set forth in and by sail petition for rehearing, in addition to all the tariffs hereinabove mentioned and described publishing said Newly Reduced Rates, certain additional tariffs have been recently filed with said Interstate Commerce Commission by eight railroad car-

riers doing business in said Southern territorial rate group and operating within and between ten different Southern states, and said Interstate Commerce Commission has permitted to become effective the scale of rates therein published, being substantially the same as said Newly Reduced Rates hereinabove set forth. That said additional tariffs and the carriers publishing the same and the rates therein [fol. 657] published and the application of such rates are as follows:

Louisville & Nashville Railroad

Tariff I.C.C. No. 16022, Supp. 19

Rate	Per car regardless of weight	Application
25 miles and less	$12.00	Over entire L.&N. system, except on Alabama and Florida intrastate traffic, and except on traffic from, to, or between points in Illinois, Indiana, Missouri and/or Ohio.
50 miles and over 25 miles	15.00	
75 miles and over 50 miles	17.50	
100 miles and over 75 miles	20.00	

From Linsey, Ky. to Knoxville, Tenn. (140 miles) $29.50 per car, regardless of weight.

Atlantic Coast Line Railroad

Tariff I.C.C. No. B-2745 (Rule 127)

Rate	Cents per 100 lbs.	Application
100 miles and under	2½	From A.C.L. stations to Montgomery, Ala.
125 miles and over 100 miles	3½	
175 miles and over 125 miles	4½	

Atlantic Coast Line Railroad

Tariff I.C.C. No. B-2745, Supp. 1. Rates on Cross Arms, Crossties, Lumber, Piling, Poles and Timber Not Otherwise Specified

Rate	Cents per 100 lbs.	Application
To Charleston from Gourdin	1	To Charleston from following A.C.L. stations in South Carolina, Gourdin *(51) Florence to Lanes (102), Sumter (94), Gamble to Carpon (56), Dillon to Florence Transfer (132), Mullins to Evansdale (130), Darlington to Haynesworth (110), Berry to Clio (128), Currans to Nix (104), Ebenezer to Ryttenburg (95) Bennettsville to Lides (134), Maxie to Noah (138), Wisacky to Lucknow (115), Floyd to Perkins (116), Auburn and Hartsville (122).
To Charleston from: Florence to Lanes, Sumter and Gamble to Carpon	1½	
To Charleston from: Dillon to Florence Transfer, Mullins to Evansdale, Darlington to Haynesworth, Berry to Clio, Currans to Nix, Ebenezer to Ryttenburg	2½	
To Charleston from: Bennettsville to Lides, Maxie to Noah, Wisacky to Lucknow, Floyd to Perkins, Auburn and Hartsville	3	

* Distance to Charleston in parentheses.

8. That said petition for rehearing was denied by said Commission on February 13th, 1933. That no final judgment or decree of this Court has been entered in, nor have any issues in the original suit been determined by this Court.

9. That your orators aver all and singular the matters and things averred in and by said original bill of complaint and in addition thereto, aver the following:

[fol. 658] Central of Georgia Railway

Tariff I.C.C. No. 2851

Rate	Cents per 100 lbs.	Application
50 miles and under	2½	From C. of G. stations to Augusta and Waynesboro, Ga.
75 miles and over 50 miles	3	
100 miles and over 75 miles	3½	

Norfolk & Southern Railroad

Tariff I.C.C. No. A. 760. Rates Lumber, Piles and Other Forest Products

Rate	Cents per 100 lbs.	Application
50 miles and under	3	From N. & S. stations to Norfolk, Va.
100 miles and over 50 miles	4	
150 miles and over 100 miles	5	
200 miles and over 150 miles	6	

Georgia & Florida Railroad Company

Tariff I.C.C. No. 558

Rate	Cents per 100 lbs.	Application
50 miles and under	2½	Over entire line of G. & F. R.R.
75 miles and over 50 miles	3	
100 miles and over 75 miles	3½	
160 miles and over 100 miles	4	
200 miles and over 160 miles	4½	

Savannah & Atlanta Railway

Tariff I.C.C. No. 115

Rate	Cents per 100 lbs.	Application
25 miles and under	2½	From S. & A. Ry. stations to Warrenton, Sardis and Newington, Ga.
50 miles and over 25 miles	3	
75 miles and over 50 miles	3½	

[fol. 659] Seaboard Air Line Railway

Tariff I.C.C. No. A-7528, Supp. 8

Rate	Application
$2.50 per 1,000 feet Doyle Scale (Minimum carload of 4,000 feet required—approximately 48,000 lbs.)	From S.A.L. Ry. stations between and including Branchville, Va. and Littleton, N. C. *(44.7) to Boykins, Va., and from S.A.L. Ry. stations between and including Severn, N. C. and Lewiston, N. C. (35) to Boykins, Va.

* Distance to Boykins in parentheses.

Seaboard Air Line Railway

Tariff I.C.C. No. A-7528, Supp. 9

Rate	Application
3½ cents per 100 lbs. (Minimum carload of 80,000 lbs. required.)	Fitz Siding, N. C. to Norfolk, Va. (61 miles)

Southern Railway

Tariff I.C.C. No. 10425, Supp. 7

Rate	Per Car regardless of weight	Application
25 miles and under	$12.50	From C.N.O. & T.P. stations to Knoxville, Tenn.; from Sou. Ry. stations to Dayton, Tenn.; and from Sou. Ry. stations to Fayette, Ala.
50 miles and over 25 miles	15.00	
75 miles and over 50 miles	17.50	
100 miles and over 75 miles	20.00	

[fol. 660] (a) That all of said Newly Reduced Rates hereinabove mentioned and described are now in effect for the transportation of logs in Southern and Southwestern territory, and said Interstate Commerce Commission has permitted them to become effective. That all of said tariffs, being 34 in number, published by 21 different railroad carriers operating in and between 14 different Southern and Southwestern States are more particularly described in said proceeding before said Interstate Commerce Commission, including said motion and petition for rehearing last filed by your orators therein. That in order to show the wide-spread application of said rates your orators have attached hereto a railroad map of the United States, which said map is marked "Exhibit D", and made by reference a part hereof. That the lines marked upon said "Exhibit D" in red color show and represent the application of said Newly Reduced Rates upon the railroad lines of the numerous various carriers publishing the same. That said Newly Reduced Rates are now in effect on numerous railroad carriers in every State in the Southeastern territory, south of the northern boundaries of Kentucky and Virginia and east of the Mississippi River, including Florida, and on or over all or portions of the lines of every railroad of any consequence which operates in interstate commerce south [fol. 661] of the States of Kentucky and Virginia, including the defendant, Atlantic Coast Line Railroad, and including the Louisville & Nashville Railroad which is controlled through stock ownership by said Atlantic Coast Line Railroad, and including the Nashville, Chattanooga & St. Louis Railroad which is controlled through stock ownership by said Louisville & Nashville Railroad. That said Newly

Reduced Rates are applicable in Florida in interstate commerce on and over the lines of said Louisville & Nashville Railroad and the Central of Georgia Railroad, and are likewise applicable in Florida in interstate and intrastate commerce on and over the lines of the St. Louis-San Francisco Railway and the lines of the Georgia & Florida Railroad.

(b) That said second report of said Interstate Commerce Commission on further hearing, "Exhibit A" hereof, states that said Newly Reduced Rates in Southwestern territory (that is, west of the Mississippi River) "should expire by limitation December 21, 1932", whereas the testimony in said proceeding before said Interstate Commerce Commission shows, without contradiction, that said railroads publishing said tariffs in said territory had assented to an extension of those scales of rates throughout the year 1933, and your orators aver that various tariffs have been filed with said Interstate Commerce Commission since the last hearing in said proceeding so extending said expiration [fol. 662] date.

(c) That the Cummer Scale is a mileage scale of rates expressed in lump sum terms per car of minimum weight of 50,000 pounds, excess in proportion; that the Newly Reduced Rates which said Interstate Commerce Commission has permitted to become effective in interstate commerce in Southeastern and Southwestern territories other than Florida, are expressed in lump sum terms per car regardless of weight; that the capacity of cars in which logs ordinarily are loaded for transportation in Southwestern and Southeastern territories ranges from 80,000 to 100,000 pounds per car, with the privilege of overloading to the extent of 10% of such capacity. And your orators aver that shippers generally, particularly shippers of commodities such as logs, in shipping upon rates applicable to carloads regardless of weight, customarily load to the full carrying capacity of the car; and that the loading of logs of all kinds, including hardwood moving in the Southeastern and Southwestern territories and in Florida, upon lump sum per car rates regardless of weight would substantially exceed 70,000 pounds per car, and would average from 75,000 to 85,000 pounds per car or more.

(d) That the table below compares for the hauls therein specified the rates, per car of the weight mentioned, for the

transportation of logs upon the Cummer Scale intrastate in Florida (Column 2); upon the Newly Reduced Rates (Column 3); and upon the scale prescribed by said Interstate Commerce Commission as aforesaid intrastate in Florida (Column 4):

[fol. 663]

(1) Hauls in miles	(2) Cummer scale	(3) Newly reduced rates in S. E. territory	(4) Scale fixed by I. C. C.
Computed on Carload of 70,000 Pounds			
25 miles	$11.97	$12.00	$24.50
50 miles	14.70	15.00	31.50
75 miles	16.10	17.50	38.50
100 miles	18.20	20.00	42.00
Computed on Carload of 75,000 Pounds			
25 miles	12.82	12.00	26.25
50 miles	15.75	15.00	33.75
75 miles	17.25	17.50	41.25
100 miles	19.50	20.00	45.00
Computed on Carload of 80,000 Pounds			
25 miles	13.68	12.00	28.00
50 miles	16.80	15.00	36.00
75 miles	18.40	17.50	44.00
100 miles	20.80	20.00	48.00
Computed on Carload of 85,000 Pounds			
25 miles	14.54	12.00	29.75
50 miles	17.85	15.00	38.25
75 miles	19.55	17.50	46.75
100 miles	22.10	20.00	51.00
Computed on Carload of 90,000 Pounds			
25 miles	15.40	12.00	31.50
50 miles	18.90	15.00	40.50
75 miles	20.70	17.50	49.50
100 miles	23.40	20.00	54.00
Computed on Carload of 95,000 Pounds			
25 miles	16.26	12.00	33.25
50 miles	19.95	15.00	42.75
75 miles	21.85	17.50	52.25
100 miles	24.70	20.00	57.00
Computed on Carload of 100,000 Pounds			
25 miles	17.12	12.00	35.00
50 miles	21.00	15.00	45.00
75 miles	23.00	17.50	55.00
100 miles	26.00	20.00	60.00

[fol. 664] (e) That said report of said Interstate Commerce Commission on further hearing, "Exhibit A" hereof, find that said Newly Reduced Rates are "on substantially the same level as the Cummer Scale", and your orators aver that in practical operation and effect each and every of said Newly Reduced Rates hereinabove referred to are on sub-

stantially the same level as the Cummer Scale, or are on a lower level than the Cummer Scale.

(f) That said Newly Reduced Rates are published in some instances as transit rates and in more than twenty other instances as local rates. That the Cummer Scale of rates, while in terms a local scale, is in practical operation and effect tantamount to a transit scale, in that all or substantially all of the outbound products manufactured by the several shippers receiving logs under the Cummer Scale move over the lines of the Atlantic Coast Line Railroad Company, under and by virtue of the terms of service contracts exacted from such shippers in the case of trainload shipments and by virtue of the location of the mills of many if not most of such other shippers as receive logs under the Cummer Scale. That in said proceedings before said Inter-State Commerce Commission your orators offered and attempted to prove that said Cummer Scale in practical operation and effect is tantamount to a transit scale as aforesaid [fol. 665] and, upon objection of said Atlantic Coast Line Railroad, said offer and the evidence supporting it was refused and rejected by said Interstate Commerce Commission. That in practical operation and effect said newly reduced rates are substantially similar to the Cummer scale, and in many instances substantially lower than said Cummer Scale.

(g) That in seeking to justify its invasion of the domain of the State of Florida, the Interstate Commerce Commission relied upon and gave consideration to comparisons of the said Cummer Scale with divers scales of transit and other rates on logs then effective upon divers other railroads in said Southeastern territory, and in many instances the very rates so compared with said Cummer Scale have been superseded in whole or in part by the Newly Reduced Rates which said Interstate Commerce Commission has suffered and permitted lately to become effective as aforesaid.

(h) That the circumstances and conditions surrounding the transportation of logs in intrastate commerce in Florida over the lines of the defendant Atlantic Coast Line Railroad are similar to, and as favorable or more favorable than, the circumstances and conditions surrounding the transportation of logs over the railroads, and under

the tariffs, publishing said Newly Reduced Rates. And your orators aver that there is now a substantial movement of logs by truck in Florida.

[fol. 666] (i) That the action of said Interstate Commerce Commission in permitting said newly reduced rates to become effective and to supersede the substantially higher interstate rates theretofore existing for the transportation of logs, is substantially concurrent with the attempt on the part of said Commission to supersede said Cummer scale of rates in intrastate commerce in Florida with the substantially higher scale of rates prescribed by said Commission as aforesaid. That said Interstate Commerce Commission at no time has attempted to fix intrastate rates for the transportation of logs in any state in the Southern territorial rate group other than in Florida, or on any railroad other than the Atlantic Coast Line Railroad.

10. That your orators by the exercise of no reasonable amount of diligence could have discovered the filing, publication or establishment of said newly reduced rates so permitted as aforesaid by said Interstate Commerce Commission to become effective, and since such discovery have acted diligently in the preparation and filing of said motions for further hearing in said proceeding before said Interstate Commerce Commission and in the preparation and filing of this supplemental bill of complaint herein.

11. And your orators aver (as at all times in these proceedings they have averred) that said Interstate Commerce [fol. 667] Commission is without the power, authority or jurisdiction to prescribed intrastate rates for the transportation of logs in intrastate commerce in Florida in said proceeding, and that said Interstate Commerce Commission has not made and cannot upon the record in said proceedings make the findings which would justify the invasion of the domain of the State of Florida, and that said Interstate Commerce Commission has not justified and could not upon said record justify the invasion of the domain of the State of Florida to fix intrastate rates, and that the action of said Interstate Commerce Commission in attempting so to do was and is arbitrary and unlawful; that the matters and things hereinabove set forth constitute additional evidence further demonstrating that the said order of the said Interstate Commerce Commission

in invading the domain of the State of Florida as aforesaid was not and is not justified and was and is arbitrary, unreasonable, beyond the power of said Interstate Commerce Commission, and wholly invalid and unlawful.

12. That the Florida intrastate rates above set forth have been prescribed by the said Interstate Commerce Commission on the sole ground that such rates are necessary to remove a revenue burden on interstate commerce, and in order that such intrastate rates might pay their fair proportionate share towards the maintenance of an adequate national transportation system; that for said Interstate Commerce Commission to invade the domain of [fol. 668] the State and prescribe intrastate rates to remove a burden upon interstate commerce while permitting the application of such lower rates upon interstate commerce constitutes an unwarranted exercise of Federal power to the preference of interstate commerce and to the unjust and undue prejudice of intrastate commerce; and that so long as the said Interstate Commerce Commission's order in this proceeding remains in force and effect the State authorities to whom primary jurisdiction over intrastate rates is committed are powerless to remove the discrimination above described against intrastate commerce.

Wherefore, your Petitioners respectfully pray as follows:

A. That process may issue against the defendants, United States of America, and Interstate Commerce Commission, an administrative tribunal of the United States, and Atlantic Coast Line Railroad Company with service thereof and of this supplemental bill of complaint in the manner prescribed by statute in such cases made and provided.

B. That upon the filing of this supplemental bill of complaint the Judge of this Court call to his assistance two other Judges, one of whom shall be a Circuit Judge; that this Honorable Court will examine the evidence taken before said Interstate Commerce Commission and determine for itself, independently of any determinations or findings of said Interstate Commerce Commission, whether or not such facts warranting such findings, which are prerequisite [fol. 669] to the jurisdiction of the Interstate Commerce Commission to invade the domain of the State of Florida, have in fact been made to clearly appear by the evidence.

C. That this Court order, adjudge and decree that the said report and order of said Interstate Commerce Commission of July 5, 1932, as amended, are beyond the authority of said Interstate Commerce Commission and are without warrant in law and are null and void and that said report and order, as amended, be set aside and annulled.

D. That this Court will allow a temporary stay or suspension of the operation of the said order of the Interstate Commerce Commission pending the application for the injunctions herein sought.

E. That this Court will grant to your petitioners herein an interlocutory order, setting aside and enjoining the enforcement of said order of July 5, 1932, as amended, of said Interstate Commerce Commission, and that such interlocutory order continue in force until the further order of this Court.

F. That upon final hearing this Court will make and enter a decree and order herein annulling, setting aside and enjoining the said order, as amended, of said Interstate Commerce Commission, and permanently enjoining the enforcement thereof.

[fol. 670] G. That your petitioners may have such other and further relief in the premises as to this Court shall seem meet and just and as equity may require.

And your petitioners will ever pray, etc.

H. P. Adair, C. G. Ashby, Attorneys for Wilson Cypress Company. J. V. Norman, Attorney for Wilson Lumber Company of Florida. A. G. Gutheim, Attorney for Plaintiffs.

[fol. 671] *Duly sworn to by C. R. MacPherson. Jurat omitted in printing.*

[fols. 672-690] Exhibit "A" Omitted, printed side page 418, ante.

[fol. 691] Exhibit "B" Omitted, printed side page 437, ante.

[fol. 692] EXHIBIT "C" TO SUPPLEMENTAL BILL

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 18364

GEORGIA PUBLIC SERVICE COMMISSION, Complainant,

vs.

ATLANTIC COAST LINE RAILROAD COMPANY, Defendant

PETITION ON BEHALF OF WILSON CYPRESS COMPANY AND WILSON LUMBER COMPANY OF FLORIDA FOR FURTHER HEARING IN, AND RECONSIDERATION OF, THE ABOVE-ENTITLED PROCEEDING, OF THE GROUND OF ADDITIONAL NEWLY DISCOVERED EVIDENCE

Come now Wilson Cypress Company and Wilson Lumber Company of Florida, interveners herein, referred to in the report of this Commission as "the Florida interveners", and respectfully petition the Commission to grant a further hearing in, and to give further reconsideration to, the above-entitled proceeding; and in support of said petition respectfully show:

I

That by its report and final order in this proceeding the Commission prescribed minimum rates per one hundred [fol. 693] pounds on Florida intrastate log traffic, minimum carload weight 40,000 pounds, as follows:

Distances	Rates cents
10 miles and under	2.5
20 miles and over 10	3.0
30 miles and over 20	3.5
40 miles and over 30	4.0
55 miles and over 40	4.5
70 miles and over 55	5.0
85 miles and over 70	5.5
100 miles and over 85	6.0
120 miles and over 100	6.5
140 miles and over 120	7.0
160 miles and over 140	7.5
170 miles and over 160	8.0

II

That said Florida intrastate log rates were prescribed by the Commission to remove an "unjust discrimination against interstate commerce from a revenue standpoint", and for no other reason (Georgia Pub. Serv. Comm. v. Atlantic Coast L. R. Co., 186 I. C. C. 157, 190); and that in reaching its conclusions and in prescribing said rates the Commission relied upon and gave consideration to certain comparisons of the presently effective Florida intrastate log rates (the so-called Cummer scale), with other scales of rates effective in southeastern territory (Georgia Pub. Serv. Comm. v. Atlantic Coast L. R. Co., supra. pp. 193-194).

[fol. 694]

III

That heretofore, on October 5, 1932, these interveners did file with the Commission their petition for further hearing in and reconsideration of the above-entitled proceeding on the ground of newly discovered evidence, and therein recited in substance that since the close of the hearings theretofore had in this proceeding certain of the carriers in southern territory had filed reduced rates applicable to the transportation of logs in that territory, and that more particularly, among such carriers, were Mobile & Ohio Railroad, Illinois Central Railroad, Yazoo & Mississippi Valley Railroad, Nashville, Chattanooga and St. Louis Railway, Southern Railway, and St. Louis-San Francisco Railway; and that such reduced rates were generally upon the following basis:

	Rate per car regardless of weight
25 miles and less	$12.00 (note 1)
50 miles and over 25 miles	15.00
75 miles and over 50 miles	17.50
100 miles and over 75 miles	20.00 (note 2)

Note 1. Sou. Ry. rate is $12.50 per car.

Note 2. St. L.-S. F. Ry. rate is $22.50 per car.

It was further alleged in said petition that said reduced rates were generally applicable upon the lines of carriers [fol. 695] located in the same territorial rate group as is the defendant herein, the Atlantic Coast Line Railroad Company, i. e., in the Southern Group; that similar reduced

rates applicable to the transportation of logs in southwestern territory had then recently been published and filed with this Commission, and permitted to become effective; and that such reduced rates, so filed, were generally upon almost exactly the same level as the so-called Cummer scale of rates on logs applicable intrastate in Florida; and that measured by such recently published rates on logs in Southern and in Southwestern territory, the scale prescribed by the Interstate Commerce Commission for intrastate application in Florida as set forth in Paragraph I hereof, is unjustly and unreasonably high and extortionate.

That subsequently, and pursuant to the prayer of the Florida interveners in said petition, the Commission reopened the proceeding, held further hearing therein at Jacksonville, Florida on November 21-22, 1932, and has now rendered its further report therein dated January 9, 1933, and affirmed the finding in the prior report on further hearing, 186 I. C. C. 157.

IV

That since the filing of said petition for further hearing in, and reconsideration of, this proceeding by the Florida interveners on October 5, 1932, and since said further hear- [fol. 696] ing held in Jacksonville, Florida on November 21-22, 1932, carriers in Southern territory and thus in the same territorial rate group as is the Atlantic Coast Line Railroad Company defendant herein, have filed additional reduced rates applicable to the transportation of logs over their lines in Southern territory; and that such rates are to the effect, and are found in tariffs as described below:

Atlantic Coast Line Railroad Company in its Lumber Transit Tariff I. C. C. No. 2745, filed to become effective December 10, 1932, (but a few days, it may be noted, after the close of the further hearing in this proceeding in Jacksonville, Fla., on November 21-22, 1932), and in Rule 127 of said tariff, has published net transit rates on logs to Montgomery, Ala., as follows:

	Cents per 100 lbs.
100 miles and under	2.5
125 miles and over 100 miles	3.5
175 miles and over 125 miles	4.5

And said Atlantic Coast Line Railroad Company, after the last hearing herein, by Supplement No. 1 to said tariff, effective December 10, 1932, published rates on lumber, poles, piling and forest products not otherwise specified, to Charleston, S. C., from the following points of origin as [fol. 697] follows (the distances likewise being set forth in the following tabulation):

From	To	Distance miles	Rate (in cents) per hundred pounds
Gourdin, S. C.	Charleston, S. C.	51	1
Florence to Lanes, S. C.	Charleston, S. C.	102	1½
Sumter, S. C.	Charleston, S. C.	94	1½
Gamble to Carpon, S. C.	Charleston, S. C.	56	1½
Dillon to Florence Transfer, S. C.	Charleston, S. C.	132	2½
Mullins to Evansdale, S. C.	Charleston, S. C.	130	2½
Darlington to Haynesworth, S. C.	Charleston, S. C.	110	2½
Berry to Clio, S. C.	Charleston, S. C.	128	2½
Currans to Nix	Charleston, S. C.	104	2½
Ebenezer to Rytten-burg	Charleston, S. C.	95	2½
Bennettsville to Lides	Charleston, S. C.	134	3
Maxie to Noah	Charleston, S. C.	138	3
Wisacky to Lucknow	Charleston, S. C.	115	3
Floyd to Perkins	Charleston, S. C.	116	3
Auburn and Hartsville	Charleston, S. C.	122	3

and that all of said rates aforesaid are about one-half the rates prescribed by this Commission for intrastate appli- [fol. 698] cation on logs over the lines of the same railroad, Atlantic Coast Line Railroad Company in Florida, as set forth in Paragraph I hereof.

Central of Georgia Railway Company, in its Tariff I. C. C. No. 2851, effective September 27, 1932, names rates

for the transportation of logs from stations on the Central of Georgia Railway to Augusta, and Waynesboro, Ga., for transit, as follows:

	Cents per 100 lbs.
50 miles and under	2.5
75 miles and over 50 miles	3.0
100 miles and over 75 miles	3.5

and that such rates are only about one-half of the rates prescribed for the transportation of logs intrastate within Florida by this Commission as set forth in Paragraph I hereof.

Louisville & Nashville Railroad Co. Tariff I. C. C. No. 16022, Supplement 19, effective January 27, 1933, names rates applicable in connection with the transportation of logs to transit points on the Louisville & Nashville Railroad when originating at Louisville & Nashville Railroad stations, and when movement to transit points is solely via the L. & N. Railroad, as follows:

	Per Car regardless of weight
25 miles and less	$12.00
50 miles and over 25	15.00
75 miles and over 50	17.50
100 miles and over 75	20.00

[fol. 699] and said tariff likewise names rates for the transportation of logs over said railroad from Louisville, Kentucky, to Knoxville, Tennessee, a distance of 277 miles, of $29.50 per car. That said rates, based upon the average carloading that may reasonably be expected of such logs, as already shown herein, are substantially the same as the rates of the Cummer scale in Florida, and very substantially less than the scale prescribed by this Commission for application on logs on the lines of the Atlantic Coast Line Railroad Company wholly within Florida.

Furthermore, these interveners respectfully allege that the Louisville & Nashville Railroad Company is controlled by defendant Atlantic Coast Line Railroad Company.

Savannah & Atlanta Railway, I. C. C. No. 115, effective July 14, 1930 (and which has only since the last hearing come to the attention of these interveners) names transit rates from all stations on the Savannah & Atlanta Railway to Warrenton, Sardis, and Newington, Georgia, on logs as follows:

	Cents per 100 lbs.
25 miles and under	2.5
50 miles and over 25 miles	3.0
75 miles and over 50 miles	3.5

and that such rates are materially lower than the rates prescribed by this Commission to apply on logs over the Atlantic Coast Line Railroad Company in Florida.

[fol. 700] Southern Railway Supplement 7 to Tariff I. C. C. 10425, effective December 31, 1932, to expire December 3, 1933, provides the following rates on logs from C. N. A. & T. P. stations to Knoxville, Tenn., from Southern Railway stations to Dayton, Tenn., from Southern Railway stations to Fayette, Ala:

	Per Car regardless of weight
25 miles and under	$12.50
50 miles and over 25 miles	15.00
75 miles and over 50 miles	17.50
100 miles and over 75 miles	20.00

and that said rates so published by said Southern Railway Company, based on the loading reasonably to be expected, are almost exactly on the level of the Cummer scale and substantially less than the scale prescribed by this Commission for application over the lines of the Atlantic Coast Line Railroad Company within Florida.

Atlanta, Birmingham & Coast Railroad Company, in its tariff No. 18, effective October 10, 1927 (and which has only since the last hearing herein come to the attention of these interveners) publish a scale for the transportation of logs, applicable at Thomasville and Tifton, Georgia, which is as follows:

	Cents per 100 lbs.
25 miles and under	.5
50 miles and over 25 miles	1.5

and that such rates are about one-half of the rates prescribed by this Commission for application to the transportation of logs over the lines of the Atlantic Coast Line Railroad Company in Florida.

[fol. 701] Seaboard Air Line Railway Company, by its tariff I. C. C. No. A-7528, Supplement No. 8, effective August 10, 1932 (and which has only since the last hearing

come to the attention of these interveners) published a scale of rates for the transportation of ash, oak, cypress and poplar logs from stations between and including Branchville, Virginia, and Littleton, North Carolina, to Boykins, Virginia, and from stations between and including Severn, North Carolina, and Lewiston, North Carolina, to Boykins, Virginia, which is $2.50 per thousand feet, and requires a minimum carload of 4,000 feet. The distance from Littleton to Boykins is 44.7 miles, and the distance from Lewiston to Boykins is 35 miles, and the record shows that these logs weigh from 10 to 14 pounds per foot (tr. 1585-1586). Said rate is therefore approximately the same as the Cummer scale for said distances, and is about one-half of the scale of rates contained in the order of the Interstate Commerce Commission herein.

Seaboard Air Line Railway Company, by its tariff I. C. C. No. A-7528, Supplement No. 9, effective December 11, 1932 (after the last hearing herein), published a scale of rates for the transportation of gum logs from Fitz Siding, N. C. to Norfolk, Virginia, a distance of 61 miles, which is 3½ cents per 100 pounds, and requires a minimum carload of 80,000 pounds. Said rate is approximately the same as the Cummer scale for said distance, and is about one-half of the scale of rates contained in the order of the Interstate Commerce Commission herein.

[fol. 702] Norfolk and Southern Railroad Company, in its tariff, I. C. C. No. A-760, effective May 15, 1931 (and which has only since the last hearing herein come to the attention of these interveners) provides a scale of rates for the transportation of lumber, piles, and other forest products to Norfolk, Virginia, which is as follows:

	Cents per 100 lbs.
50 miles and under	3
100 miles and over 50 miles	4
150 miles and over 100 miles	5
200 miles and over 150 miles	6

and said rates are materially less than the rates prescribed by this Commission for application on the lines of the Atlantic Coast Line Railroad Company within Florida.

Georgia & Florida Railroad in its Tariff I. C. C. No. 558, effective May 6, 1931, provides transit rates on logs

from stations on its line to stations on its line on the following net basis:

	Cents per 100 lbs.
50 miles and under	2.5
75 miles and over 50 miles	3.0
100 miles and over 75 miles	3.5
160 miles and over 100 miles	4.0
200 miles and over 160 miles	4.5

and that such rates are but slightly more than one-half the rates prescribed by this Commission for application to the [fol. 703] transportation of logs over the lines of the Atlantic Coast Line Railroad Company in Florida.

V

That insofar as said recently reduced rates on logs enumerated as above, and other reduced rates on logs, already of evidence in this proceeding, are applicable only to the transportation of logs to transit points, these interveners respectfully allege that the movement of logs on the Atlantic Coast Line in Florida is in everyday practice a transit movement; that in the hearing at Jacksonville, Fla., on November 21-22, 1932, these interveners offered so to prove and said proof was rejected by the Examiner (see Tr. 1530-1532, 1605 and 1784); and that upon further hearing, if the same be granted, they will again offer to prove that the rates prescribed by this Commission for application on logs over the lines of the Atlantic Coast Line Railroad Company in Florida are in practice transit rates, which assure to the Atlantic Coast Line substantially 100 per cent of the outbound movement of the product of the logs from the transit point.

VI

That carriers operating in Southwestern territory have recently published further reductions in the rates for the transportation of logs on their lines to the figures as set forth in Paragraph III hereof, and in some instances have [fol. 704] extended the expiration date of such rates theretofore named; and that among such may be enumerated Missouri Pacific Railroad Tariff I. C. C. No. A 8212, Supplement No. 5, published to expire December 31, 1933, and

T. & N. O. R. R. Supplement No. 1 to I. C. C. Tariff No. Texas 213, effective November 11, 1932.

VII

That the Florida intrastate rates above set forth have been prescribed by this Commission on the sole ground that such rates are necessary to remove a revenue burden on interstate commerce, and in order that such intrastate rates might pay their fair proportionate share towards the maintenance of an adequate national transportation system; that for this Commission to invade the domain of the state and prescribe intrastate rates to remove a burden upon interstate commerce while permitting the application of such lower rates upon interstate commerce constitutes an unwarranted exercise of Federal power to the preference of interstate commerce and to the unjust and undue prejudice of intrastate commerce; and that so long as the Commission's order in this proceeding remains in force and effect the State authorities to whom primary jurisdiction over intrastate rates is committed are powerless to remove the discrimination above described against intrastate commerce.

VIII

That the report and order of this Commission herein prescribing intrastate rates in Florida relate to and are [fol. 705] based upon conditions and circumstances all of which are far different from those existing at present, and form no proper basis for any finding or conclusion as to the amount of revenue which the carrier can now reasonably be expected to derive under the Florida rates so prescribed, and the findings actually made are themselves expressly inapplicable to present circumstances and conditions and are improper findings of fact upon which to support said order.

IX

That the matters and things set forth in the report of this Commission, including the findings therein contained, are not findings, or any of them, or the basis for the findings or any of them, which the Supreme Court has said are necessary to justify this Commission's order herein, and such findings as are made are not the findings which the Supreme Court has said are necessary.

X

And these petitioners hereby re-ass
and every of the matters and things he
affirmed in the several petitions for
sideration heretofore filed herein by
[fol. 706] Wherefore, your petition
that these proceedings be reopened fo
consideration; that pending such fur
sideration the outstanding order her
to be applied for the transportation
Florida be set aside, or that the effe
postponed; that the Commission ente
or orders as will remove or permit
of the State of Florida to remove t
tion in favor of interstate commerce
dice to intrastate commerce resultin
order of this Commission; and that
such further order or orders in the pr
somable and just.

Respectfully submitted, Wilso
Wilson Lumber Company of
man, August G. Gutheim, Ch
Adair, C. D. Ashby, Attorne

Washington, D. C., February 4th,

(Here follows Exhibit D, si

assert and reaffirm each
heretofore asserted and
or rehearing and recon-
by these petitioners.
oners respectfully pray
for further hearing and
urther hearing and con-
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on of logs intrastate in
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ing from the aforesaid
t the Commission enter
premises as may be rea-

son Cypress Company,
of Florida, by J. V. Nor-
Chas. E. Cotterill, H. P.
neys.

, 1933.

side folio 707)

[fol. 708] [File endorsement omitted]

[fol. 709] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

In Equity. No. 691

[Title omitted]

ANSWER OF UNITED STATES OF AMERICA TO SUPPLEMENTAL BILL OF COMPLAINT—Filed Feb. 24, 1933

United States of America, one of the defendants in the above-entitled cause, for answer to the supplemental bill filed therein against it answers and says:

I

United States admits for the purposes of this suit that the allegations of the opening paragraph and paragraph 1 of the supplemental bill are true, with this exception: that it denies the conclusion in said paragraph 1 that "the said Interstate Commerce Commission attempted to invade the domain of the State of Florida and to dis-establish the scale of lawful rates in force and effect for the transportation of logs" in intrastate commerce in Florida.

[fol. 710] II

Answering paragraph 2 of the supplemental bill, United States admits that plaintiffs filed with said Commission their motion to set aside the Commission's order and for further hearing by the Commission, and that said motion contained averments substantially as set forth in said paragraph 2.

But United States denies that the mere fact that said "newly reduced rates were permitted" by said Commission to be filed and to become effective constitutes, or may be construed as constituting, a finding or determination by said Commission that said rates are just, reasonable or lawful in any respect whatever; and alleges that said Commission has not found or determined that said rates are reasonable or otherwise lawful.

III

United States admits that the allegations contained in paragraphs 3 and 4 of the supplemental bill are true.

IV

Answering paragraph 5 of the supplemental bill, United States admits that on November 21 and 22, 1932, said Commission held further hearing in said proceedings, and that at such hearing numerous tariffs publishing said "newly reduced rates" mentioned in said paragraph 5 were introduced in evidence; but United States denies that said paragraph 5 contains a fair, accurate, full or complete statement of all the evidence introduced at said hearing, and for a full, complete and accurate summary of all the evidence [fol. 711] introduced and received at said hearing the Court is respectfully referred to the statements made and contained in the Commission's report, annexed as Exhibit A to the supplemental bill.

V

Answering paragraph 6 of the supplemental bill, United States admits that the allegations therein are true, and that Exhibits A, and B, mentioned therein, are true copies of said report and order of the Commission issued January 9, 1933.

Further and affirmatively answering the allegations of said paragraph, United States alleges that in its said report of January 9, 1933 (Exhibit A, sheets 15 and 16) said Commission found, among other things, that:

The record warrants the conclusion that truck competition and, to a lesser degree carrier competition, has been sufficiently compelling in the judgment of the responsible traffic officials of the various railroads operating in the western portion of southern territory to warrant the establishment experimentally of the low per car rates on logs hereinbefore referred to; that these reduced rates have not as yet succeeded in regaining for the railroads which established them any great amount of log traffic; that it is doubtful if the log traffic now moving by truck for the shorter distances, particularly 25 miles and under, can be regained by these or any other rates that the carriers could make; that there is but little competition between defendant and

trucks for the movement of logs intrastate in Florida for distances over 25 miles and, in the judgment of defendant's responsible traffic official, it is not of sufficient importance to warrant the establishment or maintenance of subnormal rates in an effort to regain it; and that the circumstances and conditions which occasioned the establishment of the experimental reduced per car rates on logs by other railroads in a section of southern territory quite widely separated from that in which defendant operates are not present with respect to the intrastate log traffic over defendant's lines in Florida.

VI

Answering paragraph 7 of the supplemental bill, United [fol. 712] States admits that on February 8, 1933, plaintiffs filed with said Commission their petition for further hearing; that Exhibit C to the supplemental bill is a true copy thereof; and that said petition contained allegations substantially as set forth and described in said paragraph 7. But United States denies that the mere fact that said Commission has permitted to be filed and to become effective the "newly reduced rates" referred to in said paragraph, constitutes or may be construed as constituting, a finding or determination by the Commission that said rates are just, reasonable or lawful in any respect whatsoever.

VII

United States admits that the allegations of paragraph 8 of the supplemental bill are true.

VIII

Answering so much of the first sentence of paragraph 9 of the supplemental bill as re-avers the allegations of the original bill of complaint in this cause, United States respectfully refers to, repeats and adopts as a part hereof, its answer heretofore filed to said original bill.

Answering subdivisions (a) to (i), inclusive, of said paragraph 9, United States denies that the matters, things and conclusions therein set forth are either relevant, competent or material to any issue which may properly be raised in this proceeding or considered by this Court in determining whether said order is lawful; and United States alleges that the allegations of said subdivision (a) to (i), inclusive, are

[fol. 713] purely argumentative, that the matters therein set forth, even if true, are beyond the jurisdiction of this Court to consider, and are for consideration solely by said Commission in its exclusive jurisdiction as an administrative body.

IX

United States disclaims any knowledge whatever of the allegations contained in paragraph 10 of the supplemental bill, and as to them it neither admits nor denies.

X

United States denies the allegations contained in paragraph 11 of the supplemental bill.

XI

Answering paragraph 12 of the supplemental bill, United States admits that said order of the Commission requires the prescribed increases in the Florida intrastate rates on logs described in the Commission's report for the purpose of removing an unjust discrimination against interstate commerce; but United States denies all the remaining allegations of said paragraph 12, and each and every inference sought thereby to be created, including the inference that the mere fact that said Commission has permitted new and reduced rates on logs to be filed and published constitutes a finding or determination that said rates are just and reasonable or otherwise lawful, and denies the further inference that such permission "constitutes an unwarranted exercise of Federal power to the preference of interstate commerce, and to the unjust and undue prejudice of intrastate commerce."

[fol. 714] Except as herein expressly admitted, United States denies each and every allegation contained in the supplemental bill and in the several separate paragraphs and subdivisions thereof.

Wherefore, having fully answered the supplemental bill of complaint, United States prays that the relief sought be denied and that both the supplemental bill of complaint and the original petition in said cause be dismissed for want of equity, with costs to the plaintiffs, and that it have the bene-

fit of such other and further orders, decrees, or relief as may be just and proper.

Elmer B. Collins, Special Assistant to the Attorney General. Clint W. Hager, United States Attorney.

[fol. 715] *Duly sworn to by Elmer B. Collins. Jurat omitted in printing.*

[fol. 716] In United States District Court

No. 691

[Title omitted]

Answer of Interstate Commerce Commission to Supplemental Bill of Complaint—Feb. 24, 1933

The Interstate Commerce Commission, defendant in the above-entitled suit, hereinafter called the Commission, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the plaintiffs' supplemental bill of complaint contained, for answer thereunto, or unto so much of such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering paragraph 1 of the supplemental bill of complaint, the Commission admits for the purpose of this suit, that the allegations therein contained are true with these exceptions: (1) That by its order of July 5, 1932, as amended July 28, 1932, in the proceeding entitled Georgia [fol. 717] Public Service Commission v. Atlantic Coast Line Railroad Company, Docket No. 18364, the Commission did not attempt to invade the domain of the State of Florida, as alleged, but, on the contrary, acted under the authority conferred upon it by paragraphs (3) and (4) of Section 13 of the Interstate Commerce Act; (2) that in requiring by said order an increase in the Florida intrastate rates of the Atlantic Coast Line Railroad Company, a common carrier engaged in interstate commerce (as well as in intrastate commerce) and therefore subject to the provisions of the Interstate Commerce Act and to the jur-

isdiction of the Commission, for the purpose of removing the unjust discrimination against interstate commerce, found by the Commission after full hearing to exist, the Commission did not require the disestablishment of a lawful scale of rates, as alleged, but, on the contrary, required increases in a scale of intrastate rates (the so-called Cummer scale) found by the Commission to be unlawful, in that said scale caused unjust discrimination against interstate commerce, which is forbidden and declared to be unlawful by section 13 (4) of the Interstate Commerce Act.

II

Answering paragraphs 2 to 6, both inclusive, of the supplemental bill of complaint, the Commission admits that after the hearing before this court in this cause, held at Atlanta, Ga., September 14, 1932, and while the cause was pending decision in this court, the plaintiffs, on October 6, 1932, filed a petition with the Commission for further hearing in the aforesaid proceeding, setting forth that subsequently to the issuance of the Commission's report and order of July 5, 1932, certain rail carriers in southern and [fol. 718] southwestern territories, other than the Atlantic Coast Line Railroad Company, had reduced certain of their logs rates to substantially the same basis as the aforesaid Cummer scale applicable intrastate on the lines of the Atlantic Coast Line Railroad Company in Florida; that upon consideration of said petition, the Commission, by order dated October 21, 1932, suspended the operation of its order of July 5, 1932, as amended, until the further order of the Commission, and reopened the proceeding for the sole purpose of receiving evidence respecting any change in the rates on logs since the close of the previous hearing, the circumstances connected with and the conditions which occasioned such changes, and whether such circumstances and conditions, or any of them, were present with respect to the Florida intrastate log rates of defendant Atlantic Coast Line Railroad Company; that such further hearing was held at Jacksonville, Fla., November 21 and 22, 1932, and thereafter, on January 9, 1933, the Commission issued a further report, styled "Second Report of the Commission on Further Hearing," and with said report issued an order which vacated and set aside, as of February 11, 1933, its order of October 21, 1932, sus-

pending the operation of the order of July 5, 1932, until the further order of the Commission, and directed that after February 11, 1933, said order of July 5, 1932, should remain in full force and effect until the further order of the Commission; that a typewritten copy of said Second Report of the Commission on Further Hearing, issued January 9, 1933, together with a copy of the order of the same date issued with and as part of said report, is attached to the supplemental bill of complaint marked [fol. 719] "Exhibit A"; that said report is published at 190 I. C. C. 588, and the Commission refers the court to said report and order for full, complete, and accurate information concerning the contents of said report and order and for a description of the further proceedings before the Commission upon which said report and order were and are based; that at the further hearing in said reopened proceeding a large volume of testimony and other evidence bearing upon the matters covered by said report and order was submitted to the Commission for consideration and at said hearing questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of the parties thereto by their counsel, whereupon the Commission determined said matters and entered and served upon the parties to said proceeding the aforesaid report and order of January 9, 1933; that said report and order included the Commission's findings of fact, decisions, conclusions, orders, and requirements in the premises, and that, upon the evidence aforesaid and upon the evidence submitted at the original hearings and upon the evidence submitted at the first rehearing and as shown in and by said reports of July 5, 1932 (186 I. C. C. 157) and January 9, 1933 (190 I. C. C. 588), the Commission made the findings and stated the conclusions upon which said order of January 9, 1933, is based.

III

Further answering paragraphs 2 to 6, both inclusive, of the supplemental bill of complaint, the Commission alleges that the findings and conclusions in said report of January 9, 1933, were and are, and that each of them [fol. 720] was and is, fully supported and justified by the evidence submitted to the Commission in said proceeding as aforesaid.

IV

Further answering said paragraphs 2 to 6, both inclusive, the Commission alleges that the newly-reduced log rates of certain rail carriers, referred to in said paragraphs, were established voluntarily by those carriers and were made effective in the manner provided by section 6 of the Interstate Commerce Act, that is, by publication in the form of printed tariff schedules, and by the filing of the tariff schedules with the Commission; that while said tariff schedules were subject to suspension by the Commission under the authority of section 15 (7) of the Interstate Commerce Act, there was no protest lodged with the Commission against the going into effect of said rates and there was no request made to the Commission for the suspension of said schedules; that in the absence of protest and request for suspension, said schedules were placed in the tariff files and became effective as of course in the routine manner; that no provision of the law requires that the permission of the Commission be obtained prior to the filing of tariff schedules naming new rates or charges, and the filing of the aforesaid schedules and the becoming effective of the rates named therein did not constitute permission to charge said rates or constitute approval of them by the Commission, and the Commission has neither sanctioned nor approved said rates.

V

Further answering paragraph 6 of the bill of complaint, the Commission admits and alleges that, at the request of [fol. 721] counsel for plaintiffs herein, it postponed the effective date of its order of January 9, 1933, from February 11, 1933, to February 25, 1933, that is to say, on January 19, 1933, it entered an order amending its order of January 9, 1933, so as to vacate and set aside its order of October 21, 1932, as of February 25, 1933, instead of February 11, 1933. A copy of said order of January 19, 1933, is attached to and made a part of the supplemental bill of complaint as Exhibit B.

VI

Answering paragraphs 7 and 8 of the supplemental bill of complaint, the Commission admits that on February 8, 1933, plaintiffs herein filed with the Commission another petition for rehearing in the aforesaid proceeding, a copy

of which petition is attached to the supplemental bill of complaint, marked "Exhibit C", and that by order dated February 13, 1933, the Commission denied said petition; and the Commission alleges that on February 14, 1933, the Atlantic Coast Line Railroad Company, defendant in said proceeding, filed an answer to said petition, a copy of which answer, marked Exhibit No. 1, is attached hereto and made a part hereof.

VII

Further answering paragraph 7 of the supplemental bill of complaint, the Commission admits that certain of the tariff schedules specified in said paragraph have been filed with it since the last hearings in the aforesaid proceeding held at Jacksonville, Fla., on November 21 and 22, 1932, but denies that all of said schedules have been filed and made effective subsequently to said hearing, denies that all of said schedules name rates on logs, and denies that said [fol. 722] paragraph 7 fully, accurately, and correctly describes or states the application of said rates according to the terms of said tariff schedules.

Further answering said paragraph 7 the Commission alleges as follows:

Louisville & Nashville Railroad Tariff I. C. C. No. 16022, supplement 19: This tariff is a "Local and Joint Freight Tariff of Transit Privileges on Forest Products, Carloads, at points on Louisville and Nashville Railroad Company," naming the rates on logs alleged in said paragraph 7, but said rates are transit rates subject to the numerous rules and regulations specified therein governing the transit privilege, and the reduced rates published in supplement 19 thereto, effective January 27, 1933, by the terms of that supplement, expire with August 6, 1933, unless sooner canceled, changed or extended.

Atlantic Coast Line Tariff I. C. C. No. B-2745 (Rule 127): This is a lumber transit tariff, effective December 10, 1932, and the rates alleged in said paragraph 7 are net transit rates to be applied on inbound movements to Montgomery, Ala., published in Rule 127, page 15, of said tariff and are applicable only in connection with certain other rates published in said tariff and where the item publishing said rates makes specific reference to Rule 127. These rates

are "back-haul" rates applying on lumber and certain other forest products, not including logs, which originate at certain points on Atlantic Coast Line east of Montgomery, Ala., shipped to Montgomery and after creosoting or dressing, or otherwise treated, are reshipped eastbound in a back-haul movement.

[fol. 723] Atlantic Coast Line Tariff I. C. C. No. B-2745, Supplement No. 1: This supplement, effective January 10, 1933, publishes charges ranging from 1 to 3 cents per 100 pounds as extra charges for back or out-of-route hauls in addition to the through rates and stoppage charges published in tariffs lawfully on file with the Commission when transit privileges are accorded at Charleston, S. C. Certain of these out-of-line charges, viz., those ranging from 1 to 2.5 cents per 100 pounds, applicable upon traffic originating at certain points and destined to certain points, were first established August 29, 1932, in Supplement 23 to Atlantic Coast Line Tariff I. C. C. B-2639, while those of 3 cents per 100 pounds, applicable upon traffic originating at other points, became effective December 22, 1932. All expire with August 29, 1933, unless sooner canceled, changed or extended, and Item No. 650-A of said Supplement 1, publishing these charges, expressly provides that "these privileges are published to meet motor truck competition." These rates do not apply on logs and apply only in connection with the "milling, creosoting, storing, trimming and/or dressing in transit of cross arms, crossties, lumber, piling, poles and timber, N, O. S."

Central of Georgia Railway Tariff I. C. C. No. 2851: This tariff, effective interstate September 27, 1932 and intrastate August 26, 1932, names the reduced rates on logs specified in said paragraph 7, but said rates are transit rates subject to the numerous provisions of the tariff governing the transit privilege. According to its terms this tariff "expires September 26, 1933, unless sooner cancelled, changed or extended," and said tariff expressly states that "these rates are issued to meet truck competition."

[fol. 724] Norfolk Southern Railroad Tariff I. C. C. No. A-760: This is a "Local Freight Tariff governing Milling and Creosoting of Lumber and Articles Taking Same Rates in Transit at Norfolk, Va.," effective May 15, 1931. The transit rates published in this tariff do not apply on logs.

Georgia & Florida Railroad Tariff I. C. C. No. 558: This tariff became effective May 6, 1931, and the transit rates on logs "from stations on Georgia & Florida Railroad to mill points on Georgia & Florida R. R. direct," published in Item No. 3 (a) thereof, have been in effect in preceding tariffs since September 20, 1924.

Savannah & Atlanta Railway Tariff I. C. C. No. 115: This tariff became effective July 14, 1930, and the transit rates on logs "from all stations on Savannah and Atlanta Railway to East Warrenton, Sardis and Newington, Ga.," published in Item No. 10 thereof, have been in effect in preceding tariffs since October 22, 1924.

Seaboard Air Line Railway Tariff I. C. C. No. A-7528, Supplement 8: This supplement, effective August 10, 1932, names a rate of $2.50 per 1,000 ft. on ash, oak, cypress and poplar logs to Boykins, Va., from points in northern North Carolina on the Lewiston Branch extending from Boykins, Va., to Lewiston, N. C., a total distance of 35 miles, and to Boykins, Va., from points on the Portsmouth Division between Branchville, Va., and Littleton, N. C., the distance from Branchville to Boykins being approximately 3 miles and from Littleton to Boykins approximately 45 miles. This rate, according to the terms of said supplement, was "established to meet motor truck competition," and its application from points on the Lewiston Branch expires [fol. 725] June 30, 1933, and from points on the Portsmouth Division expires August 10, 1933, unless sooner cancelled, changed or extended.

Seaboard Air Line Railway Tariff I. C. C. No. A-7528, Supplement 9: This supplement, effective December 11, 1932, names a rate of 3½ cents per 100 pounds on gum logs, carloads, minimum weight 80,000 pounds, from Fitz Siding, N. C., to Norfolk, Portsmouth and Suffolk, Va., distances of approximately 61, 60, and 44 miles, respectively. This supplement expressly provides that said rate is "established to meet motor truck competition," and that "rate expires with December 11, 1933, unless sooner cancelled, changed or extended."

Southern Railway Tariff I. C. C. No. A-10425, Supplement 7: This supplement names the rates on logs alleged in said paragraph 7 from Southern Railway stations to Knoxville, Tenn., and Fayette, Ala., and from Cincinnati, New Orleans & Texas Pacific Railway stations to Dayton, Tenn., effective on Tennessee intrastate traffic December 3,

1932, and on interstate traffic December 31, 1932. Said rates, according to the terms of said supplement, were "issued to meet motor truck competition and will expire with December 3, 1933, unless sooner cancelled, changed or extended."

The Commission further alleges that none of the aforementioned transit rates is applicable to or collectible upon the inbound shipment to the transit point at the time of the movement of the inbound shipment to the transit point, but the full tariff rate applicable upon the inbound movement is collected, and these transit rates are applied only if and when an outbound shipment from the transit point moves and then only if all rules and regulations governing the transit privilege as specified in the applicable tariff are complied with.

[fol. 726] VI

Answering paragraphs 9 to 12, both inclusive, of the supplemental bill of complaint, the Commission denies that said order of July 5, 1932, is unlawful for the reasons, or for any of the reasons, set forth in said paragraphs.

Further answering said paragraphs, the Commission alleges that in making said Second Report on Further Hearing, issued January 9, 1933, and the said order of January 9, 1933, it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance, and condition called to its attention on behalf of the parties in said proceeding by their counsel.

Further answering said paragraph 9, and particularly sub-paragraph (f) thereof, the Commission specifically denies that the aforesaid Cummer scale of rates is in practical operation and effect tantamount to a transit scale, denies that all or substantially all of the outbound products manufactured by the several shippers receiving logs under the Cummer scale move over the lines of the Atlantic Coast Line Railroad Company under and by virtue of the terms of service contracts exacted from such shippers in the case of train-load shipments, or by virtue of the location of the mills of many if not most of such other shippers as receive logs under the said Cummer scale. The Commission alleges that said Cummer scale of rates is a scale of local rates and that those rates are in no sense transit rates, that they are not published as transit rates

and there are no rules, regulations or conditions published in any tariffs of the Atlantic Coast Line Railroad Company governing transit privileges in connection with such rates.

[fol. 727] The Commission further alleges that said orders of July 5, 1932, and January 9, 1933, were not made or entered either arbitrarily or unjustly, or contrary to the relevant evidence, or without evidence to support them; that in making said orders the Commission did not exceed the authority which had been duly conferred upon it, or exercise that authority in an unreasonable manner; and the Commission denies each of and all the allegations to the contrary contained in the supplemental bill of complaint.

VII

Except as herein expressly admitted the Commission denies the truth of each of and all the allegations contained in the supplemental bill of complaint in so far as they conflict either with the allegations herein or with the statements or conclusions of fact included in said reports and orders of July 5, 1932, and January 9, 1933, which reports and orders are hereby referred to and made a part hereof.

All of which matters and things the Commission is ready to aver, maintain, and prove as this Honorable Court shall direct, and hereby prays that the bill of complaint and supplemental bill of complaint herein be dismissed.

Interstate Commerce Commission, by J. Stanley Payne, Assistant Chief Counsel. Daniel W. Knowlton, Chief Counsel of Counsel.

[fol. 728] *Duly sworn to by Balthasar H. Meyer. Jurat omitted in printing.*

[fol. 729] [File endorsement omitted]

[fol. 730] In United States District Court

No. 691

[Title omitted]

Motion of Atlantic Coast Line Railroad Company to Deny Motion of Plaintiffs to File Supplemental Bill of Complaint—Filed Feb. 24, 1931

Now comes Atlantic Coast Line Railroad Company and respectfully moves this court to deny the motion of Wilson Cypress Company and Wilson Lumber Company of Florida to file a supplemental bill of complaint in this cause; and, if the said motion to file said supplemental bill be allowed, it moves the court to deny the relief therein sought, and for grounds of motion says:

1

The additional matters set up in the supplemental bill are not sufficient to justify this court in granting the relief prayed, for that:

(a) The supplemental bill which plaintiffs propose filing shows that all the matters and things therein mentioned have been considered by the Interstate Commerce Commission which reopened its order and report of July 5, 1932, for the purpose of receiving and considering evidence as to the same; and that upon sufficient evidence, the [fol. 731] Interstate Commerce Commission has found that the matters and things set up in said supplemental bill do not warrant the changing of the decision made by said Commission in said report and order of July 5, 1932, in its docket No. 18364.

(b) That the record in this case shows that a motion to the Interstate Commerce Commission was filed by the plaintiffs herein on August 10, 1932, to postpone the effective date of the Commission's order entered July 5, 1932. Said motion was denied by said Commission by its order entered August 13, 1932; and that then a motion by the plaintiffs herein was filed with the Commission for further hearing and reconsideration of said report and order of July 5, 1932, on August 17, 1932, and denied by order of the Commission entered August 25, 1932.

(c) The original bill in this cause was filed by the plaintiffs herein in this court on September 9, 1932. The same came on for hearing on September 14, 1932; and after said hearing, and on October 21, 1932, the order of the Interstate Commission of July 5, 1932, as amended July 28, 1932, was suspended by the Commission and the proceedings thereunder reopened for the purpose of further hearing and for the purpose of "receiving evidence respecting any change in the rates on logs since the close of the last hearing herein, the circumstances connected with and the conditions which occasioned such changes, and whether such circumstances and conditions, or any of them, are present with respect to the Florida intrastate logs rates of defendant."

[fol. 732] (d) That the said reopened hearing was had on November 21-22, 1932; and the Commission, on full and ample evidence, has determined the issues against the plaintiffs herein, and has reaffirmed its previous findings.

(e) That thereafter, F. S. Buffum Company, Inc., an intervenor before the Interstate Commission in said proceeding, its docket No. 18364, filed its petition with the Commission for postponement of the effective date of the order and for reconsideration thereof. Said motion was considered by the Commission and denied on February 7, 1933.

(f) On or about February 8, 1933, the State of Florida and the Florida Railroad Commission filed with the Interstate Commission their petition, seeking to have the proceeding reopened for further hearing and consideration, and to have the order of the Commission of July 5, 1932, annulled and set aside. On the same date the plaintiffs herein—Wilson Cypress Company and Wilson Lumber Company of Florida, filed their petition with the Commission, praying that the proceeding be reopened for further hearing and consideration, and that the order of the Commission of July 5, 1932, be set aside or that the effective date thereof be postponed, and for further relief. Said petitions were considered by the Interstate Commission and denied on February 13, 1933."

[fol. 733] 2

The record in this proceeding in this court, including the plaintiffs' supplemental pleadings shows that the action of the Interstate Commerce Commission was based on am-

ple, relevant and controlling testimony; and that the Cum
mer scale of rates have been determined to be, and are
unjust, unreasonable and confiscatory. These proceeding
are, in effect, efforts to require the Atlantic Coast Lin
Railroad Company to continue in operation rates which ar
unjust, unreasonable and confiscatory.

3

This respondent respectfully prays that the motion t
file said supplemental bill be denied, and if the same be al
lowed, that the prayers thereof be denied; and that th
order of the Interstate Commerce Commission of July 5
1932, as amended July 28, 1932, be allowed to go into effec
on February 25, 1933, as ordered by the Interstate Com
merce Commission.

Respectfully submitted, Carl H. Davis, F. B. Grier
W. E. Kay, Alston, Alston, Foster & Moise, Attor
neys for Atlantic Coast Line Railroad Co.

February 24, 1933.

[fol. 734] [File endorsement omitted]

[fol. 735] In United States District Court

No. 691

[Title omitted]

Answer of Atlantic Coast Line Railroad Company t
Supplemental Bill—Filed Feb. 24, 1933

Now comes Atlantic Coast Line Railroad Company, in
tervenor in the above stated cause, and without waiving
its motion that the Court deny the motion to file said sup
plemental bill and its motion to dismiss said supplementa
bill, if the same should be allowed, answers the same and
for answer says:

1

Intervenor admits that orators filed their original bil
in this cause on September 9, 1932, against the United
States of America and the Interstate Commerce Commis

sion, seeking to set aside and annul the order of the Interstate Commerce Commission entered on the 5th day of July, 1932, amended on the 28th day of July 1932, in its docket No. 18364, wherein the Commission fixed rates for [fol. 736] intrastate transportation of certain classes of logs over the Atlantic Coast Line Railroad Company, intrastate in the State of Florida for distances of 170 miles or less; that the said cause came on for hearing before this court as is set out in paragraph No. 2; that the said cause was heard on September 14, 1932, and was taken under consideration by this court and briefs were filed thereon by Atlantic Coast Line Railroad Company, the United States of America and the Interstate Commerce Commission, and by the complainants.

2

Intervenor admits that complainants filed with the Interstate Commerce Commission their motion to set aside said order of the Commission entered on July 5, 1932, as amended, and to reopen the proceeding and to have further hearing, setting up, among other things, that certain railroads had filed with the Interstate Commission certain tariffs prescribing scales of rates which are referred to in this supplemental bill as "the newly reduced rates" for the transportation of logs in certain parts of the country, for the most part West of the Mississippi river and immediately east of the Mississippi river. Said rates were [fol. 737] applicable per carload, regardless of weight, size or capacity of cars; that is, a car, say of 60,000 pounds capacity brought the same revenue as a car of 120,000 pounds capacity, and a car loaded with 60,000 pounds would produce the same revenue as a car loaded with 120,000 pounds. The tariffs referred to in paragraph 2 of this supplemental bill are the tariffs referred to in the said motion of complainants to the Interstate Commerce Commission.

All or practically all of the said tariffs are subject to conditions and limitations beyond those set out in said supplemental bill. Said paragraph of said bill does not completely set out the rates which are referred to therein, nor the tariffs therein mentioned. Intervenor avers that practically all of those tariffs carry transit rates; that all or some of them are limited in duration; that all of them are

emergency or experimental rates and were made under special circumstances. The rates under nearly all of said tariffs apply to logs only for "dressing, stacking, creosoting or further manufacture and reshipment"; they do not apply to the general hauling of logs and they are limited in distance. The usual method of applying the so-called transit rates under those tariffs is as follows:

[fol. 738] (a) A shipper desires to ship logs from point X on the line of the carrier which has issued this transit rate, to point Y on the line of the same carrier. At point Y the logs are to be manufactured into lumber or into the various kinds of products into which logs may be manufactured.

(b) The shipper pays the carrier the local (not the transit rate) rate from point of origin (X) to transit point (Y), and preserves the waybills showing payments, weights, dates, etc.

(c) After the logs have been manufactured into one of the many products into which they may be manufactured, the shipper ships the manufactured product to the point of destination of this latter product, shipping the same over the lines of the carrier over which the logs originated.

(d) The carrier bills the shipper on the outbound manufactured material from the transit point (Y) to point of destination, at the rate shown in the filed tariffs. The shipper pays that rate and then the carrier accepts a claim against it in favor of the shipper for the difference between the local rate paid by the shipper and the net transit rate on the rough material which moved from X to Y.

(e) The manufactured product which is shipped out from the transit point must bear a percentage of relation in weight to the weight of the rough material; to illustrate: [fol. 739] If logs have been manufactured into lumber, the manufactured product must be 33⅓% of the weight of the logs. If it has been manufactured into kegs, their weight must be 21% of the weight of the logs. If it is manufactured into headings for slack barrels the weight of the manufactured product must be 20% of the weight of the logs. If manufactured into flooring, chemically treated, the weight of the manufactured product shipped out must

be 18% of the weight of the logs. The tariff makes a great many more gradations.

(f) Some of the tariffs filed by certain railroads authorize the shipper to enter into a contract to perform the obligations imposed upon him by the application of the tariffs covering the transit arrangement. Such tariffs require that the shipper shall give bond conditioned upon the performance by the shipper of the obligations of those tariffs. After such contract has been entered into and bond given, the carrier allows the shipper to make preliminary settlement on the basis of the transit rates on the rough material rather than on the local rates subject to the performance by the shipper of the obligations imposed upon him by the tariffs prescribing the transit rates.

[fol. 740] 2 (a)

On October 21, 1932, the Commission, in its Docket No. 18364 and upon the petitions for rehearing and reconsideration, filed by Wilson Cypress Company and Wilson Lumber Company of Florida and by the State of Florida and the Florida Railroad Commission and by E. S. Buffum Company, entered its order in which it directed that:

"said proceeding be, and it is hereby, reopened for further hearing for the sole purpose of receiving evidence respecting any change in the rates on logs since the close of the last hearing herein, the circumstances connected with and the conditions which occasioned such changes, and whether such circumstances and conditions, or any of them, are present with respect to the Florida intrastate log rates of defendant:"

The Commission further ordered that the operation of the order "heretofore entered in this proceeding on July 5, 1932, as amended by order of July 28, 1932, be, and it is hereby, suspended until the further order of the Commission."

The reopened hearing was fixed for November 10, 1932 at ten o'clock a. m. at the Hotel Mayflower, Jacksonville, Florida. The time of said hearing was changed on Oc- 28, 1932 by order of the Commission, to November 21, 1932.

On said date the said reopened hearing was had at the time and place aforesaid. It was presided over by E. J.

[fol. 741] Hoy, Esq., Examiner. The complainants in this proceeding were represented at said rehearing by counsel, and introduced oral and written testimony, examined and cross-examined witnesses and also introduced a large number of exhibits. There were sixteen witnesses examined. Appearances were entered for the Florida Railroad Commission, the State of Florida, Wilson Cypress Company, Wilson Lumber Company of Florida, F. S. Buffum Co. Inc., Southern Cypress Manufacturing Association, Jacksonville Traffic Bureau and the Atlantic Coast Line Railroad Company. The hearing continued until six-thirty p. m. o'clock on November 22nd. The oral testimony delivered at that hearing covered 354 pages as officially reported, besides the exhibits. Arguments were had on behalf of all the parties and as officially reported cover about 50 pages.

The Commission considered all of the evidence, oral and documentary and all of the arguments; and on January 9, 1933 filed its report on the further hearing and entered its order thereon in which it ordered "that the order heretofore entered in this proceeding on October 21, 1932, suspending the operation of the order of July 5, 1932 as amended by order of July 28, 1932, until the further order of the Commission, be, and is hereby, vacated and set aside as of February 11, 1933. Thereafter the aforesaid order [fol. 742] of July 5, 1932 as amended by order of July 28, 1932 shall remain in full force and effect until the further order of the Commission."

The last mentioned order was amended by the Commission on January 19, 1933, so as to set aside the order entered on October 21, 1932, as of February 25, 1933, and to provide that thereafter the order previously "entered in this proceeding on July 5, 1932 as amended by order of July 28, 1932, remain in full force and effect until the further order of the Commission."

2 (b)

At the said hearing on November 21-22, 1932, all of the tariffs mentioned in paragraph 2 of said supplemental bill and all of the tariffs mentioned in paragraph 5 of said supplemental bill, except, as respondent believes, tariff No. 5685 AA issued by the Missouri Pacific Rd., I. C. C. 8212, and tariff I. C. C. A-659, supplement 15, issued by the

Southern Railway, were introduced in evidence, and witnesses were examined in reference thereto. Other tariffs in addition to those listed in said supplemental bill were also offered and received in evidence. The Commission considered all of said tariffs not only in the limited manner in which they were pleaded, but in their completeness; that is, the Commission considered each and every term and condition thereof and also the circumstances in connection therewith and the conditions which occasioned the filing of same. There was no limitation upon the evidence offered [fol. 743] for the purpose of showing the change in the rates on logs since the close of the previous hearing before the Commission; nor as to the circumstances connected therewith and the conditions which occasioned such changes; nor as to whether such circumstances and conditions, or any of them, were present with respect to the Florida intrastate log rates over the Atlantic Coast Line.

2 (c)

The Commission, through Mr. Commissioner Meyer, filed its report on said reopened hearing on January 9, 1933. Copy of that report is attached to the supplemental petition in this cause and reference is made to it.

It is shown in said report that the tariffs under consideration are rarely ever system-wide. They apply to limited parts of the lines as well as to limited distances; and that the rates on the lines issuing those tariffs are "not uniform."

"The per car rates of the Illinois Central System apply to approximately 30 manufacturing points east of the Mississippi River, 2 of which are in Tennessee, 2 in southern Louisiana, and the remainder in Mississippi; those of the Seaboard Air Line and the Central of Georgia to Montgomery only; those of the Western of Alabama to Montgomery and Selma; those of the Southern to Mobile, Selma, and [fol. 744] York, Ala., Chattanooga and Memphis, Tenn., and Laurel and Corinth, Miss.; those of the Mobile & Ohio to Columbus, Corinth, and Meridian, Miss., Humboldt and Jackson, Tenn., and Mobile and Whistler, Ala.; those of the Columbus & Greenville to Columbus, Greenville, Grenada, and West Point, Miss.; and those of the Gulf, Mobile & Northern, St. Louis-San Francisco east of the Mississippi

River, and Nashville, Chattanooga & St. Louis to all points on those lines, although in practical effect those of the Gulf, Mobile & Northern and St. Louis-San Francisco apply only to manufacturing points, their application being dependent upon an outbound movement of manufactured products," etc.

The rates under those tariffs do not supplant the local log rates of those lines prior to the issue of the special rates under those tariffs. The Commission found that those rates were established

"primarily as an experiment to meet actual truck competition which the carriers' investigations showed to exist * * * Carrier competition also had a considerable influence in the establishment of these rates."

The Commission also found that:

"It is clear from the record that the object of the southern lines in establishing these per car rates was not merely to meet the truck competition on the logs, but was to be assured at the same time of receiving the outbound movement of the manufactured product; and that while these rates standing alone would not be attractive to these carriers from a revenue standpoint, they are attractive when coupled with the rates for the outbound movement of the manufactured product."

[fol. 745] The Commission, in its report of January 9, 1933, further analyzed these rates as follows:

"Some of the per car rates of the southern carriers are published as transit rates and others as local or proportional rates. All, except those of the Nashville, Chattanooga & St. Louis and some of those of the Southern, apply only if the manufactured product moves outbound over the line of the carrier which moves the logs inbound. In some instances the tariffs provide that, upon the shipper giving satisfactory bond to forward the outbound manufactured product over the line of the carrier transporting the logs, the charges originally collected on the logs will be these per car rates; in other instances they provide that the original charges will be based on the local rates and, upon satisfactory evidence of the outbound movement of

the manufactured product over the line of the carrier which moved the logs inbound, refund will be made to the basis of these per car rates. The local log rates in effect prior to the establishment of these per car rates are still in effect and are applicable to the movement of logs to points to which the per car rates are not applicable, also to points to which they are applicable if the tariff provisions referred to above are not complied with. The rates of the Nashville, Chattanooga & St. Louis and those of the Southern to Mobile, Selma, York and Chattanooga are local rates and their application is not dependent upon the outbound movement of the manufactured products over their lines."

The Commission made an extensive analysis of the evidence and of the effect which the evidence showed these rates had produced upon the transportation of logs and also upon the truck competition in Florida.
[fol. 746] The Commission also found that the freight traffic manager for the Atlantic Coast Line Railroad Company testified:

"That there has been no substantial change in conditions in Florida since the former hearing; that the movement of logs by truck in the territory served by defendant, including Florida, is negligible and not sufficient to warrant reductions in rates to save such traffic from the trucks;"

and that it

"could not be regained by any rates defendant might make because in most instances the distances from the woods to the railroad stations represent such a large percentage of the distances to the mills as not to justify transfer from the trucks to cars."

From July 1, 1930 to July 31, 1931 the decrease in the log traffic over the Atlantic Coast Line was 792 carloads, or 24.4 per cent. as found by the Commission. The Commission also found that

"The decrease in defendant's Florida Lumber traffic during the same period was even greater. From July 1, 1930, to July 31, 1931, defendant transported 15,949 carloads of lumber, shingles and laths originating in Florida,

whereas during the subsequent 13 months it transported but 9,672 carloads, a decrease of 6,277 carloads, or 39.4 per cent. Defendant also shows that the decrease in its Florida lumber traffic has been substantially the same as the decrease in the lumber traffic over its entire line, over all Class I carriers in the southern region, and over all class I carriers in the United States."

[fol. 747] "For example, from July 1, 1930, to June 30, 1931, defendant's Florida lumber traffic amounted to 15,130 carloads, an average of 3,782 for each quarter year, and during the following 9 months the quarterly average was 2,604 carloads, a decrease of 1,178 carloads, or 31 per cent. The corresponding percentage reductions in the lumber traffic over defendant's entire line and of the carloads of lumber originated by all class I carriers in the southern region and by all class I carriers in the United States were 27, 28 and 30, respectively."

2 (d)

The Commission reviewed the contention of the complainants in this cause and of the other shippers who are referred to in the Commission's report as "the Florida interveners," to the effect that transportation conditions are substantially similar throughout southern territory. The Commission then found:

"Transportation conditions are not substantially similar throughout southern territory. In our prior report on further hearing we specifically found that the circumstances and conditions surrounding the transportation of these logs intrastate in Florida were not on the whole as favorable as the circumstances and conditions surrounding the interstate movement of logs over defendant's lines. Therein we also pointed out that the less favorable operating conditions in the Florida peninsula than in the remainder of southern territory have given rise to the general practice of permitting the addition of arbitraries to the rates on interstate traffic to and from points in that [fol. 748] territory. We referred to Southern Class Rate case in which we prescribed class rates for that part of the hauls within the Florida peninsula that were 15 per cent higher than the basis prescribed for the remainder of southern territory. In that proceeding we stated that if and when we were called upon to fix maximum reasonable

commodity rates to and from Florida, we would not be bound by what had been done with respect to the class rates. Since then we have in several cases prescribed commodity rates with relatively higher arbitraries for the hauls within Florida then were prescribed in the Class Rate case. In Rates on Chert, Clay, Sand & Gravel, 140 I. C. C. 85, and Petroleum and Its Products, 171 I. C. C. 286, the rates prescribed for the hauls in Florida were approximately 40 per cent higher than for the remainder of southern territory."

2 (e)

The Commission also found that:

"Even if transportation conditions were similar in Florida as on the lines of the carriers that have established the per car rates, competitive conditions are not similar, as has been pointed out. The carriers that have established the per car rates have done so voluntarily as an experiment in an endeavor to regain traffic that was moving by truck and thereby increase their revenues, not only on the logs to the mills but on the outbound manufactured products from the mills, their per car rates being conditioned upon an outbound movement of the manufactured products in nearly all instances."

[fol. 749] No condition mentioned in any of the territory referred to and no rates prescribed by any of the tariffs referred to were left unconsidered by the Interstate Commission. The findings of the Commission in its reopened hearing, as in the preceeding hearings, were, and are, amply supported by evidence, which not only justified but required the conclusions made by the Commission in its order and report of January 9, 1933.

All of the findings of fact made by the Commission in its said report, and herein set out, are alleged by this respondent to be true and correct as therein stated, and are by this respondent pleaded as facts.

2 (f)

Following the said decision of the Commission, and on or about January 25, 1933, F. S. Buffum Company, Inc., intervenor, filed its petition with the Interstate Commission

for postponement of the effective date of the Commission's order and for further hearing and reconsideration, to which petition Atlantic Coast Line Railroad Company filed an answer. On February 7, 1933 the Commission entered its order denying the petition of said F. S. Buffum Company, Inc.

3

Atlantic Coast Line Railroad Company admits that on February 8, 1933, after the said Buffum petition had been denied by the Commission, the Wilson Cypress Company and the Wilson Lumber Company of Florida, and at about [fol. 750] the same time, the State of Florida and the Florida Railroad Commission filed with the Interstate Commerce Commission their petitions for further hearing and reconsideration of the proceedings in the Commission's docket No. 18364. In said petitions certain additional tariffs and certain new rates were set up as are mentioned in paragraph 7 of said supplemental bill. The Atlantic Coast Line will now deal with each of those tariffs as set up in paragraph 7 of the supplemental bill and which were set up in the aforementioned petitions before the Commission.

3 (a)

Plaintiffs refer to rates of the Louisville & Nashville Railroad under tariff I. C. C. No. 16022, supplement 19, effective January 27, 1933. The rates provided for in said tariff apply only to raw materials shipped from point of origin to the manufacturing point, when the products manufactured therefrom move out over the lines of the Louisville and Nashville Railroad in the proportions set out in this tariff. Said tariff is applicable for distances not in excess of 100 miles. It does not apply to all points on its system. It does not displace local rates. This tariff was put into effect in circumstances and conditions exactly similar to those considered by the Commission in the reopened hearing had on November 21-22, 1932. The rates provided for in said tariff expire August 6, 1933, unless sooner cancelled, changed or extended.

[fol. 751] 3 (b)

Plaintiffs refer to certain rates of the Atlantic Coast Line Railroad Company provided for in its tariff I. C. C. No.

2745 (2745-B) and in Rule 127 of said tariff. The tariff referred to is A. C. L. R. R. Lumber Transit Tariff No. 12, which cancels A. C. L. R. R. Lumber Transit Tariff No 11, I. C. C. No. B-2639 and the scale of rates referred to in Rule 127 was orginally published in Supplement No. 23 to A. C. L. R. R. I. C. C. tariff No. B-2639, effective September 8, 1932, which was prior to the reopened hearing before the Commission had on November 21-22, 1932. The rates provided for by this tariff do not apply to logs. They are transit rates applicable to certain forest products, other than logs, which move to Montgomery over the A. C. L.'s lines for creosoting and other treatment and which products, after such treatment, move to market from Montgomery in a back haul over the lines of the A. C. L. The statement of the rates shown by said tariff as made by the plaintiffs in the supplemental bill is incorrect. The Atlantic Coast Line charges in addition to the net transit rates therein quoted, 2½ cents per 100 pounds upon the shipments covered thereby.

[fol. 752] 3 (c)

Plaintiffs refer to Supplement No. 1 of the above mentioned tariff I. C. C. 2745 (properly I. C. C. B-2745) published by Atlantic Coast Line, effective December 10, 1932 fixing rates on certain products.

Atlantic Coast Line states that said tariff does not apply to logs. The said tariff was put into effect on August 29, 1932, which was before the date of the rehearing before the Interstate Commission, and Supplement No. 1 only added some additional stations thereto. The said Supplement No. 1 specifically designates the rates as "extra charges for back or out-of-route hauls, which are in addition to through rates and stoppage charges."

The rates as stated in plaintiff's supplemental bill are not the rates which are assessed on the original inbound movements but represent the net transit rates to which are added the transit charge of 2½ cents per 100 pounds.

3 (d)

Plaintiffs refer to certain rates of the Central of Georgia Railway in its tariff I. C. C. No. 2851, effective September 27, 1932 to Augusta and Waynesboro, Georgia. The rates referred to in said tariff are applicable only when the raw

material shipped in over the Central of Georgia's lines has been manufactured and the manufactured product is [fol. 753] shipped out over the Central of Georgia's lines in the proportions set out in the tariff. The circumstances and conditions under which this tariff went into effect were the same as those considered by the Interstate Commission in its reopened hearing had on November 21-22, 1932.

3 (e & f)

Plaintiffs refer to rates of the Norfolk & Southern Railroad under its tariff I. C. C. No. A-760. This tariff provides for transit rates and does not apply to logs.

3 (g)

Plaintiffs refer to rates by the Georgia & Florida Railroad Company under its tariff I. C. C. No. 558, effective May 6, 1931. This tariff was in effect long before the petitions before the Commission for reopening were filed. This tariff applies only to logs which are shipped over the [fol. 754] Georgia and Florida's lines to the transit point and the products manufactured therefrom are reshipped over the same lines in the proportions prescribed in the tariff. These rates do not apply to all stations, and do not supplant local rates. The rates under this tariff are on a parity with the rates which have been adjudged by this court, in the cases claiming restitution from Atlantic Coast Line Railroad Company, to be unjust, unreasonable and confiscatory.

3 (h)

Plaintiffs refer to rates of the Seaboard Air Line Railway under its tariff I. C. C. No. 115, effective July 14, 1930. This tariff was in effect long prior to the reopened hearing before the Commission had on November 21-22, 1932. The rates stated in this tariff apply only when the products manufactured from the inbound logs are reshipped via the Savannah & Atlanta Railway's lines in accordance with the terms of the tariff; and apply to only three stations; and are limited to distances of 75 miles.

[fol. 755] 3 (i)

Plaitniffs refer to rates of the Seaboard Air Line Railway in its tariff I. C. C. No. A-7528, supplement 8. This tariff covers rates from stations between Branchville, Va.,

and Littleton, North Carolina (including Branchville and Littleton), and between Severn, N. C. and Lewiston, N. C. (including those two places) to Boykins, Virginia. The rates under this tariff expire June 30, 1933, unless sooner cancelled, changed or extended. The maximum distance to which the rates under this tariff apply is 44.7 miles; and they apply to one destination from a limited number of stations.

Plaintiffs also refer to rates under this same tariff, supplement 9. The rates prescribed by this tariff apply from one point to one destination—Fitz Siding, N. C. to Norfolk, Virginia, 61 miles.

3 (j)

Plaintiffs refer to Southern Railway rates under its tariff I. C. C. No. 10425, supplement 7. The rates under this tariff expire December 3, 1933 unless sooner cancelled, changed or extended. They apply to logs, etc. from Southern Railway stations to Knoxville, Tenn., from C. N. O. & T. P. stations to Dayton, Tennessee, and from Southern Railway stations to Fayette, Tenn. The rates under this tariff were published to meet truck competition.

[fol. 756] All of the above mentioned tariffs and rates which are referred to in paragraph 7 of plaintiffs' supplemental bill and which are in addition to those which were specifically set up in the reopened hearing before the Interstate Commerce Commission on November 21-22, 1932, were issued under the same kind of circumstances and conditions as were those submitted at said reopened hearing. The rates fixed in those tariffs, if applied to the Florida territory over the Atlantic Coast Line Railroad Company would be unjust, unreasonable and confiscatory. All or nearly all of them are transit rates applicable to limited distances. They do not supplant the local rates and apply between limited stations.

3 (k)

The Interstate Commerce Commission carefully considered the aforementioned petitions for further hearing and reconsideration, and the rates and tariffs therein referred to and on February 13, 1933 denied the prayers of said petitions.

3 (1)

In so far as the above mentioned tariffs apply to carloads without regard to the weight carried, they are on a basis which has been disapproved by the Supreme Court of Florida and by the Interstate Commerce Commission. [fol. 757] They are unjust and unremunerative and are unjustly discriminatory, not only as against commerce, but also as between shippers.

(4)

(a) Answering the allegations of paragraph 9 of plaintiffs' supplemental bill Atlantic Coast Line Railroad Company alleges that the aforementioned "newly reduced rates" are not in effect in southern and southwestern territories throughout the country. Only rarely do they apply throughout any one system. They are limited in application to stations and to distances. They do not supersede the local tariffs. They do not apply in any part of the State of Florida south of the line made by the Louisville & Nashville Railroad Company's line and the Seaboard Air Line Railway Company's line from Pensacola to Jacksonville. None of them applies in that territory of the state of Florida which has been hereinbefore described and which is referred to in the report of January 9, 1933 of the Commission as being sharply differentiated from the other southern territory and which differentiation has been made by the Interstate Commission in this particular case on the rehearings in this case and as well in the Class Rate case and in Rates on Chert, Clay, Sand & Gravel, 140 I. C. C. 85, and Petroleum and Its Products, 171 I. C. C. 286; all of which is more fully set out in the report of the Commission in its docket No. 18364, and hereinbefore quoted. [fol. 758] This differentiation is noted not only by the Commission in its report on the reopened hearing, but as well in its report of July 5, 1932 (146 I. C. C. 717).

The said rates are all experimental and are made for the purpose of meeting truck competition and in some instances not only truck competition but rail as well. The application of said rates has not produced satisfactory results to the carriers who have put them into effect.

While the Atlantic Coast Line Railroad Company owns a majority vote of the shares of capital stock of the Louis-

ville & Nashville Railroad Co., it has never exercised and does not now exercise any control over its traffic policies. This has been made known to the Interstate Commission in other cases as well as in this one.

Respondent is not advised as to whether or not any of the so-called "newly reduced rates" apply over the Central of Georgia Railway in Florida, but it avers that the Central of Georgia has all but no mileage in the State of Florida. It simply has the stub-end of a line which runs two (2) miles south of the Alabama-Florida line.

None of the rates which are referred to as the "newly reduced rates" are applicable in Florida below the line which divides the State for rate-making purposes and in the southern part of which the higher rates apply, as has been hereinbefore pointed out.

(b) The report of the Interstate Commerce Commission on the second reopened hearing, which report is dated January 9, 1933, fairly and fully states the tariffs, their limitations and conditions.

[fol. 759] (c) The rates which are called the "newly reduced rates" have not been authorized by the Interstate Commerce Commission. Tariffs were filed evidencing those rates. No complaints were lodged against them. The Interstate Commission's jurisdiction to fix minimum rates is limited, and those rates became effective without action by the Commission.

This court has previously held, in the cases claiming restitution against Atlantic Coast Line Railroad Company, that the Cummer scale of rates is unjust, unreasonable and confiscatory. The "newly reduced rates" are made upon a basis which is likewise unreasonable, unjust and confiscatory as to those roads upon which they may be imposed. They are also made upon a car load basis without regard to weight, which lends itself to discrimination and to inexactness of charges and treatment, and if said rates were imposed upon this carrier in the territory herein involved they would be all the more unjust, unreasonable and confiscatory.

(d) Without admitting the correctness of the table of rates contained in subparagraph (d) of paragraph 9 of plaintiffs' supplemental bill, it is respectfully submitted that the said table shows how unjust, unfair and unreason-

able are the rates sought to be imposed upon the Atlantic Coast Line by this proceeding.

[fol. 760] (e) The allegations of subparagraph (f) of paragraph 9 of plaintiffs' supplemental bill, in so far as it alleges that the so-called "newly reduced rates" are in some instances transit rates, are admitted. In fact, practically all of said rates are transit rates. The exceptions to this are relatively small and in such exceptions little, if any, traffic moves. The Cummer scale of rates is not a scale of transit rates.

(f) The Interstate Commission has held that the so-called "newly reduced rates" do not supplant the local rates; that the Cummer scale provides rates which are unjust, unreasonable and confiscatory has been determined by the Commission three times and also by this Court.

(g) The allegations of subparagraph (h) of paragraph 9 of plaintiffs' supplemental bill are denied. The Interstate Commission has found in its report on the reopened proceeding, and in other causes, that the territory involved in this cause is not as favorably situated from a transportation standpoint as other territories in the southeastern part of the country.

[fol. 761] (5)

Answering paragraphs 10, 11 and 12 of plaintiffs' supplemental bill the Atlantic Coast Line Railroad Company denies the allegations of each of said paragraphs.

The findings that the Cummer scale of rates is unjust, unreasonable and confiscatory, have been sustained by this court as hereinabove set out. The Commission has found on ample evidence that the rates under the Cummer scale make an unjust discrimination against interstate commerce and put an unjust burden thereon.

Wherefore respondent having answered the allegations of said supplemental bill, prays that the same be dismissed and the prayers thereof be denied; that the injunction and restraining order prayed for in said supplemental bill be

refused; and that this respondent have such other and further relief as may be meet and proper.

Carl H. Davis, W. E. Kay, F. B. Grier, Alston, Alston, Foster & Moise, Attorneys for Atlantic Coast Line Railroad Co.

February 24, 1933.

[fol. 762] *Duly sworn to by J. W. Perrin. Jurat omitted in printing.*

[fol. 763] [File endorsement omitted.]

[fol. 764] IN UNITED STATES DISTRICT COURT

No. 691

[Title omitted]

PETITION OF GEORGIA PUBLIC SERVICE COMMISSION TO INTERVENE IN THE ABOVE STATED CAUSE—Filed Feb. 24, 1933

To the Honorable the Judges of the United States District Court:

Now comes Georgia Public Service Commission, and respectfully represents unto this Honorable Court that it was the petitioner before the Interstate Commerce Commission in the proceeding in its Docket No. 18364, out of which the reports and orders of the Interstate Commission complained of in this proceeding originated; and prays to be allowed to intervene in this cause.

Respectfully submitted, Georgia Public Service Commission, by J. J. E. Anderson, Special Atty.

[fol. 765] [File endorsement omitted.]

[fol. 766] IN UNITED STATES DISTRICT COURT

No. 691

[Title omitted]

MOTION OF GEORGIA PUBLIC SERVICE COMMISSION, INTERVENOR, TO DENY THE MOTION OF PLAINTIFFS TO FILE SUPPLEMENT BILL OF COMPLAINT—Filed Feb. 24, 1933

To the Honorable the Judges of the United States District Court:

Now comes Georgia Public Service Commission, intervenor, and respectfully moves this court to deny the motion of Wilson Cypress Company and Wilson Lumber Company of Florida, to file a supplemental bill of complaint in this cause; and, if the said motion to file said supplemental bill be allowed, it moves the court to deny the relief therein sought, and for grounds of motion says:

1

The proceedings in this case show that all of the matters and things which are set out in the supplemental pleadings have been considered by the Interstate Commerce Commission which reopened its order and report of July 5, 1932 for the purpose of receiving and considering evidence as to the same; and that upon sufficient evi-
[fol. 767] dence, the Interstate Commission has found that the matters and things set out in said supplemental bill do not warrant the changing of the decision made by said Commission in said report and order of July 5, 1932, in its Docket No. 18364.

2

The record in this proceeding in this court, including plaintiffs' supplemental pleadings shows that the action of the Interstate Commission was based on ample, relevant and controlling evidence; and that the Cummer scale of rates has been determined to be unjust, unreasonable and confiscatory.

3

This intervenor respectfully prays that the motion to file said supplemental bill be denied, and if the same be

allowed, that the prayers thereof be denied; and that the order of the Interstate Commerce Commission of July 5, 1932 as amended July 28, 1932 be allowed to go into effect on February 25, 1933, as ordered by the Interstate Commission.

Respectfully submitted, Georgia Public Service Commission, by J. J. E. Anderson.

February 24, 1933.

[fol. 768] [File endorsement omitted]

[fol. 769] IN UNITED STATES DISTRICT COURT

No. 691

[Title omitted]

ANSWER OF GEORGIA PUBLIC SERVICE COMMISSION, INTERVENOR, TO SUPPLEMENTAL BILL OF COMPLAINT—Filed Feb. 24, 1933

To the Honorable the Judges of the United States District Court:

Now comes Georgia Public Service Commission, intervenor in the above stated cause, and without waiving its motion that the court deny the motion of Wilson Cypress Company and Wilson Lumber Company of Florida, to file said supplemental bill and its motion to dismiss said supplemental bill if the same should be allowed, answers the same and for answer says:

1

This intervenor does not deem it necessary to answer the various allegations of said supplemental bill in detail. Intervenor states that the findings of the Interstate Commerce Commission in its report of August 2, 1928 and in its report on the reopened proceedings, of July 5, 1932, and in its report and order on the second reopened hearing, of January 9, 1933, in this proceeding, known as its Docket No. 18364, are all based on ample and controlling evidence, much of which is wholly uncontradicted.

[fol. 770] 2

The findings of the Interstate Commission in said hearings represent the legislative action of the Commission on facts submitted to it after due notice to all parties concerned and in which all of the parties were permitted to offer evidence, to file briefs and to make arguments. All of the matters were considered with painstaking care over a long period of time. The Interstate Commission's findings on those facts are conclusive.

The Interstate Commission in its first report in this cause of August 2, 1928 established not only certain intrastate rates on logs for application in Florida, but also interstate rates for the transportation of the same kind of logs between points in Florida and Georgia. Those intrastate rates have since been reaffirmed by the Interstate Commission, and there has been no contest over the interstate rates.

This intervenor avers that there is, in its judgment, no reason why the intrastate rates involved in this proceeding on logs over six feet in length, in Florida, should differ from interstate rates on the same kind of logs moving from points in Florida to points in Georgia; and that as hereinbefore stated, the said interstate rates have not been contested.

[fols. 771 & 772] 3

Intervenor represents that this situation has been an unsettled one for about eight years now, and caused this intervenor to suspend on the 25th day of May, 1925, a schedule of intrastate rates in Georgia which it had issued on April 15, 1925. That schedule of rates was comparable to and almost in exact conformity with the interstate rates put into effect by the Interstate Commission in this proceeding, applicable to the transportation of certain kinds of logs between points in Florida and points in Georgia.

4

This intervenor prays that the injunction prayed for in said supplemental bill be denied and that the order of the Interstate Commerce Commission of July 5, 1932 as

amended July 28, 1932 be allowed to become effective February 25, 1933.

Respectfully submitted, Georgia Public Service Commission, by J. J. E. Anderson, Special Atty.

February 24, 1933.

[fol. 773] IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

In Equity. No. 695

F. S. BUFFUM COMPANY, INC., Petitioner,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, Defendants

BILL OF COMPLAINT—Filed Oct. 14, 1932

To the Honorable the Judge of the District Court of the United States for the Northern District of Georgia, Atlanta Division:

Petitioner F. S. Buffum Company, Inc. respectfully represents:

I

Petitioner is a corporation, organized and existing under the laws of the State of Florida, having its principal office at 234 Ives Street in the city of Jacksonville, Florida and is engaged in the business of buying and shipping hardwood logs, including cypress, ash, oak and other kinds, from points in Florida to its mill at Jacksonville and manufacturing, selling and shipping lumber from its mill which is located on and served exclusively by the lines of the Atlantic Coast Line Railroad Company.

II

Petitioner brings this suit in equity against the United States of America under an act of Congress approved October 22, 1913, known as the "District Court Jurisdiction Act", (38 Stat. L. 219), to enjoin, set aside, suspend and

annul a certain order entered by the Interstate Commerce Commission, hereinafter called "The Commission", an ad-
of ministrative tribunal created by Act of Congress of Feb-
[fol. 774] ruary 4, 1887, and whose duties and powers are defined in such act and amendments thereto and supplements thereof, said order being dated July 5, 1932, in a proceeding known as Docket No. 18364, Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, and instituted by the Georgia Public Service Commission, a public tribunal of the State of Georgia; created by the laws of Georgia and having its legal residence in and being a resident of the Northern District of Georgia.

III

The Atlantic Coast Line Railroad Company is a common carrier of freight and, as such, owns and operates various lines of railroad within the state of Florida, over which it transports and has been transporting logs to petitioner's mill at Jacksonville, and over which it transports and has been transporting lumber shipped from petitioner's mill and destined to various interstate points throughout the country. For the transportation of such logs wholly within the State of Florida, as aforesaid, the Atlantic Coast Line Railroad Company voluntarily established in the year 1914 and thereafter voluntarily continued in effect until February 9, 1929, certain mileage or distance scale of rates known as the "Cummer Scale", which for varying distances up to 170 miles provides varying rates "per car of 50,000 pounds, excess in proportion, to be loaded and unloaded by owner and not to be unloaded on the railroad's right of way".

IV

Effective February 9 1929, the Atlantic Coast Line Railroad Company filed freight tariffs with The Commission purporting to cancel out the said Cummer Scale and pur-
porting to establish in lieu thereof a new, higher and dif-
[fol. 775] ferent scale of rates, citing as its authority for such changes, the decision of The Commission in Georgia Pub. Serv. Comm. v. Atlantic Coast L. R. Co., 146 I. C. C. 717, (Docket 18364) in which The Commission, Division 4, found that the Florida intrastate Cummer scale of rates resulted and would result in undue preference and advan-

tage of shippers of intrastate traffic within Florida, in undue prejudice to shippers of interstate traffic from points in Florida to points in Georgia, and in unjust discrimination against interstate commerce, and that said undue preference and advantage should be removed by establishing rates for intrastate application within Florida which would correspond with the rates found reasonable by The Commission for interstate application from northern Florida points to Georgia.

V

On March 7, 1931 this Honorable Court, pursuant to the decision of the Supreme Court of the United States in Florida v. United States, 282 U. S. 194, (in which the Supreme Court reversed the decree of the lower court (30 Fed. (2d) 116 and 31 Fed. (2d) 580)) ordered and adjudged that all parts of the said order of The Commission in 146 I. C. C. 717 which prescribed or attempted to prescribe rates for the transportation of logs in intrastate commerce in the State of Florida on the lines of the Atlantic Coast Line Railroad Company were invalid and unlawful, and such parts of said order of The Commission were thereby enjoined, set aside and annuled.

VI

Effective April 10, 1931, pursuant to the said orders of this Honorable Court, the Atlantic Coast Line Railroad [fol. 776] Company filed with The Commission new freight tariffs cancelling out The Commission's first prescribed scale of rates on logs for application on Florida intrastate traffic, and restoring the Cummer scale.

VII

The Commission, in its Report on Further hearing in Georgia Pub. Serv. Comm. v. Atlantic Coast L. R. Co., 186 I. C. C. 157 (Docket 18364) decided July 5, 1932, modified its previous findings in the original report, 146 I. C. C. 717, and, among other things, found that the Cummer scale places a substantial burden upon defendant's interstate revenues, and is and for the future will be unjustly discriminatory against interstate commerce; and that such unjust discrimination can be and should be removed by the establishment between all points on the Atlantic Coast Line

in Florida for distances of 170 miles or less of rates not less than the rates shown for such distances in Appendix F to the Commission's report in 186 I. C. C. 157, at page 198, hereinafter called the Appendix F scale, which, said The Commission, are the rates found reasonable by The Commission for interstate application from northern Florida to Georgia. In the same report The Commission in substance withdrew its finding in the original report that the Cummer scale resulted and would result in undue preference and advantage of shippers of intrastate traffic within Florida, and in undue prejudice to shippers of interstate traffic from points in Florida to points in Georgia, and The Commission decided that it would make no finding in that regard. The Commission, by its order of July, 1932, notified and required the Atlantic Coast Line Railroad "to cease and desist from practicing the unjust discrimination found in said report to exist in the relation of intrastate and interstate rates and to establish, put in force and maintain rates for the transportation of logs over [fol. 777] six feet in length, except walnut, cherry, and cedar, in carloads, minimum weight 40,000 pounds, in intrastate commerce within and throughout the state of Florida for distances of 170 miles or less, which shall be the same as those set forth in appendix F to the aforesaid report on further hearing". The said order of the Commission fixed no date upon which the order should become effective, and merely required that "this order shall continue in force until the further order of the Commission". The rates ordered by the Commission to be established by the Atlantic Coast Line Railroad as set forth in the said appendix F to the Commission's report were prescribed as "Minimum rates per 100 pounds prescribed herein on Florida intrastate log traffic", to wit:

Distances	Rate cents[1]	Distances	Rate cents
10 miles and under	2.5	85 miles and over 70	5.5
20 miles and over 10	3	100 miles and over 85	6
30 miles and over 20	3.5	120 miles and over 100	6.5
40 miles and over 30	4	140 miles and over 120	7
55 miles and over 40	4.5	160 miles and over 140	7.5
70 miles and over 55	5	170 miles and over 160	8

[1] Minimum 40,000 pounds.

VIII

On July 28, 1932, The Commission amended its order of July 5, 1932, and therein ordered that the Appendix F

scale of rates shall become effective "on or before September 15, 1932".

IX

Thereafter the Atlantic Coast Line Railroad Company in purported compliance with the said orders of The Com-[fol. 778] mission filed new freight tariffs with The Commission, cancelling out the application of the Cummer scale on Florida intrastate log traffic and substituting therefor The Commission's Appendix F scale of rates, to become effective September 15, 1932.

X

On September 14, 1932, the said orders of The Commission, dated July 5 and July 28, in Georgia Public Service Commission v. Atlantic Coast Line Railroad Company (Docket 18364) were enjoined by interlocutory order of this Honorable Court in Equity No. 691 et al upon petitions filed by The State of Florida, Wilson Cypress Company, Wilson Lumber Company of Florida and others against the United States of America, Interstate Commerce Commission as defendants so that the Cummer scale still remains in effect upon the date of the filing of this petition by your Petitioner herein.

XI

Petitioner's mill plant at Jacksonville represents an investment of many thousands of dollars. Petitioner has been employing some one hundred and twenty-five persons thereat, more or less, and has been giving employment to some hundred or more persons who have been engaged in cutting logs in the interior of Florida for shipment to Petitioner's mill.

Petitioner began the operating of its mill at Jacksonville in June, 1930, subsequent to the first report and decision of The Commission in Georgia Pub. Serv. Comm. v. Atlantic C. L. R. Co., 146 I. C. C. 717.

Prior to April 10, 1931, when the Cummer scale was restored petitioner could not ship logs to its mill by railroad under the high rates prescribed by The Commission. Prior to that date petitioner had contracted for and was

receiving about 72 cars of logs per month by truck and by water and only about 12 cars by rail, a total of 84 cars per month which only enabled petitioner to operate its mill intermittently during the period that the high rates prescribed by The Commission were in effect. Subsequent to the restoration of the Cummer scale, and after petitioner's [fol. 779] contract for delivery of logs by water and truck had expired petitioner immediately increased its shipments of logs by rail in sufficient quantities to enable it to operate its mill to capacity whenever sufficient orders were available.

During the first eight months of the current year, 1932, petitioner received an average of about 76 carloads of logs by rail per month, an increase of about 633 per cent, from various log-shipping points on the lines of the Atlantic Coast Line Railroad, such as Lake Butler, Alachua, Orlando and other stations over the Atlantic Coast Line Railroad to Petitioner's Jacksonville mill, which is located on and served exclusively by the Atlantic Coast Line Railroad.

Petitioner has been using hardwood logs, such as cypress, ash, oak and other kinds, and has not used pine logs, such as were the primary source of controversy in the original proceedings before the Commission (146 I. C. C. 717) and this Honorable Court (30 Fed. 2d 106 and 31 Fed. 2d 580).

Petitioner has been paying freight charges on its inbound shipment of such logs to the Atlantic Coast Line Railroad Company on basis of the Cummer Scale since April 10, 1931.

On or about September 12, 1932, in the expectation that the rates would be increased under the said orders of The Commission, the cutting of logs at interior Florida points adjacent to the Atlantic Coast Line practically ceased, shipments of logs by railroad to petitioner's mill likewise ceased, and on October 4, 1932, petitioner was compelled to stop the operation of its mill. After the issuance of the orders of this Honorable Court, enjoining the said orders of The Commission, the cutting of logs at interior Florida points was resumed, shipments of logs by railroad to petitioner's mill were resumed and petitioner, during the week of October tenth, 1932, revived the operation of its mill. During the interim when the said plant was closed the Atlantic Coast Line Railroad's revenues from this traffic

in logs was reduced from substantially large sums to practically nothing. By reason of the Commission's orders, [fol. 780] petitioner has been thereby placed in jeopardy of losing its entire investment and its business, and the value of its going concern.

XII

Important and vital changes have occurred since the hearings were held before The Commission as reported in 186 I. C. C. 157. The knowledge is common that basic commodity prices have persisted at new low levels; that the reduction in railroad freight and passenger traffic, due to the rapid growth of motor vehicle and water competition has caused the railroad lines generally to cease their attempts to increase rates to make up for lost traffic and to inaugurate many widespread and drastic reductions in freight rates as the effective means of increasing their traffic and revenues in recognition of the fact that the price of transportation must follow the general price level of the basic commodities transported.

In keeping with these radical changes many rates on logs have been recently established, some during the summer of 1932, subsequent to the Commission's decision in 186 I. C. C. 157, and many of such new rates are on a level with, commensurate with, and in instances lower than the Cummer scale. Most of such new scales are applicable on intrastate shipments of logs where the lumber products therefrom are afterwards moved out over the line of the inbound carrier under transit rules and regulations. Such situations are similar to the inbound movement of logs to Petitioner's mill, and the outbound movement of lumber over the line of the inbound carrier, except that the fiction of "transit" is not accorded to petitioner at Jacksonville by the Atlantic Coast Line Railroad Company.

Illustrative of such new and recently reduced rates on [fol. 781] logs are the following:

Distance	Rate per car regardless of weight	
25 miles and less	$12.00	(Note 1)
50 miles and over 25 miles	15.00	
75 miles and over 50 miles	17.50	
100 miles and over 75 miles	20.00	(Note 2)

NOTE 1. Southern Railway rate is $12.50 per car to Chattanooga and $12.00 per car to Memphis.

NOTE 2. St. Louis-San Francisco Railway rate is $22.50 per car.

Such new, reduced log-rate scales apply from stations on the Mobile & Ohio Railroad to certain points in Mississippi, Alabama, Kentucky and Tennessee (M. & O. I. C. C. B-860); from stations on the Illinois Central Railroad to certain points in Mississippi (I. C. C. 7786); from stations on the Yazoo & Mississippi Valley Railroad to certain points in Mississippi (Y. & M. V. I. C. C. 7810); between points on the Nashville, Chattanooga & St. Louis Railway on interstate traffic (N. C. & St. L. Ry. I. C. C. 3284-A) and in Tennessee on intrastate traffic (N. C. & St. L. Ry. Tariff 6); from points in Alabama, Georgia and Tennessee over the Southern Railway to Chattanooga (Sou. Ry. I. C. C. A-10425); from Southern Railway stations in Tennessee and Mississippi to Memphis, Tenn. (Sou. Ry. I. C. C. A-10448); and between stations on the St. Louis-San Francisco Railway in Alabama, Mississippi and Florida (St. L. S. F. Ry. I. C. C. 9019) as published in tariffs filed with the Interstate Commerce Commission and accepted by it under the I. C. C. tariff numbers shown in the parentheses above. All of the above named tariffs apply upon lines of the named carriers which are in the same territorial rate-group as the Atlantic Coast Line Railroad, namely, the Southern group and in log producing regions where the transportation conditions surrounding the movements of logs has been declared by witnesses for the Atlantic Coast Line Railroad Company to be substantially similar to those in Florida. The said scale of new rates on logs is in effect in western Florida over the lines of carriers other than [fol. 782] the Atlantic Coast Line Railroad and apply when the outbound products move over the line of the inbound carrier under transit rules and regulations in interstate traffic.

XIII.

Effective August 12, 1932, numerous other rates, designated as specific commodity rates, producing less revenue per car than the Cummer scale were established in Southern Railway tariff I. C. C. A-10467 on timber, piling, poles, lumber and cross ties from stations on the Southern Railway's Charleston division over the Southern Railway to Charleston, S. C., as proportional rates in connection with outbound shipments of products manufactured therefrom, as illustrated in the following table where the rates and revenue per car of 50,000 pounds are compared with like revenues under the Cummer scale:

To Charleston from		Cents per 100 lbs.	Revenue per car of 50,000 lbs. New rates	Cummer scale
Edgefield, S. C.	144 miles	2	$10.00	$17.00
Columbia, S. C.	130 miles	1½	7.50	17.00
Orangeburg, S. C.	79 miles	1	5.00	11.50

These new rates to Charleston apply on lumber, as well as piling and timber, and lumber is of higher value than logs. Charleston is in the Southern rate group and is served by the Atlantic Coast Line Railroad Company. As an outbound shipping point Charleston is competitive with Jacksonville.

XIV

A scale of new rates on logs, reduced to meet truck competition, which produces revenue per car in certain instances commensurate with and about equal to the Cummer scale, was established effective intrastate on August 15, 1932, and interstate September 13, 1932, in Central of Georgia Railway's tariff I. C. C. No. 2848 on "logs, all kinds, carloads of any weight, from stations on its line in [fol. 783] Georgia and Alabama to Montgomery, Ala., as follows:

Distances	Rates (in cents) per car, any weight
25 miles and under	1450
50 miles and over 25	1750
75 miles and over 50	2000
100 miles and over 75	2250

such rates to be applied as proportionals in connection with the outbound movement of lumber products over the line of the inbound carrier in the ratio of not more than three pounds of logs inbound to one pound of lumber products outbound.

XV

In August, 1932, and at other recent times, new reduced scales of rates on logs have been filed with The Commission and have been permitted to become effective within Southwestern territory between points on the Missouri Pacific Railroad in Arkansas, Louisiana, Missouri, Oklahoma and Texas (M. Pac. I. C. C. A-8212); between points on the Chicago, Rock Island & Pacific Railway in Arkansas

and Louisiana (C. R. I. & P. Ry. I. C. C. No. 12130); between points on the St. Louis Southwestern Railway in Arkansas, Louisiana and Missouri (St. L. S. W. Ry. I. C. C. 4676); between points on the St. Louis-San Francisco Railway in Arkansas and between points in Arkansas and points in Missouri (St. L. S. F. Ry. I. C. C. 9346).

The reduced rates so made applicable in southwestern territory as aforesaid are identical in level with the newly reduced rates made applicable in the southern rate group as aforesaid, save that the rate per car regardless of weight for transportation a distance of 100 and over 75 miles is $22.50 and that on the St. L. S. F. Ry. the said rates are applicable on cars of 90,000 lbs. or less, to be charged excess proportionately. Otherwise the same rates are applicable in southwestern territory as per carload rates regardless of the weight of the car transported.

[fol. 784] XVI

The Cummer Scale is a mileage scale of rates expressed in lump sum terms per car of minimum weight of 50,000 pounds, excess in proportion; the newly reduced rates which The Commission has permitted to become effective in interstate commerce and in intrastate commerce in states other than Florida is expressed in lump sum terms per car regardless of weight; the capacity of cars in which logs ordinarily are loaded for transportation in intrastate commerce or in interstate commerce in the southeastern territory ordinarily exceeds 80,000 pounds. And this petitioner avers that it is the custom of the shippers of traffic, particularly logs, in shipping upon rates named per carload regardless of weight, to load to the full carrying capacity of the car; and that the loading of all kinds of logs, including hardwood in the southeastern territory and in Florida, upon rates moving regardless of weight would approximate or exceed 70,000 pounds to 85,000 pounds per car.

XVII

The table below compares for the hauls therein specified the rates per car of the weight mentioned, for the transportation of logs upon the Cummer Scale intrastate in Florida and upon the recently published rates named per car regardless of weight as aforesaid, based upon the loading thereof reasonably to be expected; and upon the scale

prescribed by this Commission as aforesaid intrastate in Florida:

Hauls in miles	Cummer scale	Newly reduced rates in S. E. territory	Scale fixed by I. C. C.
Computed on Carload of 70,000 Pounds			
25 miles	$11.97	$12.00	$24.50
50 miles	14.70	15.00	31.50
75 miles	16.10	17.50	38.50
100 miles	18.20	20.00	42.50
[fol. 785] **Computed on Carload of 75,000 Pounds**			
25 miles	12.82	12.00	26.25
50 miles	15.75	15.00	33.75
75 miles	17.25	17.50	41.25
100 miles	19.50	20.00	45.00
Computed on Carload of 80,000 Pounds			
25 miles	13.68	12.00	28.00
50 miles	16.80	15.00	36.00
75 miles	18.40	17.50	44.00
100 miles	20.80	20.00	48.00
Computed on Carload of 85,000 Pounds			
25 miles	14.54	12.00	29.75
50 miles	17.85	15.00	38.25
75 miles	19.55	17.50	46.75
100 miles	22.10	20.00	51.00

XVIII

Such newly reduced log rates are published in some instances as transit rates and in other instances as local rates. The Cummer scale of rates, while in terms a local scale is the only scale available to petitioner in connection with outbound shipments over the lines of the inbound carrier and in substance is the same as or in lieu of a transit scale, such as is accorded to other mill points generally throughout the south and southwest, as hereinbefore described. In seeking to justify its invasion of the domain of the state of Florida, The Commission relied upon and gave consideration to comparisons of the said Cummer scale with divers scales of transit and other rates effected in interstate commerce upon divers other railroads in southeastern and Mississippi Valley territories; and in several instances the very rates so compared by The Commission with the Cummer scale have been superseded in whole or in part by the newly reduced rates which The Commission has suffered and permitted lately to become effective as aforesaid.

[fol. 786] XIX

All of such changes in economic conditions, in methods of railroads in meeting the competition of other modes of

transportation, and such newly reduced log rates are matters which were not in evidence before the Commission when it rendered its decision of July 5, 1932, and unless petitioner is accorded opportunity to be heard upon such matters petitioner will be denied its right in the premises.

XX

The Commission's Appendix F scale of rates was prescribed as a scale of minimum rates, although no such issue has ever been presented to the Commission in these proceedings before it which would warrant the exercise of The Commission's authority to prescribe minimum rates, and there was no prayer in the proceedings before the Commission for the prescription of any minimum rates on any kind of traffic; and the effect of the prescription of such minimum rates on logs over the lines of the Atlantic Coast Line Railroad Company to Jacksonville is to prohibit and prevent petitioner from using the Cummer scale as a proportional scale in lieu of a transit scale, and from procuring the benefit of such newly reduced rates on logs such as have been recently established generally throughout southern and southwestern territories as hereinbefore described, where no minimum rates on logs have been prescribed by The Commission and where the railroads are left free to reduce their log rates to any extent or degree which they may deem necessary to enable them to compete with other modes of transportation.

XXI

The prescription by The Commission of the Appendix F scale of log rates on Florida intrastate traffic as minimum rates, the same as the scale of maximum reasonable inter-[fol. 787] state rates on logs from north Florida to Georgia is without parallel elsewhere in that the Commission itself, in numerous cases, has approved, and in instances prescribed rates which The Commission itself had found to be less than maximum reasonable rates, resting somewhere within the limits of the zone between minimum reasonable rates and maximum reasonable rates. The prescription of these appendix F rates for Florida intrastate traffic as minimum rates, to be the same as the maximum interstate rates for like traffic for like distances is equivalent to the denial

by the Commission of the existence of any zone of reasonableness between minimum rates and maximum rates.

The prescription of minimum rates for intrastate application in Florida, while at the same time, as has been pointed out, permitting lower interstate rates to become applicable throughout the same rate group of carriers, constitutes a new unjustifiable discrimination and undue prejudice against Florida intrastate log traffic and shippers and localities and in favor of said interstate log traffic, and the State of Florida and the Atlantic Coast Line Railroad would be powerless, under the said order of The Commission, to remove such discrimination and prejudice.

XXII

On October 8, 1932, your Petitioner filed its petition of intervention and petition for further hearing before The Commission in Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, under The Commission's Docket No. 18364, setting forth petitioner's interest [fol. 788] in the matters and things in controversy, describing the changed conditions of this new economic era and citing the recently reduced rates on logs throughout the southern and southwestern territories generally as to which this petitioner prayed The Commission for opportunity to be heard, and averring that Petitioner will show, if given such opportunity to do so upon further hearing that the Commission's report on further hearing, 186 I. C. C. 157, contains numerous erroneous statements of fact and erroneous deductions, findings and conclusions thereon. Your Petitioner, however, avers that in the usual and ordinary course of such petitions under The Commission's rules of practice and procedure, a long time may in all probability elapse before such petition may be acted upon, further hearing held, and further report thereon by The Commission issued, especially in view of the fact that The Commission's orders of July 5 and 28, 1932, in the same proceeding have [fol. 789] been enjoined by interlocutory orders of this Honorable Court and now await final determination thereon in this Court.

XXIII

Wherefore, having exhausted its administrative remedies, your petitioner herein respectfully institutes this proceeding for the purpose of annulling, vacating and setting

aside said report and orders of July 5 and July 28, 1932 as amended as aforesaid, of said Interstate Commerce Commission, and to enjoin enforcement thereof.

XXIV

And your Petitioner avers that said report and order of The Commission, as amended as aforesaid, are arbitrary and unreasonable, beyond the power of the Interstate Commerce Commission and wholly invalid and unlawful.

XXV

Said report and order, as amended as aforesaid, are unlawful for the following several reasons, among others:

(1) Because the facts of record before the Commission in said proceeding formed no constitutional ground or warrant for the exercise of or the attempted exercise of any federal power in derogation of or superior to the power and authority of the State of Florida in respect to the regulation of intrastate commerce sought to be affected by said order of The Commission.

(2) Because the basic, essential and jurisdictional facts pre-requisite to the exercise of such federal power in derogation of or superior to the power and authority of the State [fol. 790] of Florida, and to the invasion of the domain of the state of Florida have not been made to appear clearly under the facts of record before The Commission.

(3) Because the basic, essential and jurisdictional facts pre-requisite to the exercise of such federal power in derogation of or superior to the power and authority of the State of Florida, and to the invasion of the domain of the State of Florida have not been made to appear clearly in the findings in The Commission's report.

(4) Because the findings of fact upon which The Commission relied to justify its order prescribing intrastate rates were not warranted and were not made to appear clearly by the evidence before the Commission.

(5) Because The Commission made no findings supported by evidence as to the essential facts as to the Florida intrastate traffic in logs and the revenue therefrom and as to the effect of the intrastate rates both as existing and prescribed

by The Commission upon the income of the Atlantic Coast Line Railroad Company, which would justify the conclusion that said order of the Commission was needed to avoid an undue burden on the revenues of said carrier and a consequent interference with the maintenance of an adequate transportation system.

(6) Because The Commission made no finding of the amount of revenue which had been derived in the past by the Atlantic Coast Line Railroad Company from the particular traffic in question under the existing intrastate Cummer scale of rates.

(7) Because it did not and does not appear clearly that the evidence warranted a finding of the amount of revenue which had been derived in the past by the Atlantic Coast Line Railroad Company from the particular traffic in question under the existing intrastate Cummer scale of rates.

[fol. 791] (8) Because The Commission made no finding of the amount of revenue which can be reasonably expected to be derived from the traffic in question under the Appendix F scale of intrastate rates which The Commission ordered to be established.

(9) Because it does not appear clearly that the evidence warranted a finding of the amount of revenue which can be reasonably expected to be derived from the traffic in question under the increased Appendix F scale of intrastate rates which The Commission ordered to be established.

(10) Because The Commission made no finding that the application of the existing Cummer scale of intrastate rates resulted in an impairment of the income of the carrier which caused an undue burden upon the carrier's interstate revenues and obstructed the maintenance of an adequate national transportation system.

(11) Because it did not and does not appear clearly that the evidence warranted a finding that the application of the existing Cummer scale of intrastate rates resulted in an impairment of the income of the carrier which caused an undue burden upon the carrier's interstate revenues and obstructed the maintenance of an adequate national transportation system.

(12) Because The Commission made no finding that an undue burden upon the carrier's interstate revenues and obstruction to the maintenance of an adequate national transportation system existed which was of such character and consequent that it was the affirmative duty of the Interstate Commerce Commission as an important step in maintaining an adequate national railway system to remove such burden and obstruction.

(13) Because it did not and does not clearly appear that the evidence warranted a finding that any undue burden upon the carrier's revenues and obstruction to the maintenance of an adequate national transportation service existed which was of such character and consequence that it was the affirmative duty of the Interstate Commerce [fol. 792] Commission as an important step in maintaining an adequate national railway system to remove such burden and obstruction.

(14) Because The Commission made no finding that the alteration of the intrastate rates would produce, or was likely to produce, an additional and greater amount of income, and made no finding that such additional and greater amount of income was necessary to prevent an existing undue burden upon the carrier's interstate revenues and necessary to maintain an adequate transportation service.

(15) Because it did not and does not clearly appear that the evidence warranted a finding that the alteration of the intrastate rates would produce or was likely to produce, and additional and greater amount of income and it did not and does not clearly appear that the evidence warranted a finding that such additional and greater amount of income was necessary to prevent an existing undue burden upon the carrier's interstate revenues and necessary to maintain an adequate transportation service.

(16) Because the Interstate Commerce Commission made no finding of the quantity or extent of any burden upon the interstate revenues of the carrier caused by the application of the existing Florida intrastate rate.

(17) Because it did not and does not clearly appear that the evidence warranted a finding of the quantity or extent of any burden upon the interstate revenues of the carrier

caused by the application of the existing Florida intrastate rate.

(18) Because the Interstate Commerce Commission by indirection seeks to determine the reasonableness per se of the Florida intrastate rate (the Cummer Scale), a thing which the Supreme Court has declared lies with the state authority and not with the Interstate Commerce Commission.

[fol. 793] (19) Because no complaint was made and no evidence offered by the complainant of a revenue burden upon interstate commerce.

(20) Because no complaint was made and no evidence offered by the complainant before The Commission which would warrant the prescription by the Commission of minimum reasonable rates on Florida intrastate log traffic.

(21) Because it did not and does not clearly appear that the evidence warranted a finding that the minimum rates so prescribed by the Commission on Florida intrastate traffic should be the same as and no lower than the maximum reasonable interstate rates prescribed by The Commission on like traffic for like distances from north Florida points to Georgia points.

(22) Because The Commission had no evidence before it as to changed conditions in this new economic era in which the railroads generally are making such drastic reductions in rates on logs and other traffic as may be necessary to meet new low price levels and necessary to meet the competition of other kinds of carriers as a means of increasing their revenues.

(23) Because The Commission had no evidence before it as to the newly reduced rates on logs, established since the date of its order.

(24) Because The Commission had no authority to prescribe a higher rate on intrastate log traffic from the woods to the mill than the rates which it has recently permitted to become effective on like traffic for like distances in areas of similar transportation conditions as "transit" rates.

(25) Because The Commission has thereby sought to regulate internal concerns of the State of Florida as if

unjust discrimination against interstate commerce in violation of Section 13 existed when there was not submitted to the Interstate Commerce Commission by any party to the proceeding before it any case or controversy of such [fol. 794] character, and there was no other pending proceeding or order of investigation of such Commission involving any such subject matter.

(26) Because the same are not appropriate to the case and not just to the parties to be affected, they were not made following the forms of law, nor were they adapted to the end sought to be attained in said proceeding before said Interstate Commerce Commission.

(27) Because in making the same The Commission considered and gave effect to rate comparisons.

(28) Because in making the same The Commission considered and gave effect to statements of system revenue returns, and to the relation of log traffic and log revenue to total traffic and total revenue.

(29) Because in making the same The Commission considered and gave effect to system average costs.

(30) Because in making the same The Commission considered and gave effect to cost studies and other matters which were incompetent and insufficient to furnish the basis for any such report and order.

(31) Because in making the same The Commission considered and gave effect to studies of out-of-pocket costs of transportation wherein there were included charges to operating expenses not authorized by the Classification of Operating Revenues and Operating Expenses of Steam Roads as prescribed by the Interstate Commerce Commission.

(32) Because in making the same The Commission considered and gave effect to its own cost study, Appendix E of said report, which was formulated from matters dehors the record, without submitting the same in evidence and thereby deprived the parties thereto of the full and fair hearing to which they were entitled by the Act.

[fol. 795] (33) Because your petitioner has not been afforded a fair opportunity to be heard respecting the justice of the same.

(34) Because in making the same The Commission considered and gave effect to studies of transportation costs which charged to the costs of Florida intrastate log transportation the full statutory return of five and three-quarters per cent while contemporaneously the return actually earned by the carrier was far less.

(35) Because in making the same The Commission assumed in error that the rates on logs should be based upon the average expenses of hauling all traffic, carloads and less-than-carloads, regardless of all the usual factors which are taken into consideration in making different rates on different commodities.

(36) Because in making the same The Commission assumed in error that the log traffic on which the rates are limited to apply only where the railroad is freed from all terminal and station expenses, should pay a gross-ton mile share of the gross taxes, and a like share of the fictitious fair return upon the entire investment in carrier property, including freight and passenger terminals and equipment.

(37) Because the rates prescribed therein to be applicable to Florida intrastate log transportation are far in excess of all demonstrated costs, taxes, and the full statutory return of five and three-quarters per cent, and are extortionate.

(38) Because The Commission has attempted to prescribe intrastate rates in Florida applicable to territory for which no interstate rates have been prescribed and in which no general investigation of rate levels, whether on interstate or intrastate traffic, has been made.

(39) Because the intrastate rates prescribed in said proceeding before The Commission are broader in their scope than the interstate rates prescribed in said proceeding, and are beyond the scope of the issues raised in said proceeding.

[fol. 796] (39-a) Because the report and order of The Commission in prescribing intrastate rates in Florida relate to and are based upon a past period of time, and relate to and are based upon conditions and circumstances all of which are far different from those existing at present, and form no proper basis for any finding or conclusion as to the amount of revenue which the carrier can now reason-

ably be expected to derive under the Florida intrastate rates so prescribed, and the findings actually made are themselves expressly inapplicable to present circumstances and conditions and are improper findings of fact upon which to support said order.

(39-b) Because the matters and things set forth in the report of The Commission including the findings therein contained are matters and things alleged to have been existing and true in the year 1929 and thereabouts and form no proper predicate as regards the present, or the future, for the making of the findings, or any of them, which would be necessary to support The Commission's order.

[fol. 797] (40) Because it did not and does not clearly appear in said proceeding before The Commission that there was or is any unjust discrimination against interstate commerce in violation of Section 13 of the Interstate Commerce Act.

(41) Because in said proceeding The Commission did not find any facts sufficient to constitute an unjust discrimination against interstate commerce in violation of Section 13 of the Interstate Commerce Act.

(42) Because said action of The Commission constitutes an unlawful invasion of the sovereign rights of the State of Florida reserved to it by the Constitution of the United States and of this petitioner, citizen of said State of Florida, and is without any warrant of authority of or under the Constitution of the United States; and further that The Commission was and is without jurisdiction to enter its said order.

(43) Because said action of The Commission constitutes an unlawful exercise of power by the Interstate Commerce Commission and is without warrant or authority of or under the Constitution of the United States.

XXVI

Petitioner avers and charges that many thousands of dollars have been invested in its mill and milling operations at Jacksonville, and that it has arranged for the transportation of logs to its mill, and for the transportation by the Atlantic Coast Line Railroad of lumber from its mill; that

the effect of the order of the Interstate Commerce Commission is to require that the rates for the transportation of such logs to petitioner's mill by the Atlantic Coast Line Railroad Company be more than doubled and that it will be impossible for petitioner to pay such rates and operate its mill; that the fear that the increased rates would become effective on September 15, 1932 has already caused the loggers to cease their operations temporarily, and [fol. 798] caused petitioner to close its mill temporarily and cease making outbound shipments of lumber; that only by reason of the existence of the interlocutory orders of this Honorable Court, enjoining the said orders of The Commission has the inbound movement of logs to petitioner's mill, the operation of the said mill, and the shipment of lumber therefrom over the lines of the Atlantic Coast Line Railroad Company been resumed; and that unless the enforcement of said order is by this Honorable Court enjoined, petitioners will be irreparably injured and damaged in their business and will be deprived of their property by the enforcement of an unlawful order of the Interstate Commerce Commission, and that the damage which will be thus inflicted upon petitioner will be irreparable and cannot be compensated for nor adequately redressed by any suit or suits at law, and petitioners have no plain, complete or adequate remedy at law available to them in the premises.

XXVII

Wherefore, your petitioner respectfully prays as follows:

(a) That process may issue against the defendants, United States of America and Interstate Commerce Commission, an administrative tribunal of the United States, with service thereof and in this petition in the manner prescribed by statute in such cases made and provided.

(b) That upon the filing of this bill the Judge of this Court call to his assistance two other judges, one of whom shall be a Circuit Judge; that this Honorable Court will examine the evidence taken before said Commission and determine for itself, independently of any determination or finding of said Commission, whether or not such facts

warranting such findings, which are pre-requisite to the jurisdiction of the Commission to invade the domain of the State of Florida, have in fact been made to appear clearly by the evidence.

(c) That this Court order, adjudge and decree that the said report and order of said Interstate Commeree Commission of July 5, 1932, as amended, are beyond the authority of said Interstate Commerce Commission and are [fol. 799] without warrant in law and null and void and that said report and order, as amended, be set aside and annulled.

(d) That this Court will grant to your petitioner herein an interlocutory, unless other interlocutory orders upon the petitions of Wilson Cypress Company and others which have been entered by this Honorable Court shall remain in effect, setting aside and enjoining the enforcement of said order of July 5, 1932, as amended, of said Interstate Commerce Commission, and that such interlocutory order continue in force until further order of this Court.

(e) That upon final hearing this Court will make and enter a decree and order herein annulling, setting aside and enjoining the said order, as amended, of said Interstate Commerce Commission and permanently enjoining the enforcement thereof.

(f) That your petitioner may have such other and further relief in the premises as to the Court shall seem meet and just and as equity may require.

And your petitioner will ever pray, etc.

F. S. Buffum Company, Inc., by F. S. Buffum, President. Julian E. Fant, F. C. Hillyer, Solicitors for Complainant. F. C. Hillyer, of Counsel.

[fols. 800 & 801] *Duly sworn to by F. S. Buffum. Jurat omitted in printing.*

[fol. 801a] [File endorsement omitted.]

[fol. 802] IN UNITED STATES DISTRICT COURT

In Equity. No. 695

[Title omitted]

STIPULATION FOR EXTENSION OF TIME FOR FILING DEFENDANTS' ANSWERS—Filed Nov. 17, 1932

Whereas the petition in the above-styled cause having been filed in this Court on October 14, 1932, praying that the order issued by the Interstate Commerce Commission on July 5, 1932, in its Docket No. 18364, Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, be enjoined and annulled, and copies of said petition having been served October 15, 1932, upon the defendants United States of America and Interstate Commerce Commission, whose answers to said petition are, under the statute invoked by the petition, due to be filed within thirty days after service of said petition among them; and

Whereas, on October 21, 1932, the Interstate Commerce Commission, upon petitions duly filed with it by proper parties, entered its order reopening the proceedings in its said Docket No. 18364 and setting said proceeding for further hearing of testimony upon the matters set forth and [fol. 803] alleged in said petitions; and further suspending the operation of its order of July 5, 1932, until its further order;

It is hereby stipulated and agreed by and between counsel for the petitioner and the defendants, respectively, that, because the operation of said order of July 5, 1932, is suspended until the further order of said Commission, and no hearing or action by this Court upon the petition in this cause is deemed necessary unless and until made so by the issuance of a further order by the Commission in its said Docket No. 18364, the filing of defendants' answers to the petition this cause may be deferred until ten days after defendants have received notice from the petitioner of further proceedings in this Court upon said petition.

Dated November 8, 1932.

F. C. Hillyer, Solicitor for Petitioner. Elmer B. Collins, Special Assistant to the Attorney General, Solicitor for Defendant United States of America. J. Stanley Payne, Assistant Chief Counsel for Interstate Commerce Commission.

[fol. 804] IN UNITED STATES DISTRICT COURT

In Equity. No. 695

[Title omitted]

ORDER EXTENDING TIME FOR FILING DEFENDANTS' ANSWERS TO PETITION—Filed Nov. 17, 1932

Upon consideration of the facts set forth in the annexed stipulation between counsel for the parties to this cause, it is hereby

Ordered that the time for filing defendant's answers to the petition in this cause is hereby extended until ten days after said defendants have received notice from the petitioner of further proceedings upon said petition in this Court.

This 17th day of November, 1932.

E. Marvin Underwood, United States District Judge.

[fol. 805] [File endorsement omitted.]

[fol. 806] IN UNITED STATES DISTRICT COURT

In Equity. No. 695

[Title omitted]

MOTION FOR LEAVE TO FILE SUPPLEMENTAL BILL OF COMPLAINT—Filed Feb. 13, 1933

Comes now the complainant in the above entitled cause, by its undersigned solicitors, and moves the Court for leave to file in the above entitled cause a certain Supplemental Bill of Complaint herewith tendered for filing; that the Supplemental Bill narrates vital events which have transpired subsequent to the filing of the original bill of complaint; that the reasons for the filing of said Supplemental Bill of Complaint and the failure to include in the Original Bill of Complaint herein the matters and things set forth in said Supplemental Bill are specified in said Supplemental Bill; and that a copy of said Supplemental Bill of Complaint is hereto attached and made a part hereof.

Julian E. Fant, F. C. Hillyer, Solicitors for Complainant. F. C. Hillyer, of Counsel.

[fol. 807] IN UNITED STATES DISTRICT COURT

In Equity. No. 695

[Title omitted]

ORDER GRANTING LEAVE TO FILE SUPPLEMENTAL BILL OF COMPLAINT—Filed Feb. 13, 1933

This cause coming on this day on motion of F. S. Buffum Company, Incorporated, complainant in the above entitled cause that leave be granted to file its Supplemental Bill of Complaint in the above entitled cause, as specifically set forth in said motion and the Court being fully advised in the premises

It is ordered by the Court that leave be and the same is hereby given to said complainant to file its Supplemental Bill of Complaint in the above entitled cause by filing the copy of said Supplemental Bill of Complaint attached to said motion for such leave.

This 13 day of February, 1933.

E. Marvin Underwood, United States District Judge.

[fol. 808] [File endorsement omitted.]

[fol. 809] IN UNITED STATES DISTRICT COURT

In Equity. No. 695

[Title omitted]

SUPPLEMENTAL BILL OF COMPLAINT—Filed Feb. 13, 1933

To the Honorable Judges of the District Court of the United States for the Northern District of Georgia, Atlanta Division:

Complainant F. S. Buffum Company, Incorporated, a corporation, by its undersigned solicitors, with leave of Court first had and obtained, brings this its Supplemental Bill of Complaint against United States of America and Interstate Commerce Commission, defendants. Thereupon your orator complains and says:

1. That heretofore, to-wit, on October 14, 1932 your orator filed in this cause its bill of complaint hereafter called "original bill" against United States of America and Interstate Commerce Commission, defendants herein, wherein and whereby complainant sought to enjoin, set aside, suspend and annul that part of the order entered by said Interstate Commerce Commission dated July 5, 1932, as amended July 28, 1932, wherein and whereby said Interstate Commission hereinafter called "Commission" attempted to invade the domain of the State of Florida and to disestablish the scale of lawful rates in force and effect for the transportation of logs, except walnut, cheery and cedar, in carloads, minimum weight 50,000 pounds, excess in proportion [fol. 810] (herein called the Cummer scale), upon the lines of the Atlantic Coast Line Railroad Company in intrastate commerce in Florida, and to require said Atlantic Coast Line Railroad Company, a common carrier by railroad, and subject to the jurisdiction and regulation of the State of Florida, to establish, put in force and maintain a certain other scale of rates for the transportation of such logs prescribed in and by the terms of said order entered in a proceeding before the Commission known as its Docket No. 18364, Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, which scale is hereinafter called the "Commission's scale."

That prior to September 15, 1932, the date on which the said order of the Commission was to become effective, this Court did, on September 14, 1932, make and enter its order in a proceeding entitled Wilson Cypress Company, et al., vs. United States of America, et al., in Equity No. 691, wherein and whereby the said order of the Interstate Commerce Commission and the effect thereof was duly stayed until further order of the Court, but not to exceed sixty days from the date thereof; and that no final judgment or decree of this Court has been entered in nor have any issues in the original suit of Wilson Cypress Company and others, in Equity No. 691, or in the original suit of F. S. Buffum Company, Incorporated, in Equity No. 695, been determined by this Court.

That on October 21, 1932, the Commission, upon petitions of complainant and other proper parties duly filed, entered its order reopening the proceedings in its said Docket No. 18364 and assigned said proceeding for further hearing for

the sole purpose of receiving evidence respecting any change in the rates on logs since the close of the previous hearing, the circumstances connected with and the conditions which occasioned such changes, and whether such circumstances and conditions, or any of them, are present with [fol. 811] respect to the Florida intrastate log rates of Atlantic Coast Line Railroad Company, and further suspending the operation of its order of July 5, 1932, as amended July 28, 1932, until its further order.

That on November 21 and 22, 1932, said further hearing before the Commission under its docket No. 18364 was held; and thereafter, to-wit, on January 9, 1933, the Commission in its second report on further hearing under its said docket No. 18364, affirmed all of the findings in its report on further hearing, and by its order of January 9, 1933, in the said proceeding, as amended by its order of January 19, 1933, vacated its order of October 21, 1932, as of February 25, 1933, and ordered that thereafter the aforesaid order of July 5, 1932, as amended by order of July 28, 1932, shall remain in full force and effect until the further order of the Commission. A copy of said second report on further hearing and order of January 9, 1933, duly certified by the Secretary of the Commission, and a copy of its amendatory order dated January 19, 1933, are attached hereto and marked Exhibits A and B respectively, and made a part hereof.

That on or about January 21, 1933, complainant herein filed its petition with the Commission seeking postponement of its order in docket 18364, praying for further hearing and alleging among other things that at such hearing no new, added, basic, essential and jurisdictional facts were adduced which would warrant such exercise of federal power over intrastate log rates in Florida; that the Commission's second report upon further hearing in its No. 18364 contains vital omissions and vital errors of fact; that the Commission's conclusions are unsupported by the facts, contrary to the evidence and unsupported by the findings. A copy of said petition of complainant is attached hereto as Exhibit C, and made a part hereof; and said petition filed [fol. 812] by your orator before said Commission has been denied on or about February 8, 1933.

2. That your orator avers all and singular the matters and things averred in and by said original bill of complaint, and in addition thereto avers the following:

(a) That said Interstate Commerce Commission purported to justify its power to prescribe such intrastate rates upon no ground except upon the ground asserted by said Commission in its report of July 5, 1932, that the Cummer scale constituted an unjust discrimination against interstate commerce from a revenue standpoint.

(b) That at the further hearing before the Commission on November 21 and 22, 1932, no new, added, basic essential and jurisdictional facts were adduced which would support the Commission's exercise of federal power over intrastate log traffic and rates of the Atlantic Coast Line Railroad Company thereon; that no such essential and jurisdictional facts are of record upon such rehearing; and that no such essential and jurisdictional facts have been found by the Commission in its second report upon further hearing as decided January 9, 1933.

(c) That at the further hearing before the Commission on November 21 and 22, 1932, evidence was adduced by complainant herein which shows that newly established reduced rates on logs are now in effect generally throughout the lumber producing regions of the south and southwest over many and varied lines of railroad between, from and to many points of production and manufacture, which new rates are in most instances about the same as or equivalent to the rates for like distances under the Cummer scale, and about one-half the rates prescribed by the Interstate Commerce Commission as minimum rates for application on [fol. 813] Florida intrastate traffic over the Atlantic Coast Line Railroad; and that many of such new reduced rates in the schedules of many lines apply strictly as local rates, both on intrastate traffic and interstate traffic, and, in numerous instances, apply generally from all points on the lines of certain railroads within various states; that the charges lawfully assessed on shipments of logs to complainant's mill over the Seaboard Air Line were substantially less than the charges which would have accrued on basis of the rates prescribed by the Interstate Commerce Commission for application over the Atlantic Coast Line.

(d) That reduced rates on logs have been established by the Florida East Coast Railway which are substantially less than the Commission's scale; and that the Louisville & Nashville Railroad Company has established the new scale of reduced rates on logs between all points on its line, including points in West Florida, in its schedule filed with the Commission, effective January 27, 1933, under its tariff number I. C. C. A-16022, supplement 19, which scale is substantially the same as the scales of reduced rates now in effect over many rail lines throughout the south and southwest, all of which changes in log rates create a new, low and different general level of log rates from that which existed at the time of the first hearing before the Commission under its docket No. 18364.

(e) That complainant by reason of the impending withdrawal on February 25, 1933 of the said Cummer scale and the substitution therefor of the Commission's scale of rates on logs in intrastate traffic in Florida over the Atlantic Coast Line Railroad under the said orders of the Commission, is again threatened with loss of business in that the log-cutters who have been and are now shipping logs from [fol. 814] points in Florida over the Atlantic Coast Line Railroad to complainant at its Jacksonville mill, will discontinue cutting and shipping such logs to complainant if and when the said Cummer scale of rates is withdrawn. In order to insure, even temporarily, the continuation of its supply of such logs complainant has been, by the said orders of the Commission, required to enter into an agreement with its log-cutters to give them at least one week's notice of the impending change in such log rates so as to protect the said log-cutters from the increases in freight charges which would result if and when the said Cummer scale should be withdrawn and substituted by the Commission's scale of log rates; and that your orator would suffer loss of business and irreparable injury if such changes in such log rates should occur, as more fully appears in the affidavit of F. S. Buffum, which affidavit is attached hereto and marked Exhibit D and made a part hereof.

3. That your orator by the exercise of no reasonable amount of diligence could have discovered or presented to this Court the new matters and things contained in Paragraph 2, Sub Paragraphs (b), (c), (d) and (e) of the sup-

plemental bill of complaint, and at the time of filing the original bill of complaint herein, and, since such discovery, has acted diligently in the preparation and filing of said petition before the Commission (Exhibit C hereto) and the preparation and filing of this supplemental bill of complaint.

4. That because of the matters and things set forth in the original bill of complaint, which is hereby affirmed and re-asserted, and the matters and things herein set forth the said orders of the Commission dated July 5, 1932, as amended on various dates as aforesaid to become effective February 25, 1933, were and are arbitrary, unreasonable, beyond the power of said Interstate Commerce Commission and wholly invalid and unlawful.

[fol. 815] Forasmuch, therefore, as your orator is without remedy save in a court of equity, your orator prays as follows:

1. That United States of America and Interstate Commerce Commission, and each of them, be required to make full, true and perfect answer to this Supplemental Bill of Complaint, but not under oath, answer under oath being hereby expressly waived.

2. That the order of this Court staying the operation and effect of the said orders of the Commission be re-entered and continued in force and effect until the further order of this Court.

(a) That this Court order, adjudge and decree that the said reports and orders of said Interstate Commerce Commission dated July 5, 1932, as amended, and January 9, 1933, as amended, are beyond the authority of the Commission, and are without warrant in law and are arbitrary, invalid, null and void; and that said reports and orders as amended be enjoined, annulled and set aside.

(b) That this Court allow a temporary stay of the operation of the said orders of the said Commission, as amended, pending the application for the injunction herein sought.

(c) That this Court will grant to your orator an interlocutory order setting aside and enjoining the enforcement of said orders of July 5, 1932 and January 9, 1933, as

amended, of the Commission and that said interlocutory [fol. 816] injunction be continued in force until the further order of this Court.

(d) That upon the coming in of this cause this Court will make and enter a decree and order herein annulling, setting aside and enjoining the said orders, as amended, of said Commission, and permanently enjoining the enforcement thereof.

4. That your orator have such other and further relief in the premises as shall be consonant with equity and the nature of the case of your orator may require.

And your orator will ever pray, etc.,

F. S. Buffum Company, Inc., F. S. Buffum, President, Mrs. M. L. Jones, Secretary. Julian E. Fant, F. C. Hillyer, Solicitors for Complainant. F. C. Hillyer, of Counsel. (Seal F. S. Buffum Company, Inc., Jacksonville, Florida.)

[fol. 817] *Duly sworn to by F. S. Buffum. Jurat omitted in printing.*

[fols. 818-836] EXHIBIT "A"

Second Report of the Commission on Further Hearing omitted, printed side page 418, ante.

[fols. 837 & 838] Exhibit "B" omitted, printed side page 437, ante.

[fol. 839] EXHIBIT "C" TO SUPPLEMENTAL BILL

BEFORE THE INTERSTATE COMMERCE COMMISSION

No. 18364

GEORGIA PUBLIC SERVICE COMMISSION

vs.

ATLANTIC COAST LINE RAILROAD COMPANY

PETITION FOR POSTPONEMENT OF DATE OF ORDER, FOR FURTHER HEARING, AND FOR RECONSIDERATION

To the Interstate Commerce Commission:

I. Comes now your petitioner, F. S. Buffum Company, Incorporated, intervener in the above entitled proceeding, and prays that the Commission postpone the effective date (February 11, 1933) named in its order of January 9, 1933, which was issued in connection with the Commission's report on further hearing — I. C. C. —, decided January 9, 1933. The original opinion is reported in 146 I. C. C. 717, and the opinion upon further hearing in 186 I. C. C. 157.

Your Petitioner further prays that this proceeding be re-opened for further hearing, to permit this intervener a full hearing upon matters alleged in its petition of intervention and matters which intervener offered to prove and which the Commission's Attorney-Examiner excluded at the Jacksonville hearing, November 21 and 22, 1932.

Your Petitioner further prays that the Commission reconsider its decision of January 9, 1933 upon facts of record which are omitted from the opinion, upon facts of [fol. 840] record which prove that certain important conclusions of fact, stated in the opinion, are erroneous.

II. Petitioner avers that at the hearing in Jacksonville on November 21 and 22, 1932, no new, added, basic, essential and jurisdictional facts were adduced which would warrant the exercise of federal power over intrastate log rates of defendant in Florida; that no such essential and jurisdictional facts are of record; and that no such essential and jurisdictional facts have been found by the Commission; that a number of primary findings of the Commission are not warranted by the evidence; and that the findings do not support the conclusion and order of the Commission.

III. Prior to the hearing of November 21 and 22, 1932, Petitioner filed its bill of complaint in the United States District Court for the Northern District of Georgia, Atlanta Division, in equity No. 695, to enjoin, set aside, suspend and annul the order entered in this proceeding which is to be re-instated effective February 11, 1933 by the Commission's order of January 9, 1933. Hearing upon the bill was postponed by the Court until ten days after defendants therein have received notice from your Petitioner herein of further proceedings in that court upon said petition, as stipulated by solicitors for Petitioner therein for defendant United States of America and for Interstate Commerce Commission. In view of such stipulation, and the shortness of time intervening between the date of the Commission's decision of January 9, 1933, and the effec- [fol. 841] tive date of its orders, viz., February 11, 1933, Petitioner avers that a postponement of said effective date is necessary to the ends of justice in order that the Commission may have sufficient time for careful consideration of matters and things set forth in this petition, serve notice of its action thereon, and still leave sufficient time for arrangement of, and for service of notice to the parties of a hearing upon the bill of complaint in the District Court in accordance with the said stipulation. Your Petitioner avers that the prayer for postponement of the effective date of the Commission's order is not for purposes of delay.

Petitioner therefore prays that the Commission postpone the effective date of its order until April 11, 1933, or until after further hearing if further hearing is granted.

IV. Petitioner avers, in support of its prayer for further hearing, that, at the hearing in Jacksonville on November 21 and 22, 1932, the Commission's presiding Attorney-Examiner excluded testimony proffered by this Intervener bearing upon certain issues raised in its petition of intervention, thereby denying to petitioner a full hearing, to which petitioner is entitled under the Interstate Commerce Act.

Petitioner alleged that the use of the Cummer scale into its Jacksonville mill is similar to the use of newly established local, proportional and transit scales of rates on logs over various lines in southern and southwestern territories [fol. 842] to other competing mills; that the defendant At-

lantic Coast Line Railroad Company derives substantia revenues on outbound lumber traffic from petitioner's mil to far distant northern markets, just as it would if th Cummer scale were applicable as a proportional or transi scale; and that the presence of other similar scales on log to competing mill points in the south and southwest, an the withdrawal of the Cummer scale under the Commis sion's order would subject petitioner to undue prejudic and disadvantage and give undue preference and advan tage to petitioner's competitors in South Carolina, Ala bama, Mississippi and Tennessee; and that the Commis sion's order would result in loss of revenue to the Atlanti Coast Line not only on inbound log traffic but also on out bound lumber traffic. The Attorney-Examiner receive evidence of defendant with respect to the transit rates else where, and considered "the moral obligation" relied upo by the railroads where the newly reduced rates were estab lished as local rates to regain inbound log traffic and out bound lumber traffic, but he rejected intervener's evidenc of like conditions at intervener's mill at Jacksonville. Ex ceptions to his rulings were made by intervener and note of record.

Attention is directed to the fact that this issue, raise by intervener's petition, related to a situation which woul arise from the operation of the Commission's order, an not to a situation which now exists. Such preference an prejudice were alleged to arise only if and when the Com mission required the elimination of the Cummer scale o [fol. 843] rates on logs to intervener's mill. It is no de fense, then, to say that this issue was not raised by th original complaint. The issue only arises under change conditions in contemplation of the Commission's announce exercise of federal power over Florida intrastate rates The discussion in connection with the Examiner's ruling and the proffer of testimony, appear at pages 1529 to 153 of the transcript.

V. Petitioner further desires opportunity to adduce evi dence, in support of the allegation contained in its petitio of intervention, that there are serious mistakes, illogica theories, and unwarranted assumptions underlying the so called accounting evidence, and formula employed by th Commission in its decision of July 5, 1932, reported in 18 I. C. C. 157, which mistakes and formula formed the basi

of the Commission's erroneous conclusion that the Cummer scale of log rates cast a burden on interstate traffic. At the hearing held November 21 and 22 petitioner was denied the right to adduce evidence in support of such allegations.

VI. Petitioner avers that there are numerous material facts omitted from the Commission's report of January 9, 1933; that numerous facts are partially stated, or stated with such imperfection as to cast an entirely erroneous color or impression as to such facts, contrary to the plain import and effect of the complete context of the evidence; that other important facts are erroneously stated; and that important primary findings and conclusions of the Commission which are based upon these omissions and errors are unsupported by and contrary to the evidence.

[fol. 844] (a) On sheet 3 of the Commission's report of January 9, 1933 is the statement that the newly established reduced rates "expire by limitation December 31, 1932", and on sheet 4, that "these rates are published to expire in one year", etc. whereas the fact is that the carriers have made arrangements to continue these reduced rates beyond the original expiration date. The testimony is that the railroad's Bureau "has assented to a proposal to extend the effective dates of those rates one year beyond the expiration date in that territory" (Record, page 1456). The effect of this omission of fact is to create the erroneous impression that on the date of the Commission's decision, January 9, 1933, many of these reduced rates had expired and the old rates had been restored on December 31, 1932, contrary to the truth. The testimony shows that "the new reduced rates on logs will continue to apply within the Southwestern territory throughout the year 1933" (Record, page 1457).

(b) On sheet 5 of the Commission's report of January 9, 1933 is the statement that "all of these (new reduced rates) apply in the western portion of southern territory and none in the eastern portion". This statement is misleading and incorrect. The evidence shows that the reduced rates apply from stations in Georgia (1448), "between all stations in Florida on the St. L. & S. F. Railroad" (Exhibit No. 134, middle of the sheet), and that reduced rates on piling and timber, lower than the Cummer

scale, have been recently established from South Carolina [fol. 845] points to Charleston, S. C. (Record 1464, 1465, 1467). Intervener desires to prove, further, that the new reduced rates have been recently established generally over the lines of the Louisville & Nashville R. R. (L. & N. I. C. C. A-16022, Supplement 10, January 27, 1933), and that reduced rates on logs substantially lower than the Commission's prescribed scale, have been established over the lines of the Florida East Coast Railway in Florida. The evidence also shows that the charges paid on logs moved over the Seaboard Air Line in Florida are substantially less than they would have been under the log-rate scale prescribed by the Commission (Record 1798, $22.10 per car S. A. L. $30.00 per car I. C. C.). It is clear that the omission of such facts leads to the erroneous statement that "all of these rates apply in the western portion of southern territory and none in the eastern portion".

(c) On sheets 4, 5, 6 and 7, the report minimizes the fact that these new rates apply in wholesale over a very broad area which embraces most of the lumber producing regions of the south and southwest (1450), with the exception of the area in which the Atlantic Coast Line, defendant here, dominates the log rates, either directly or through control of its affiliated lines. Intervener challenges anyone to prove that there are any substantial number of hardwood mills in the southeast or southern territory today (which do not own logging railroads) which have not the benefit of reduced rates on logs substantially less than the Commission-prescribed scale. The Commission's report seems to avoid any reference to the colored map which [fol. 846] was submitted in evidence and which shows most graphically the wholesale and general southwide reductions in log rates.

(d) The assertion, that the Commission's statement of facts on this point is discolored, can be further proven upon the face of the report itself. On sheet 5 is the statement in reference to the new reduced rates, that "All except those of the N. C. & St. L. and some of those of the Southern apply only if the manufactured product moves outbound over the line of the carrier which moves the logs inbound". This statement is directly contrary to the evidence. The record shows that many of these new tariffs

are applicable on strictly local shipments of logs (1450-1466). Exhibit 161 shows a list of twenty new tariffs of various railroads which apply the new reduced log rates locally, as signified by the symbol "L". The application of a number of these tariffs was specifically explained by an expert witness and there is no evidence which controverts his testimony or the plain wording of the tariffs themselves.

On page 5 of the Commission's report is a partial statement of the application of the new tariffs which is misleading. The report omits the stations from which the new rates apply. This omission again minimizes the effect of the widespread application of the new reduced rates. For example, the Missouri Pacific tariffs apply between all Louisiana points, all Missouri points, all Arkansas points, and between all points in Arkansas, Louisiana, Missouri, Oklahoma and Texas. The St. L. S. W. tariffs [fol. 847] apply from all stations in Tennessee and Mississippi, between all stations in Missouri, from all stations in Arkansas, between stations in Arkansas and Missouri, between all stations in Alabama, between all stations in Alabama and Florida or Mississippi, between all stations in Mississippi and between all stations in Florida, Missouri and Mississippi. The G. M. & N., C. R. I. & P. and St. L. S. W. tariffs all apply from or between all stations on their lines. See exhibit 134. In like manner, practically all of the tariffs explained on exhibits 135, 136, 137 apply the new rates from all stations on the lines shown. The effect of this omission of these facts from the Commission's report is to cast the erroneous impression that the new rates apply only from or to a very few mill points. This is directly contrary to the evidence.

(e) On page 6 is the statement that

"It should be remembered that the carrier transporting the logs to the manufacturing point at these per car rates is also assured of the outbound movement of the manufactured products, except in the case of the Nashville, Chattanooga & St. Louis and in some instances, the Southern."

This finding makes more glaring the ruling under which intervener was prohibited from submitting it proof that the

Atlantic Coast Line received practically all of the out bound movement of lumber from petitioner's mill, which could possibly move over that line, and that the proportion of its outbound movement of lumber which so moved was much greater than the tonnage which petitioner could have used under transit billing. Attention has been directed, hereinbefore, to the error in the above quoted statement as to the N. C. & S. T. L. and the Southern. Some twenty [fol. 848] of the new tariffs apply locally. Therefore in both respects the above-quoted sentence is clearly erroneous.

(f) What has just been said, is true in like manner of the statement on sheet 7. that;

"While these rates standing alone would not be attractive to these carriers from a revenue standpoint, they are attractive when coupled with the rates for the outbound movement of the manufactured product."

This statement shows again the unfairness of the exclusion of the intervener's evidence on this subject, and the discoloration of the report by its failure to state correctly the facts concerning the twenty tariffs of local application.

(g) In this connection the attention of the Commission is directed to the omission from the decision of any explanation of the issue raised by intervener's petition of intervention—that there could be no justification for the prescription of the Commission's scale of minimum rates in Florida on a basis twice as high as the newly established local, proportional and transit rates on logs throughout the south and southwest generally. The Commission, in substance, dismisses the effect of the new rates by the mere explanation that they are "experimental." The Commission fails to explain any theory of fact or law upon which it interferes with Florida intrastate rates and prescribes minimum rates in Florida twice the level of new rates on logs in West Florida, from Georgia, and within and throughout the states of Alabama, Tennessee, Mississippi, Louisiana, Arkansas, Oklahoma, Texas and Missouri. What different revenue test is the Commission applying [fol. 849] to these Florida intrastate rates than it applies to these "experimental rates"? The decision of the Com-

mission is significantly silent upon this important question.

(g) On sheet 9 is the statement that:

"Such truck competition as has been shown in the movement of logs in Florida is generally to the smaller lumber mills and between points where the rail hauls are 25 miles or less."

This statement is misleading, due to its inaccuracy. The evidence proves beyond question that there has been a wholesale and widespread diversion of log traffic from the railroads to the trucks throughout the state of Florida; and that truck competition has been as strong as or more acute in Florida than elsewhere throughout the South. The record proves beyond question that there is as much need of reduced rates on logs in Florida to meet truck competition as there is in any other Southern state. The evidence further shows that the same kind of truck movements are common in Florida as elsewhere in the South where mills are in operation. There is no evidence to support the direct inference and implication in the above-quoted sentence to the effect that the trucks haul only to the small mills and not to the larger mills. The evidence of record proves without question that there has been a large diversion of log traffic from railroads to trucks, especially during this Cummer-scale litigation in Florida.

(h) The Commission's report with respect to the effect of the Cummer scale upon the rail tonnage and revenues at the Buffum mill in Jacksonville is so strongly distorted [fol. 850] and highly discolored that it would be impossible for a reader of the decision to gain any adequate conception of this intervener's evidence. The record shows without dispute that when the Cummer scale was lifted the log movement to the Buffum mill was almost entirely by truck and water, with the exception of some rail shipments from points close by where the charges were relatively small; that after the Cummer scale was restored the A. C. L. rail movement to the Buffum mill increased about 670 per cent; that the threatened cancellation of the Cummer scale under the Commission's order on September 15, 1932, caused a stoppage of the rail movement of logs, and a short discontinuation of the operations of the mill until

the effect of the injunction of the United States District Court was manifested; and that the cancellation of the Cummer scale, under the Commission's order, would have the undoubted effect of practically stopping the A. C. L.'s log traffic and log revenue to this mill. This evidence is uncontroverted. The failure of the Commission's report to make suitable findings in accord with the plain facts of record with respect to the Buffum mill is astonishing.

(i) On Sheet 12 of the Commission's decision is the statement that:

"The record does not show that any of the other logs shown to have moved by truck in Florida could have moved over defendant's lines."

This statement is erroneous, without foundation, and contrary to the plain facts of record. The statement is squarely at variance with the facts proved without dispute throughout the hearing of November 21 and 22.

[fol. 851] (j) The following statement, on sheet 12 of the report is distorted and inaccurate:

"The logs that moved by truck to these two companies (at Jacksonville) which the record shows could have moved over defendant's lines represents an average of approximately 35 carloads a month and as indicated above they moved for relatively short distances."

The evidence shows that during the first 10 months of 1932 the truck movement to the Buffum mill alone averaged the equivalent of 84.8 cars per month; and that the effect of the withdrawal of the Cummer scale will be to enlarge the area of truck movements and eliminate rail movements.

(k) The following statement on sheet 13 of the report is erroneous:

"The movement of logs by truck into the territory served by defendant, including Florida, is negligible and not sufficient to warrant reductions in rates to save such traffic from the trucks."

The record shows that there has been a large movement of logs by truck in Florida, particularly since the Cummer-scale litigation has been in progress. There is no basis

upon this record for the implied inference that truck movements are less in Florida than in Alabama, and other states where the reduced rates are in effect. On the contrary, the plain deduction from the evidence here is that there is a larger movement of logs by trucks in Florida than elsewhere in the South. The above-quoted statement of the Commission is misleading in that this case does not present any application for reductions in rates to meet truck competition. The question here is whether the Commission should exert any federal power to compel this defendant to cancel the Cummer scale and put into effect the Commission's scale which is about twice as high as the new log [fol. 852] rates in effect throughout a widespread area. This is an entirely different question. There was no application here to reduce the Cummer scale to meet truck competition. The evidence shows that the Commission's scale, if substituted for the Cummer scale, will drive all of the existing log traffic away from the Coast Line, especially log traffiic to the Buffum mill, thereby resulting in loss of revenue to this defendant. The above-quoted finding in the Commission's report is erroneous and directly contrary to the facts of record.

(l) The finding on sheet 16 of the Commission's report that:

"There is but little competition between defendant and trucks for the movement of logs intrastate in Florida for distances over 25 miles",

is contrary to the evidence. The record shows that truck competition has taken away from the Coast Line a large proportion of the Florida intrastate log traffic, many mills having purchased their own trucks while the Cummer scale was withdrawn, and many of them now using trucks over highways which parallel practically all of the lines of the Coast Line in Florida between timber areas and mills.

(m) The Commission's report, pages 16 to 18, inclusive affirms the previous findings with respect to similarity in transportation conditions, thereby ignoring completely the evidence of intervener's witnesses, Buffum and True, who proved that the transportation and loading conditions with respect to log traffic over defendant's lines to Jacksonville is generally over main lines, whereas at other southern mill [fol. 853] points the log traffic usually originates on branch

lines; that the land over which defendant's lines run in Florida to Jacksonville is level, and free from the swampy regions which characterize the hauls to Memphis, free from the grades and curves incident to the mountainous region around Chattanooga, and more favorable than the hilly country around Montgomery, Alabama, and free from the soil-slides which have occurred on railroads in the Laurel, Miss. area. All of this evidence is omitted from the report, thereby casting an entirely erroneous and incorrect impression as to the favorable transportation conditions for log traffic over the Coast Line to Jacksonville.

(n) The Commission's report, sheet 17, specifically mentions the one extreme and highest Florida arbitrary for Florida hauls south of Jacksonville which were prescribed in two cases, and studiously omits the mention of cases in which much smaller arbitraries have been prescribed, and the Fertilizer Case, 113 I. C. C. 389 in which the level prescribed interstate in the south was also prescribed for peninsula Florida without any arbitraries whatsoever. The mention of two extreme cases and the omission of all the other cases on this subject, even if this subject were relevant here to log traffic, distorts and discolors the context of the evidence adduced in this case.

(o) On sheet 18 the Commission finds that:

"The re-established substantially lower Cummer scale has had no effect on the volume of rail movement."

This statement is directly contrary to the proven facts of [fol. 854] record, and there is no evidence whatsoever to support it. Exhibit No. 141 shows 47 cars of logs moved over the A. C. L. to Buffum's mill in the period June-October, 1930 when the Cummer scale was withdrawn, and during the same months of 1932 when the Cummer scale was in effect 342 cars moved over the A. C. L. During the month of May, 1932, when the Cummer scale was in effect, 107 cars moved over the A. C. L. to the Buffum mill, which was about the equal of the movement from June 1930 through February 1931, prior to the restoration of the Crummer scale. The effect of the Cummer scale, in the monthly comparable periods of 1930 and 1932, June to October, inclusive, was to increase the Coast Line's rail movement by about six hundred and seventy per cent. In other words the movement to the Buffum mill under the

Cummer scale for this period of 1932 was seven hundred seventy per cent of the movement for the same period of 1930. This period includes the month of September 1932, when the movement dropped down due to the expectation that the Cummer scale would be withdrawn September 15, under the I. C. C. order. In spite of this remarkable showing the Commission's report finds (erroneously) that the reestablishment of the Cummer scale "has had no effect on the volume of rail movement". This point is of vital importance in this case especially to the Buffum mill. The findings on such facts are directly contrary to the record and without evidence to support them.

(p) One of the most glaring omissions from the Commission's report is the failure to show and illustrate the numerous tables of comparisons of the revenues per car [fol. 855] under the Cummer scale, the Commission's scale, and the newly reduced rate scales on logs which have been established generally throughout the South and southwest. The effect of these omissions is to minimize the effect of the newly established reduced rates. The Commission emphasized the old log rate scales in its first report. In this latest report it minimizes the importance of the same kind of comparisons under the newly reduced rates.

Further recital in detail of the errors, omissions, and discolorations of the facts of record is deemed unnecessary. The report as a whole is apparently framed in the attitude of a litigant, attempt to uphold a preconceived conclusion, contrary to judicial attitude which one is accustomed to find in the Commission's treatment of facts.

Wherefore petitioner prays that the Commission postpone the effective date of its order of January 19, 1933, July 5, 1932 and July 28, 1932; and re-open the Case for Further Hearing, and Reconsideration.

F. S. Buffum Company, Inc., by F. S. Buffum, President. Julian E. Fant and F. C. Hillyer, of Counsel.

STATE OF FLORIDA,
County of Duval, ss:

Before me, a notary public in and for the state of Florida at large, personally appeared E. C. Green, witness on behalf of F. S. Buffum Co., Inc., who being by me first duly sworn deposeth and saith that he has read the foregoing

petition and that he believes that the facts stated therein are true.

——— ———, Notary Public.

[fol. 856] EXHIBIT "D" TO SUPPLEMENTAL BILL

Affidavit

STATE OF FLORIDA,
County of Duval, ss:

Before me, a notary public in and for the state of Florida at large, personally appeared F. S. Buffum, who being by me first duly sworn deposes and on oath says: That he is President of F. S. Buffum Company, Incorporated, a Florida corporation; that said F. S. Buffum Company, Incorporated, now operates and since June 1930 has operated a lumber mill at Jacksonville, Florida; that the supply of logs for such milling operations, prior to the reinstatement of the Cummer scale of log rates was transported principally by motor truck and to a minor extent by water; that after the reinstatement of the Cummer scale of log rates in the spring of the year 1931 a substantial and important part of its supply of logs has been transported over the Atlantic Coast Line Railroad Company from points in Florida to the Buffum mill at Jacksonville and that such rail movement has enabled the said mill to maintain full time operations due to the increased supply of logs derived from such source; that soon after the receipt of the decision and order of the Interstate Commerce Commission, to-wit, on or about the 11th of January, 1933, the cutters and shippers of logs over the Atlantic Coast Line Railroad to the Buffum mill, due to the threatened cancelation of the Cummer scale of log rates and the establishment of the Commission's prescribed scale in lieu thereof as of February 11, 1933, notified the F. S. Buffum Company that they would cease the cutting of logs prior to February 11 because they would not be able to pay the increased freight charges and that after consultation with them, in order to insure even temporarily, the continuation of its supply of logs, affiant, on behalf of the F. S. Buffum Company, Incorporated, was required to give one week's notice to the log-cutters prior to such [fol. 857] change in log rates in order that the cutters might have sufficient time in which to load the logs which had been

cut and ship them over the Atlantic Coast Line prior to such change in rates, and that in the event such notice by the Buffum Company of such change is not so given in due time, the Buffum Company would have to assume the difference in the transportation charges under the Cummer scale and the higher rates which might be charged pursuant to the orders of the Interstate Commerce Commission; and that if such rates are so increased the supply of logs to the Buffum mill will be thereby stopped by the Buffum Company as soon as such change becomes effective, due to its inability to absorb such higher transportation charges in its cost of manufacture; and that in the event such increase is made in such log rates the Buffum mill will in the future have its logs transported by truck and some by water, and none over the rails of the Atlantic Coast Line Railroad Company; that due to the reinstatement of the Cummer scale in the year 1931 the rail shipments of logs over the Atlantic Coast Line Railroad increased many fold, and that the withdrawal of the Cummer scale would result in the cessation of the transportation of logs over the Atlantic Coast Line Railroad from points in Florida to the Buffum mill at Jacksonville, with irreparable loss and injury to F. S. Buffum Company, Incorporated.

(Signed) F. S. Buffum.

Sworn to and subscribed before me this 8th day of February, 1933. E. M. Winter, Notary Public. My Commission expires Dec. 18, 1934. (Seal of E. M. Winter, Notary Public, State of Florida.)

[fol. 858] [File endorsement omitted.]

[fol. 859] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

No. 695—Equity

AFFIDAVIT OF E. C. GREEN—Filed Feb. 24, 1933

STATE OF FLORIDA,
County of Duval, ss:

Before me, a notary public in and for the state of Florida at large, personally appeared E. C. Green, who being by me first duly sworn deposes and on oath says: That he is

Manager of the Jacksonville Traffic Bureau, Inc., a Florida corporation, maintained and supported jointly by the Jacksonville Chamber of Commerce and the municipality of Jacksonville for the purpose of handling transportation matters, rates and charges for the business interests of Jacksonville or any citizens thereof; that he has had seventeen years experience in railway freight traffic work engaged in handling transportation matters, rates, rules and regulations in the employ of the Southern Railway Company and the Georgia, Southern & Florida Railway Company at Macon, Ga., and Jacksonville, Fla.; that he was employed for approximately two years by the American Railway Association and the United States Railroad Administration handling transportation by both freight and passenger trains into and out of various military camps in Georgia and Tennessee; that for the past ten years he has been employed by the Jacksonville Traffic Bureau as rate clerk, assistant manager and manager of that organization; that he is familiar with the construction of freight tariffs and interpretation; and that he is qualified to interpret the rules, regulations, rates and transportation charges contained in railway freight tariffs;

That there is attached hereto and made a part hereof photostat copies of several freight tariffs on file with the Mississippi Railroad Commission located in the new state capitol building at Jackson, Miss., and at the bottom of the [fol. 860] freight tariffs is an official certificate of the Mississippi Railroad Commission dated February 16 1933, signed by J. W. Williams, secretary, and properly attested to by the official seal of the Mississippi Railroad Commission certifying that these tariffs are true and correct copies of the indicated portions of the tariffs as duly filed with the Mississippi Railroad Commission; that these photostat copies will be explained in the order in which they are bound together beginning at the top; and that his interpretation of the tariffs is as follows:

The first three sheets are respectively the title page of Mississippi Central Railroad Company 780-E, issued August 10, 1928, effective August 20, 1928, indicating that the tariff contains local and proportional rates applying on classes and commodities between stations on the Mississippi Central Railroad; page 4 of the tariff showing a geographical list of stations and distances between all stations on the railroad; page 24 of the tariff containing in items

265 and 267 at the bottom of the page rates on hardwood logs in carload lots from eleven stations in Mississippi to Bude, Miss., and Hattiesburg, Miss., for manufacture and reshipment. These rates are tabulated below showing the distance for which each rate is applied. The rates apply only on shipments of five cars or more moving in one day from the same consignor to the same consignee and apply per car regardless of weight of the logs on the car.

			Distance	Rate per car
Brassfield, Miss.	to	Bude, Miss	79 miles	15.00
Birch	"	"	61 "	15.00
Carson	"	"	74 "	15.00
Clyde	"	"	101 "	20.00
Epley	"	"	98 "	20.00
Prentiss	"	"	67 "	15.00
Silver Creek	"	"	58 "	15.00
Sumrall	"	"	93 "	20.00
Wanilla	"	"	59 "	15.00
Whitsand	"	"	64 "	15.00
Wanilla	"	Hattiesburg, Miss	63 "	15.00

[fol. 861] The above $15.00 rate per car applies from distances ranging from 61 miles to 79 miles and the $20.00 rate per car applies for distances ranging from 93 miles to 101 miles.

The next two photostat copies are respectively the title page of supplement No. 5 to I. C. C. 9642 of St. Louis-San Francisco Railway Company freight tariff No. 2173-0, publishing rates on forest products, carloads from points in Alabama, Arkansas, Kansas, Louisiana, Mississippi, Missouri, Oklahoma and Tennessee to Fayette Jct., Fayetteville, Ft. Smith, Ark., and Poteau, Okla.; and page 4 of supplement 5 to the same tariff, publishing the following distance scale of rates from stations on the St. Louis-San Francisco Railway in Arkansas and Missouri to Fayette Jct., Fayetteville and Ft. Smith Ark., in cents per car of 90,000 pounds or less with any excess loads to be charged proportionately. These rates expire with December 31, 1933, unless sooner cancelled, changed or extended.

Distances	Rates in cents per car
25 miles and less	1,200
50 " " over 25 miles	1,500
75 " " " 50 "	1,750
100 " " " 75 "	2,250

The next protostate copy is the title page of supplement 4 to I. C. C. 7848, Illinois Central Railroad Company and

The Yazoo and Mississippi Valley Railroad Company Freight Tariff 692-I, publishing rates on logs and other forest materials from stations on the two railroads mentioned herein to Memphis, Tenn. for manufacture and refreshment via the two railroads previously mentioned herein, issued January 7, 1933, affective February 11, 1933. The next photostate copy is page 2 of supplement 4 of the same tariff publishing rates on logs and also stave and heading bolts in cents per car, regardless of weight, to [fol. 862] Memphis, Tenn., from eighteen stations in Mississippi. The distance and rate from each of these stations to Memphis, Tenn. are shown below:

From	Distance miles	Rate, in cents per car, regardless of weight, to Memphis, Tenn.
Black Bayou Jct, Miss.	101	2,250
Somerville "	102	2,250
Phillip "	106	2,250
Sandy Ridge "	109	2,250
Ruby "	111	2,250
Money "	114	2,250
Perthshire "	104	2,250
Gunnison "	107	2,250
Waxhaw "	109	2,250
Wright "	111	2,250
Rosedale "	114	2,250
Niles "	118	2,250
Malvina "	120	2,250
Symonds "	122	2,250
Kimball Lake "	124	2,250
Harlow "	123	2,250
Loughlin "	121	2,250
Skene "	120	2,250

These rates are published to expire with April 1, 1933, unless sooner cancelled, changed or extended, and are only applicable when the rules shown on pages 5 to 9 of the tariff are complied with. (These rules will be discussed later.)

The next photostate copy is page 3 of supplement 3 to the same tariff publishing rates from five additional stations in Mississippi to Memphis, Tenn. The distances and rates are shown below:

From		Distance	To Memphis, Tenn., in cents per car
Mound Bayou, Miss.		104	2,250
Merigold	"	107	2,250
Cleveland	"	113	2,250
Boyle	"	116	2,250
O'Reillys	"	119	2,250

These rates are published to expire April 1, 1933 and are only applicable when the rules published on pages 5 to 9 of the original tariff are complied with.

The next five photostat copies are pages 5, 6, 7, 8 and 9 of the same tariff 692-I, publishing the rules under which [fol. 863] the rate of $22.50 per car from the 23 stations in Mississippi to Memphis, Tenn., tabulated above will apply. The general requirement of these rules is that the $22.50 rate to Memphis will be applied when the reshipping certificates, contracts, bonds, supervision and inspection of records, reshipment within the limit of one year after the inbound logs are received and method of settlement of the freight charges on the movement of logs into Memphis through claim channels are observed. In rule 5, page 6, it is provided that when logs are shipped into Memphis and lumber is shipped out of Memphis, for every pound of lumber shipped out of Memphis the $22.50 rate per car would be applied on every three pounds of logs shipped into Memphis.

The general purpose of these rules is to require protection to the carrier through contract, bond, supervision and inspection of records that when the logs are manufactured into lumber or other products the manufactured products will be reshipped out of Memphis over the lines of either the Illinois Central Railroad or the Yazoo and Mississippi Valley Railroad. In the final settlement of the freight charges covering the movement of logs from the 23 stations in Mississippi to Memphis the net rates are applied amounting to $22.50 per car regardless of weight for distances ranging from 101 miles to 124 miles from Memphis, and for every car of lumber shipped out of Memphis the rate of $22.50 per car regardless of weight will be applied on every three carloads of logs shipped inbound to Memphis.

The next photostat copy is the title page of supplement 5 to I. C. C. 7748, freight tariff 780-A of the Illinois Central Railroad Company, The Yazoo and Mississippi Valley

Railroad Company and Gulf and Ship Island Railroad Company, publishing rates on logs, carloads between sta- [fol. 864] tions on the Yazoo and Mississippi Valley Railroad in Louisiana west of the Mississippi River and stations on Gulf and Ship Island Railroad, Illinois Central Railroad and/or The Yazoo and Mississippi Valley Railroad in Mississippi and Louisiana east of the Mississippi River, when for manufacture and reshipment via Illinois Central R. R., The Yazoo and Mississippi Valley R. R. and/or Gulf and Ship Island R. R., issued December 16, 1932, effective January 18, 1933.

The next photostat copy is page 2 of the same supplement. Item 5-B at the bottom of the page publishes rates on logs from stations on the Illinois Central R. R. and The Yazoo and Mississippi Valley R. R. in Mississippi to Tallulah, La., as follows:

Distances	Rate In cents per car
25 miles or less	1700
50 miles and over 25	2000
75 miles and over 50	2250
100 miles and over 75	2500
125 miles and over 100	2750

These rates per car apply regardless of weight of the car and only when the rules provided on pages 3 to 6 of the original tariff are complied with.

The next four photostat copies are respectively pages 3, 4, 5 and 6 of the original tariff, 780-A. On these pages are the rules relating to supervision and inspection of records and other provisions the same as those already outlined in this affidavit in connection with tariff 692-I of the Illinois Central Railroad previously described herein. The rules in connection with these rates of from $17.00 to $27.50 per car form the final basis on which the freight charges on the logs moved into Memphis are finally settled when the logs are manufactured into lumber or other products and reshipped out of Memphis over either of the lines bringing the logs into Memphis.

E. C. Green.

Sworn to and subscribed before me this 21st of February, 1933. Nell Hurst, Notary Public. My Commission expires —— —, —. (Seal of Nell Hurst, Notary Public, State of Florida.)

(Here follow freight tariffs, side folios 865-883)

MISSISSIPPI CENTRAL RAILROAD COMPANY

780-E

(Cancels 780-D.)

FREIGHT TARIFF

—OF—

LOCAL AND PROPORTIONAL RATES

—APPLYING ON—

CLASSES AND COMMODITIES

—BETWEEN STATIONS ON—

MISSISSIPPI CENTRAL RAILROAD

As provided on page 4.

This Tariff is applicable only to traffic having origin, destination and entire transportation within the State of Mississippi. It will not apply on traffic moving between points within the State of Mississippi and another state or territory, or on traffic moving between points in the State of Mississippi which is transported through another state in transit.

Rates shown herein may be used only when no other through rates apply. When governed by classification which also contains distance rates they will take precedence over the distance rates in such classification. They may not be used either by themselves or in combination in preference to any specific rate.

Governed by Southern Classification No. 48, Agent E. H. Dulaney's I. C. C. No. 23, in connection with Classes 1 to D, inclusive.

Governed by Mississippi Classification No. 3, Agent E. H. Dulaney's I. C. C. No. 3, supplements thereto and reissues thereof, to the extent indicated on page 6 herein; and also governed by exceptions to classification as shown on page 6 herein.

ISSUED AUGUST 10, 1928. EFFECTIVE AUGUST 20, 1928.

W. J. KESSLER,
Ass't General Freight Agent,
Hattiesburg, Miss.

Issued by
LeROY MORRIS,
Traffic Manager,
Hattiesburg, Miss.

File 4188-8.

GEOGRAPHICAL LIST OF STATIONS AND DISTANCES

BETWEEN	AND	Natchez, Miss.	Roxie, Miss.	Brookhaven, Miss.	Wanilla, Miss.	Silver Creek, Miss.	Hattiesburg, Miss.
Natchez	Miss.		21	65	87	96	150
*Washington	Miss.	8	16	59	79	88	142
*Fenwick	Miss.	13	12	55	75	84	138
*Cranfield	Miss.	15	9	52	72	81	135
*Leesdale	Miss.	18	6	49	69	78	132
*Butler	Miss.	19	5	48	68	77	131
*McMillan	Miss.	20	4	47	67	76	130
Roxie	Miss.	24		43	63	72	126
*Misco	Miss.	27	3	40	60	69	123
*Kirby	Miss.	30	6	37	57	66	120
*Mile Branch	Miss.	34	10	33	53	62	116
Meadville	Miss.	35	11	32	52	61	115
Bude	Miss.	38	14	29	49	58	112
*Monroe	Miss.	40	16	27	47	56	110
Eddiceton	Miss.	43	19	24	44	53	107
Quentin	Miss.	45	21	22	42	51	105
*Celco	Miss.	48	24	19	39	48	102
McCalls	Miss.	49	25	18	38	47	101
Lucien	Miss.	51	27	16	36	45	99
*Williams	Miss.	53	29	14	34	43	97
*Cobbs	Miss.	57	33	10	30	39	93
*Tetus	Miss.	60	36	7	27	36	90
Brookhaven	Miss.	65	43		20	29	83
*Carlos	Miss.	72	48	5	15	21	78
*Woolworth	Miss.	78	54	11	9	18	72
Sontag	Miss.	83	59	16	1	13	67
Wanilla	Miss.	87	63	20		9	63
*Birch	Miss.	89	65	22	2	5	61
*Richardson	Miss.		66	23	3	6	60
*Hooker	Miss.	92	68	25	5	1	58
Silver Creek	Miss.	96	72	29	9		54
*Lucas	Miss.	99	75	32	12	3	51
*Whitesand	Miss.	102	78	35	15	6	48
Prentiss	Miss.	105	81	38	18	9	45

*Prentiss	Miss.	105	81	38	18	9	15	
*Shepherd	Miss.	109	85	42	20	13	41	
Carson	Miss.	112	88	45	25	16	38	
Bassfield	Miss.	117	93	50	30	21	33	
*Hawkins	Miss.	119	95	52	32	23	31	
Britton	Miss.	119	95	52	32	23	31	
*Melba	Miss.	124	100	57	37	28	26	
*Hercules	Miss.	126	102	59	39	30	24	
*Higgins	Miss.	128	104	61	41	32	22	
Sumrall	Miss.	131	107	64	44	35	19	
*Bynum	Miss.	132	108	65	45	36	18	
*Coral	Miss.	133	109	66	46	37	17	
*Epley	Miss.	136	112	69	49	40	14	
*Clyde	Miss.	139	115	72	52	43	11	
*Breland	Miss.	143	119	76	56	47	7	
*Wardwell	Miss.	144	120	77	57	48	6	
Hattiesburg	Miss.	150	126	83	63	54	3	
*Dreyfus	Miss.	153	129	86	66	57		
Tallahala Branch.								
*Booth	Miss.	155	131	88	68	59	5	
*Morris	Miss.	159	135	92	72	63	9	
Tallahala	Miss.	163	139	96	76	67	13	

*No Agent. Freight charges must be prepaid.
‡Forwarding station only; shipments for this station will not be accepted.
§Carload freight only.
‖L C L shipments only.

EXPLANATION OF ABBREVIATIONS.

C L	Carload.
I. C. C.	Interstate Commerce Commission.
L C L	Less carload.
Lbs	Pounds.
Miss	Mississippi.
M. R. C	Mississippi Railroad Commission.
No	Number.
N O S	Not otherwise specified.
N O I B N	Not otherwise indexed by name.

SECTON 2.

MISCELLANEOUS COMMODITY RATES Continued.

In cents per 100 pounds, unless otherwise specified.

Item No.	COMMODITY	FROM	TO	RATE
259	Gravel, carloads, minimum weight 90% of the marked capacity of the car, except when car is loaded to full visible capacity, actual weight shall govern	Hattiesburg Miss.	Brookhaven Miss.	In cents per ton of 2,000 lbs. 100
261	Gravel, minimum weight 10% less than marked capacity of car, except that when cars are loaded to visible capacity, in which case, the actual weight shall apply	Parkers Spur Miss.	Natchez Miss.	In Dollars per car $15.00
	Description A Handles, broom or mop, wooden, without metal attachments, when in the rough or in the white, but not further finished, and not primed, shellaced, varnished, painted, treated or waxed, carload minimum weight 30,000 pounds (see Note)			13
263	**Description B** Handles, broom or mop, wooden, without metal attachements, when finished, primed, shellaced, varnished, painted, treated or waxed, carload minimum weight 30,000 lbs. (see Note) NOTE Articles named in Descriptions A and B, may be shipped in mixed carloads, at the higher rate.	Hattiesburg Miss.	Natchez Miss.	16

				In Dollars per Car
265	Logs, hardwood, carloads NOTE For manufacture and reshipment.	Bassfield ... Miss. Birch ... Miss. Carson ... Miss. Clyde ... Miss. Epley ... Miss. Prentiss ... Miss. Silver Creek ... Miss. Sumrall ... Miss. Wanilla ... Miss. Whitesand ... Miss.	Bude ... Miss. (See Note.)	(56) $15.00 (56) 15.00 (56) 15.00 (56) 20.00 (56) 20.00 (56) 15.00 (56) 15.00 (56) 20.00 (56) 15.00 (56) 15.00

				In Dollars Per Car
267	Logs, hardwood, carloads.....	Wanilla ... Miss. And intermediate points. (See page 4.)	Hattiesburg..... Miss.	(56) (57) $15.00

(56) Applies only on shipments of five (5) cars or more, moving in one day, in the same train (it being optional only with the railroad company as to handling in the same train); from the same consignor to the same consignee.

(57) Rates on hardwood logs, named above to Hattiesburg, Miss., are applicable only when manufactured product is reshipped via the Mississippi Central Railroad, and shall be applied only where consignees at Hattiesburg, Miss., have filed satisfactory bond with this line, guaranteeing the shipment of the manufactured products from Hattiesburg, Miss., via the Mississippi Central Railroad.

In case of failure of consignee to file such bond the local rates published in tariff, to Hattiesburg, Miss., shall be applied and when the manufactured product is shipped out via the Mississippi Central Railroad, refund will be made of the inbound charges down to rates named above.

For the purpose of policing shipments under this agreement the ratio of logs to manufactured product shall be as follows:

When the raw material is logs, and the manufactured product is rotary cut box material for each carload of manufactured product shipped outbound refund will be made on not more than five (5) carloads of raw material inbound.

Supplement No. 5 to Arkansas No. 253
Cancels Supplements Nos. 1 and 4
Supplement No. 5 contains all changes from the original tariff that are effective on the date hereof.

Supplement No. 5 to I. C. C. No. 9642
Cancels Supplements Nos. 1 and 4
Supplement No. 5 contains all changes from the original tariff that are effective on the date hereof.

FRISCO LINES

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

(J. M. Kurn and John G. Lonsdale, Receivers)

IN CONNECTION WITH PARTICIPATING CARRIERS SHOWN IN TARIFF

SUPPLEMENT No. 5

TO

FREIGHT TARIFF No. 2173-O

Cancels Supplements Nos. 1 and 4
Supplement No. 5 contains all changes from the original tariff that are effective on the date hereof.

STAMP HERE

DATE RECEIVED

OF

LOCAL, JOINT AND PROPORTIONAL RATES
IN CENTS PER 100 POUNDS, EXCEPT AS NOTED

ON

FOREST PRODUCTS, CARLOADS

(As Described in Item No. 15)

FROM

POINTS IN ALABAMA, ARKANSAS, KANSAS, LOUISIANA, MISSISSIPPI, MISSOURI, OKLAHOMA AND TENNESSEE

ALSO

DISTANC RATES FROM ARKANSAS, MISSOURI AND CEDARS, OKLA.

TO

FAY TTE JCT., ARK., FAYETTEVILLE, ARK., FT. SMITH, ARK. AND POTEAU, OKLA.

APPLICATION OF EMERGENCY CHARGES

Charges resulting from the rates in this tariff are subject to the provisions of Tariff of Emergency Charges, Southwestern Lines' No. 24-A, Agent J. E. Johanson's I. C. C. No. 2398, Ark. R. C. No. 108, Western Trunk Lines' No. 252-A, Agent E. B. Boyd's I. C. C. No. A-2277, and Agent F. L. Speiden's No. 250-A, I. C. C. No. 1616.

ISSUED JANUARY 31, 1933

EFFECTIVE MARCH 14, 1933
(Except as otherwise provided herein)

Issued by
J. M. STRUPPER,
Assistant Freight Traffic Manager,
906 Olive Street
ST. LOUIS, MC

(C.E.Q.—300) 73176

PLANOGRAPHED BY JOHN S. SWIFT CO., INC. ST. LOUIS, CHICAGO, NEW YORK
(PRINTED IN U.S.A.)

FRISCO

Supplement 5 to Frisco 2173-0

DISTANCE RATES

[4] # Item 160-B, Cancels 160-A

BILLETS, BOLTS, LOGS, ROUGH STAVES AND ROUGH HEADING, STRAIGHT OR MIXED CARLOADS

Applies only from and to stations on St.Louis-San Francisco Railway as follows:

TO

FAYETTE JCT., ARK., FAYETTEVILLE, ARK. AND FT. SMITH, ARK.

FROM

Stations in Arkansas and Missouri

(For List of stations see Official List of Open and Prepay Stations No. 47, Agent F.A.Leland's I.C.C. No. A-12, Ark. No. A-12, supplements to or successive issues thereof).

ALSO

CEDARS, OKLA.

Rates per car will only apply on cars of 90,000 pounds or less, with any excess loads to be charged proportionately.

(Expires with December 31, 1933, unless sooner cancelled, changed or extended).

DISTANCES (To ascertain distances see StL-SF Ry. Freight Tariff 1259-E I.C.C. No. 9216, Ark. No. 174)	RATES IN CENTS PER CAR COLUMN A SEE ITEMS 5 AND 15
25 miles and less	1200
50 miles and over 25 miles	1500
75 miles and over 50 miles	1750
100 miles and over 75 miles	2250

If from and to the same stations the charges in this item make lower than the per car charges resulting from the application of cents per 100 pounds rates published elsewhere in tariff, the charges in this item will apply.

Departure from the terms of Rule 7 (b) of Tariff Circular 20 is authorized under special permission of the Interstate Commerce Commission No. 115899 of July 1, 1932.

[4] Reissued from Supplement No. 4, effective December 16, 1932.

For explanation of abbreviations, see page 2 of tariff as amended.

Charges resulting from rates in this Schedule, or as amended, are subject to the provisions of Agent F. L. Speiden's Tariff of Emergency Charges No. 280-A, I. C. C. No. 1616, supplements thereto or successive issues thereof, except as otherwise provided herein

Supplement No. 4 to
(Cancels Supplement No. 3)
I. C. C. No. 7848
(Supplements Nos. 3 and 4 contain all changes from the original Tariff that are effective on the date hereof)

ILLINOIS CENTRAL RAILROAD COMPANY
(SOUTHERN LINES)

THE YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY

STAMP HERE

DATE RECEIVED

SUPPLEMENT No. 4
(Cancels Supplement No. 3)
(Supplements Nos. 3 and 4 contain all changes from the original Tariff that are effective on the date hereof)

TO

692-I

FREIGHT TARIFF

OF

LOCAL AND JOINT RATES

APPLYING ON

Logs; Flitches; Hoop Poles; Bolts; Billets, viz.: Handle, Pole, Shaft, Spoke, Singletree and Doubletree, Carloads

(Except Pine; also except Butternut, Cocobolo, Ebony, Lignum Vitae, Mahogany, Rosewood, Spanish Cedar, and similar foreign woods)

FROM STATIONS ON

ILLINOIS CENTRAL RAILROAD
(SOUTHERN LINES)

THE YAZOO AND MISSISSIPPI VALLEY RAILROAD
(Indexed on pages 2 to 4 of Tariff)

TO

MEMPHIS, TENN.

FOR MANUFACTURE AND RESHIPMENT VIA ILLINOIS CENTRAL RAILROAD OR THE YAZOO AND MISSISSIPPI VALLEY RAILROAD

CLASSIFICATION

Governed, except as otherwise provided herein, by Southern Classification No. 50, Agent E. H. Dulaney's I. C. C. No. 44, supplements thereto or successive issues thereof, and by Exceptions to said Classification as shown on page 4 of Tariff.

Governed as to prepay requirements at stations, discontinuance of stations, changes in station names, and restrictions as to the handling of carload freight by I. C. R. R. Co. and The Y. and M. V. R. R. Co. Circular No. 99-I, I. C. C. No. A-10254; also The Y. and M. V. R. R. Tariff 88-C, I. C. C. 7390, supplements thereto or successive issues thereof.

ISSUED JANUARY 7, 1933 **EFFECTIVE FEBRUARY 11, 1933**

Issued by
J. L. SHEPPARD
General Freight Agent
135 East Eleventh Place
CHICAGO, ILL.

WILLIAM HAYWOOD
Freight Traffic Manager
CHICAGO, ILL.

JOSEPH HATTENDORF
Assistant Freight Traffic Manager
CHICAGO, ILL.

(11)

Supplement No.4 to 892-I.

(Amends Page 17 of Tariff and Page 2 of Supplement No.2)

RATES

APPLYING ON LOGS; ALSO STAVE AND HEADING BOLTS, CARLOAD
(In Cents Per Car)
(Regardless of Weight)

TO

MEMPHIS, TENN.

(For Application of Rates and Rules Governing, see Pages 8 to 9, Inclusive, of Tariff)

Index No.	FROM Y.and M.V.R.R.	Reshipping Rates
	Tallahatchie District	
177	Black Bayou Jct.Miss.	③ 2250
178	Somerville. . .Miss.	③ 2250
180	Philipp . . . .Miss.	③ 2250
181	Sandy Ridge . .Miss.	③ 2250
183	Ruby. . . . . .Miss.	③ 2250
184	Money . . . . .Miss.	③ 2250
409	♦Perthshire . .Miss.	① 2250
410	♦Gunnison . . .Miss.	① 2250
411	♦Waxhaw . . . .Miss.	① 2250
412	♦Wright . . . .Miss.	① 2250
413	♦Rosedale . . .Miss.	① 2250
	Kimball Lake District	
347	♦Niles . . . . .Miss.	① 2250
348	♦Malvina . . . .Miss.	① 2250
349	♦Symonds . . . .Miss.	① 2250
352	♦Kimball Lake. .Miss.	① 2250
352½	♦Harlow. . . . .Miss.	① 2250
353	♦Loughlin. . . .Miss.	① 2250
354	♦Skene . . . . .Miss.	① 2250
	Riverside District	

♦ Reduction.
① Effective January 11,1933. Issued on one (1) days notice authority special permission of the Interstate Commerce Commission No.121565 of January 6, 1933.
③ Expires with April 1,1933 unless sooner cancelled, changed or extended.

Supplement No. 27 to Tariff 692-H
Supplement No. 3 to Tariff 692-I

Effective December 1, 1932.

(Amends Page 3 of Supplement No. 1 of I. C. C. No. 7848 to Extent Shown Below)

RATES OF FREIGHT

APPLYING ON LOGS; ALSO STAVE AND HEADING BOLTS, CARLOAD

(In Cents Per Car)

(Regardless of Weight)

TO MEMPHIS, TENN.

(For Application of Rates and Rules Governing, see pages 5 to 9, inclusive, of I. C. C. No. 7848 to the Extent Shown Below)

Index No.	FROM		Reshipping Rates
	The Y. and M. V. R. R.		
	Clarksdale District		
130	Mound Bayou	Miss.	(♦)2250
131	Merigold	Miss.	(♦)2250
	Cleveland District		
304-A	Cleveland	Miss.	(♦)2250
305	Boyle	Miss.	(♦)2250
306	O'Reillys	Miss.	(♦)2250

♦Reduction
(1)Expires April 1, 1933, on intrastate traffic.

APPLICATION OF RATES

(a) The rates published herein apply only on Hardwood Logs, Bolts, Billets, Fliteches and Hoop Poles (see description in paragraph (b)), from stations on Illinois Central Railroad (Southern Lines) and The Yazoo and Mississippi Valley Railroad Indexed on pages 2 to 4, inclusive, handled under the rules and regulations provided herein.

(b) The term Hardwood as used in paragraph (a) is hereby defined as embracing all kinds of wood except Pine; also except Boxwood, Butternut, Cocobolo, Ebony, Granadilla, Imported Cedar, Ironwood, Lancewood, Lignum Vitae, Mahogany, Rosewood, Satinwood, Spanish Cedar, Teakwood and Vermilion.

BILLING RATES

(a) The "Billing Rates" shown on pages 10 to 16, inclusive, apply on shipments of Logs, Hoop Poles, Bolts, Billets or Fliteches forwarded to Memphis, Tenn., for manufacture and reshipment via Illinois Central Railroad or The Yazoo and Mississippi Valley Railroad, subject to Rules provided on pages 5 to 9, inclusive. Shipments must in all instances be waybilled to Memphis on basis of the billing rates, and charges will be collected by the Agent at Memphis, Tenn., on such billing rates, except as provided in Rule 15."

(b) In the absence of through rates on Logs, Hoop Poles, Bolts, Billets and Fliteches, carloads, from points of origin shown herein to destinations on Illinois Central Railroad, the "Billing Rates" to Memphis, Tenn., published on pages 10 to 16, inclusive, apply also to Memphis, Tenn., in reconstructing through rates on shipments from such points of origin to such points of destination. Shipments so handled will not be subject to rules published on pages 5 to 9, inclusive.

RESHIPPING RATES

(a) The "Reshipping Rates" must not be used in waybilling shipments to Memphis, Tenn. All shipments must be waybilled to Memphis, Tenn., at "Billing Rates."

(b) Except as provided in Rule 15, and upon evidence, as provided for herein, of shipments from Memphis, Tenn., via The Illinois Central Railroad or The Yazoo and Mississippi Valley Railroad, of articles manufactured of Logs, Hoop Poles, Bolts, Billets or Fliteches at full published freight tariff rates applying from Memphis, Tenn., proper (see Rule 45, page 8), the freight on Logs, Hoop Poles, Bolts, Billets and Fliteches into Memphis, Tenn., will be reduced to the basis of "Reshipping Rates" shown on pages 10 to 17, inclusive; through the Freight Claim Department on the ratios shown in Rule 5.

Rule	WHEN ARTICLE SHIPPED IN IS	AND ARTICLE SHIPPED OUT IS	For each pound shipped out from Memphis, Tenn., "Reshipping Rates" shown on pages 10 to 17, inclusive, will be applied on not more than the number of pounds shown below of the article shipped in.
	Billets	Automobile Body Parts, wooden, knocked down or flat, in the white or creosoted, loose or in packages	3
	Billets	Felloes	1¼
	Billets	Handles	4
	Billets	Handle Material, wooden, without metal attachments (not waxed nor primed), not further finished than sawed, bent, planed, sand belted or turned to shape	4
	Billets	Ladder Rungs	5
	Billets	Neck Yokes	3
	Billets	Picker Sticks	4

Billets	Neck Yokes	3
Billets	Picker Sticks	3
Billets	Poles	4
Billets	Rims, bent	3
Billets	Rim Strips, rough or planed, not bent	1½
Billets	Rough Turned Wooden Rods not exceeding 2 inches in diameter	3
Billets	Shaft	5
Billets	Single and Doubletrees	3
Billets	Spokes	3
Billets	Vehicle Material (not otherwise indexed by name in Tariff), in straight carloads; also Vehicle Material (not otherwise indexed by name in Tariff), (except felloes and rims, bent), in mixed carloads	4
Ratios		3
	Automobile Body Parts, wooden, knocked down or flat, in the white or creosoted, loose or in packages	3
	Felloes	1½
	Handles	4
	Handle Material, wooden, without metal attachments (not waxed nor primed), not further finished than sawed, bent, planed, sand belted or turned to shape	4
Hitches, consisting only of irregular pieces (not squared or edged), sawed from Logs with bark on one or both edges when for manufacture and reshipment	Hoops	3
	Neck Yokes	3
	Picker Sticks	4
	Poles	3
	Rims, bent	1½
	Rim Strips, rough or planed, not bent	3
	Shafts	3
	Single and Doubletrees	3
	Spokes	4
	Vehicle Material (not otherwise indexed by name in Tariff), in straight carloads; also Vehicle Material (not otherwise indexed by name in Tariff), (except felloes and rims, bent), in mixed carloads	3
Hoop Poles	Hoops	4

(Concluded on following page)

RESHIPPING RATES—Concluded

Rule	WHEN ARTICLE SHIPPED IN IS	AND ARTICLES SHIPPED OUT IS	For each pound shipped out from Memphis, Tenn., "Reshipping Rates" shown on pages 16 to 17, inclusive, will be applied on not more than the number of pounds shown below of the article shipped in.
	Logs and Bolts	Automobile Body Parts, wooden, knocked down or flat, in the white or creosoted, loose or in packages	5
	Logs and Bolts	Baskets, viz.:	
		Fruit or Vegetable, made of Veneer, not braided, plaited or woven	
		Grape, made of Veneer, with solid wooden tops and bottoms, not braided, plaited or woven	5
	Logs and Bolts	Barrel Bungs	5
	Logs and Bolts	Boat Oars	5
	Logs and Bolts	Box Material	4
	Logs and Bolts	Chair Stock	3
	Logs and Bolts	Crate Material	4
	Logs	Flooring, Finished	3
	Logs	Golf Head Blocks	5
	Logs and Bolts	Golf Head Billets	5
	Logs and Bolts	Hames	5
	Logs and Bolts	Handles	4
	Logs and Bolts	Handle Material, wooden, without metal attachments (not waxed nor primed), not further finished than sawed, bent, planed, sand belted or turned to shape	5
	Logs and Bolts	Heading	5
	Logs and Bolts	Hoops	4
	Logs and Bolts	Insulator Pins	4
Ratios	Logs and Bolts	Ladder Rungs	3
	Logs and Bolts	Lumber	5
	Logs	Moulding, other than ornamental	3
	Logs and Bolts	Picker Sticks	3
	Logs	Plywood	5
	Logs	Porch Columns	5
	Logs	Pumps	4
	Logs	Rung Timbers	4

Logs	Porch Columns	5
Logs	Pumps	4
Logs	Pump Tubing	4
Logs and Bolts	◆Sawn Cross Ties	4
	Rough Turned Wooden Rods not exceeding 2 inches in diameter	3
Logs and Bolts	Shoe Last Blocks	5
Logs and Bolts	Shuttle Block Billets	5
Logs and Bolts	Skewers	5
Logs	Tobacco-Hogshead Material, viz.:	5
	Staves, Heading, Liners	5
Logs and Bolts	Staves	4
Logs and Bolts	Sucker Rods	4
Logs and Bolts	Tie Plugs	5
Logs and Bolts	Vehicle Stock	5
Logs and Bolts	Veneer, ¼ of an inch and less in thickness	5
Logs and Bolts	Veneer, over ¼ of an inch in thickness	3

10 Claims

Claims must be supported by:

(a) Paid freight bills covering articles shipped in, and such paid freight bills must clearly indicate the weight of the Logs, Hoop Poles, Bolts or Billets. If the paid freight bills do not show this information or satisfactory evidence thereof is not furnished, such paid freight bills will not be available for securing protection of rates shown herein.

(b) Copies of bills of lading showing the article shipped out via the Illinois Central Railroad or The Yazoo and Mississippi Valley Railroad and such copies of bills of lading must clearly indicate the character and weight of the article shipped out; for example: Lumber, Staves, Handles, etc. If the copies of bills of lading do not show this information or satisfactory evidence thereof is not furnished, such copies of bills of lading will not be available for securing protection of rates shown herein.

15— Bonds

(a) The reshipping rates as shown on pages 10 to 17, inclusive, will be applied by the Agent at Memphis, Tenn., upon delivery of the raw material, provided the consignee has executed suitable contract supported by bond satisfactory to the I. C. R. R. Co. and The Y. and M. V. R. R. Co. for the shipment of the manufactured product via those roads at full published rates applicable from Memphis, Tenn. (see Rule 45, page 8), or in the event the manufactured product is not so shipped, for the payment to the I. C. R. R. Co. or The Y. and M. V. R. R. Co. of charges on basis of rates lawfully applicable to Memphis, Tenn., on such traffic when for disposition other than for manufacture and shipment via the I. C. R. R. or The Y. and M. V. R. R.

(b) The amount of the bond required in the preceding paragraph shall at all times be sufficient to fully cover the consignee's liability to the I. C. R. R. Co. and The Y. and M. V. R. R. Co. When the amount of the liability of the consignee to the roads mentioned exceeds the amount of the bond furnished, subsequent shipments of inbound raw material will be charged for at the rates lawfully applicable to Memphis, Tenn., on such traffic when for disposition other than for manufacture and reshipment via I. C. R. R. or The Y. and M. V. R. R. until required outbound shipments reducing the liability shall have been made or satisfactory bond furnished to cover the additional liability.

(c) The shipment of manufactured product outbound from Memphis, Tenn., against the inbound raw material to be on basis of the ratios provided in Rule 5.

(d) Whenever the consignee at Memphis, Tenn., elects to use the basis authorized in paragraph (a) of this Rule he must, in consideration of the application of the basis authorized therein, keep upon forms prescribed or approved by the Southern Weighing and Inspection Bureau a record of receipts from all sources, of all dispositions and of tonnage on hand of raw material and manufactured products. Further, to furnish affidavit when required as to the accuracy of such records. In the event of failure or refusal to keep such records, the application of rates as provided in paragraph (a) shall be denied and shipments handled in accordance with provisions under caption of "Billing Rates" and of Rule 10.

◆Will not apply on Sawn Cross Ties consigned to I. C. R. R. Co. or The Y. and M. V. R. R. Co., for company material.

RULES AND REGULATIONS

Rule No.	SUBJECT	INSTRUCTIONS
	Basis for Constructing Combination Rates	Except as otherwise indicated, rates on Lumber and Forest Products (see Note below) carloads; are subject to Rules for Constructing Combination Rates as provided in Agent B. T. Jones' Freight Tariff No. 228, I. C. C. No. U. S. (I. C. R. R. Co. and The Y. and M. V. R. R. Co. Tariff 13617-A), supplements thereto or reissues thereof. **Note** Applies to rates on the following wooden articles in carloads, where commodity rates thereon are published in this tariff: Agricultural implement material, in the rough; Bark, tan; Lumber, rough or dressed; Mine props; Mine rollers; Barrel material, viz.: Staves, heading and hoops; Billets or blocks, round or split; Blocks, paving, creosoted or not creosoted; Bolts or butts, viz.: Heading, shingle or stave; Box material; Crate material; Laths; Logs; Piles or Piling; Poles, telephone and telegraph; Shingles; Spokes, club turned; Ties, cross; Timber, N. O. S.; Vehicle material, in the rough
25	**Change of Ownership of Raw Material or Unmanufactured Products**	(a) A transfer to manufacturers of paid freight bills covering inbound raw material will be permitted only where the ownership of the raw material is also transferred by bona fide sale. A certificate to this effect shall be made in the following form on the face of the paid freight bill: "This is to certify that there has been a bona fide sale to the undersigned of the commodity covered by this paid freight bill." Signed ..... Date ..... (b) The expense bills covering raw material may be used to secure application of rates as authorized by this Tariff where manufactured products are transferred by bona fide sale only when accompanied by certificate in the following form: "This is to certify that there has been a bona fide sale of ..... (insert manufactured product) from ..... (insert name of manufacturer) to the undersigned and such manufactured product or products manufactured therefrom consisting of ..... was forwarded over the ..... (insert I. C. R. R. or The Y. and M. V. R. R.) as indicated below and ..... (insert name of manufacturer), is entitled to application of rates on raw material as authorized in Tariff 692-I, I. C. C. No. 7848, supplements thereto and reissues thereof: Car No. Commodity Weight Date shipment moved (Signature of shipper of manufactured product) (c) When claims are made and certificates of the kind required by paragraph (b) accompany claims, copies of the bills of lading covering such outbound shipments will not be required.
30	**Certificate to be Attached to Claims**	Claims must be accompanied by certificate in the following form: Tender is hereby made to the Illinois Central Railroad Co. or The Yazoo and Mississippi Valley Railroad Co. (as the case may be), of freight bills numbered and dated as specified below for the purpose of securing application of rates as provided in I. C. R. R. Co. or The Y. and M. V. R. R. Co. Tariff No. 692-I, I. C. C. No. 7848, on the commodity covered thereby. This tender is made in good faith and with the guarantee on our part that such rates may legally be applied under the rules of said railroad as published in its Tariff No. 692-I, I. C. C. No. 7848, issued October 27, 1932, or supplements thereto. Freight Bill ..... Pro No. ..... Date ..... Manufacturing Point ..... (Signature of Claimant.) In instances where the shipper at the manufacturing point for commercial reasons forwards shipments from the manufacturing point in the name of another party, firm or corporation, the actual shipper must add to the certificate quoted above the following: "For Commercial reasons the shipment from ..... (insert name of manufacturing point), in car ..... (insert car initial and number), shows consignor as follows: (Signature of the Actual Shipper) **Note**—Where contract and bond made as provided in paragraph (d) of application of re-shipping rates, page 3 herein, certificate must be attached to the tonnage records of the manufacturer.
35	**Minimum Charge**	The minimum charge for carload shipments shall be Fifteen Dollars ($15.00) per car (See Note below.) **Note**—Will not apply on the following commodities: **Forest Products, viz.:** Billets or blocks (round or split); Bolts or Butts, viz: Heading, Shingle or Stave. **Forest Products, viz.:** Logs

RULES AND REGULATIONS

Rule No.	SUBJECT	INSTRUCTIONS
70	**Terminal, Transit and Other Privileges and Charges**	In the absence of specific provisions to the contrary shipments transported under this Tariff will be subject to all terminal charges and allowances relating to: Arbitraries — Diversion — Inspection — Storage Car Rentals — Drayage — Mileage on Private Cars — Switching Car Service — Grading — Milling — Transit Privileges Demurrage — Handling — Reconsignment — Wharfage together with all other privileges, charges and rules which in any way increase or decrease the amount to be paid on any shipment between points named in this Tariff or as the same may be amended or which increase or decrease the value of the service to the shipper as provided in tariffs lawfully on file with the Interstate Commerce Commission. In the absence of specific provisions in this Tariff to the contrary, property destined to points beyond the tracks of Illinois Central R. R. Co. or The Yazoo and Mississippi Valley R. R. Co. is entitled to such privileges, and will be subject to such charges as provided in tariffs and supplements thereto published and lawfully on file with the Interstate Commerce Commission, of the carriers granting the privilege and performing the service.
75	**Time Limit**	(a) Shipments of outbound tonnage must be made within one year from the date of paid freight bill covering inbound movement of rough material, except as provided in paragraph (b) and Notes 1, 2, 3, 4, 5 and 6 below. (b) In the event the shipper operating under the provisions of this Tariff is unable to forward the required tonnage as provided in this tariff, within the time limit named in paragraph (a) but has on hand sufficient rough material or the manufactured product thereof to satisfy tariff requirements as to outbound shipment of all rough material forwarded to the mill point under the terms of this Tariff, the time limit as provided in paragraph (a) will be extended to eighteen (18) months from date of paid freight bill covering inbound movement of rough material under the following conditions: Shippers desiring such extensions must make application to the carrier in writing not less than thirty (30) days prior to the expiration of time limit of freight bills, as provided in paragraph (a), on which such extension is desired. A certified inventory showing the amount of rough material and manufactured product thereof then on hand must accompany such application. Upon receipt of application for extension of time limit the carrier's inspector shall verify such inventory and render invalid for reshipment under the terms of this Tariff such freight bills, if any, as are not represented by rough material or manufactured product thereof then on hand. In making such verification inspector shall take into consideration those upon which the time limit is desired to be extended as well as all other freight bills against which outbound shipments have not been made in accordance with tariff. Freight charges shall be collected on such cancelled freight bills on basis of full local or joint rates applicable to destination of rough material in effect on date of inbound movement. The time limit of such remaining freight bills as are represented by rough material or manufactured product thereof then on hand on basis of ratios named in application of rates, pages 5 and 6, will then be extended to eighteen months from date of such freight bills and the following notation should be made on all freight bills so extended: The time limit for reshipment of rough material represented by this freight bill is hereby extended to eighteen (18) months, under the terms of paragraph (b), Rule 75, I. C. R. R.-The Y. and M. V. R. R. Freight Tariff No. 692-I, I. C. C. No. 7848, supplements thereto or successive issues thereof. Signed.....Inspector **Note 1**—The time limit of freight bills which, under the rules as published herein, expire on and after August 2, 1930, but not later than January 31, 1931, will be extended for a period of six (6) months. **Note 2**—The time limit of expense bills which, under rules as published herein, expire during the period February 1, 1931, to July 1, 1931, inclusive, are hereby extended for a period of six (6) months. **Note 3**—The time limit of expense bills, which under rules published herein, expire with or after July 31, 1931, but not later than January 31, 1932, is hereby extended for an additional period of six months, but in no case beyond the maximum period of three (3) years. **Note 4**—The time limit of expense bills, which, under rules published herein, expire with or after January 31, 1932, but not later than June 30, 1932, is hereby extended for an additional period of six months, but in no case beyond a maximum period of three (3) years. **Note 5**—The time limit of expense bills which, under rules published herein, expire with or after July 1, 1932, but not later than December 31, 1932, is hereby extended for an additional period of six months, but in no case beyond a maximum period of three (3) years. **Note 6**—The time limit of expense bills which, under this rule expire with or after September 17, 1932, but not later than March 17, 1933, is hereby extended for an additional period of six months, but in no case beyond a maximum period of three years and six months.
80	**Substitution of Freight Bills**	The substitution of other freight bills for those previously used and cancelled in connection with logs, flitches, hoop poles, bolts and billets handled under these transit arrangements is not permitted. Except that in case of bona fide error, upon application of the transit user to the Southern Weighing and Inspection Bureau the substitution of proper freight bills and the necessary correction of the transit account will be permitted, subject to the following: (a) The freight bill substituted shall be one that had transit value at the date of movement from the transit point. (b) The freight bill substituted shall be for one that had no transit value in connection with the outbound movement for which surrendered.
85	**Cars, Marked, Capacity, Length, Dimensions or Cubical Capacity of**	For marked capacity, length, dimensions or cubical capacity of cars used, refer to the Official Railway Equipment Register, Agent G. P. Conard's I. C. C.-R. E. R. No. 239, supplements thereto or successive issues thereof.
90	**Exception to Emergency Charges**	Rates in Tariff, as amended, published in cents per car, are not subject to Agent F. L. Speiden's Tariff of Emergency Charges 250-A, I. C. C. 1616, supplements thereto or successive issues thereof.

RULES AND REGULATIONS

Rule No.	SUBJECT	INSTRUCTIONS
40	Minimum and Estimated Weights	(a) Minimum Weights (except where rates are published herein per car) The carload weight on all shipments other than logs is 50,000 pounds, except when the capacity of the car is less, in which case the marked capacity will be the minimum. (b) Minimum Weights (except where rates are published herein per car) The following minimum weights apply on logs: **IN CARS OF** — **THE MINIMUM CARLOAD WEIGHT IS** Less than 40,000 pounds marked capacity — Marked capacity of car (see paragraph (c)) 40,000 pounds or greater capacity — 40,000 pounds (see paragraph (c)) Cars must not be loaded in excess of maximum load limit. (c) Estimated Weights On shipments of logs moving between points where actual weight cannot be ascertained at point of shipments, or at destination, or in transit, the following estimated weights will apply, subject to the minimum weights specified in paragraph (b), owners to furnish invoice or certificate showing the number of feet and kind of logs shipped: Ash 10,000 pounds per 1,000 feet — Gum 10,000 pounds per 1,000 feet Chestnut 10,000 pounds per 1,000 feet — Hickory 14,000 pounds per 1,000 feet Cypress 10,000 pounds per 1,000 feet — Maple 10,000 pounds per 1,000 feet Cottonwood 10,000 pounds per 1,000 feet — Oak 11,000 pounds per 1,000 feet Dogwood 10,000 pounds per 1,000 feet — Poplar 10,000 pounds per 1,000 feet Elm 11,000 pounds per 1,000 feet — Sycamore 10,000 pounds per 1,000 feet (d) In the event there is a deficit between the actual weight and the minimum weight applying in connection with the carload rate to the manufacturing point proper, such deficit shall be charged for on basis of the carload rate lawfully applicable on commodity contained in the car to manufacturing point when for disposition other than for manufacture and reshipment of the product via I. C. R. R. and (or) The Y. and M. V. R. R., as the case may be. In no such case shall the total charges per car be less than would result from the application of the carload minimum weight provided herein at rates published in this Tariff. The provisions of this paragraph apply only in connection with the provisions contained under Heading "Reshipping Rates" on pages 5 and 6 herein. **Note**—On all bills of lading, waybills, transfer slips or freight bills covering shipments of logs, agents must specify kind of logs shipped.
45	Rates on Articles Shipped Out	The rates published in this Tariff apply only when the article shipped out is forwarded from Memphis, Tenn., at full published freight tariff rate. Rates published on pages 10 to 17, inclusive, inbound, do not apply when the article shipped out is forwarded from Memphis, Tenn., on reconsigning or reshipping rates.
50	Commodity Rates From Intermediate Point	Subject to the provisions of Notes 1, 2, 3 and 4 below, from any point of origin from which a commodity rate on a given article to a given destination and via a given route is not named in this Tariff, which point is intermediate to a point from which a commodity rate on said article is published in this Tariff via a route through the intermediate point over which such commodity rate applies to the same destination, apply from such intermediate point to such destination and via such route the commodity rate in this Tariff on said article from the next point beyond from which a commodity rate is published herein on that article to the same destination via the same route. **Note 1**—When by reason of branch or diverging lines there are two or more "next beyond" points, apply the rate from the next point beyond (in this Tariff) which on that article to the same destination via the same route results in the lowest charge. **Note 2**—If the intermediate point is located between two points from which commodity rates on the same article via the same route are published in this Tariff apply via that route from the intermediate point the rate from the next point in either direction which results in the higher charge. In applying this note, if there are two or more next beyond points due to branch or diverging lines, eliminate all such next beyond points except the point from which the lowest rate applies. **Note 3**—If the class rate on the same article via the same route from the intermediate point produces a lower charge than would result from applying the commodity rate under this rule, such commodity rate will not apply. **Note 4**—If there is in any other Tariff a commodity rate on the same article from the intermediate origin point applicable over the same route to the same destination, the provisions of this rule are not applicable from such intermediate origin point.
55	Rates From Stations Not Provided Herein	For rates from stations on Illinois Central R. R., beyond stations shown herein, see I. C. R. R. Co. and The Y. and M. V. R. R. Co. Tariff No. 590-S, I. C. C. No. 7835, supplements thereto or reissues thereof.
60	Shipments From Connecting Lines	Rates shown on pages 10 to 17, inclusive, also apply from junctions of Illinois Central R. R. and The Yazoo and Mississippi Valley R. R. with connecting lines, on shipments originating at points on connecting lines from which no through net rates are published, subject to the rules shown herein.
65	Supervision and Inspection	The traffic handled at the rates and under the rules shown in this Tariff shall be subject to the supervision of an inspector or inspectors who shall have access to the records of the railroads and of the shippers for the purpose of determining the accuracy of such records and of the documents submitted in support of claims for protection of the rates shown in this Tariff. Among other duties, it shall be the duty of the Inspector to: (a) Check, compare and verify the inbound roads freight bills. (b) Check the records of the railroads and shippers for the purpose of determining the actual character and weight of the outbound shipments, in order that the correctness of the claims may be fully shown.

RATES AND CHARGES NAMED HEREIN ARE SUBJECT TO AGENT F. L. SPEIDEN'S TARIFF OF EMERGENCY CHARGES No. 250-A, I. C. C. No. 1616, SUPPLEMENTS THERETO OR SUCCESSIVE ISSUES THEREOF.

Supplement No. 5 to
I. C. C. No. 7748
(Cancels Supplement No. 3)
Supplements Nos. ①1 and 5 contain all changes from the original tariff that are effective on the date hereof
(Supplement No. 4 rejected by the Commission)

THE YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY
ILLINOIS CENTRAL RAILROAD COMPANY
(SOUTHERN LINES)
GULF AND SHIP ISLAND RAILROAD COMPANY, FX 5-A3-A4

SUPPLEMENT No. 5
(Cancels Supplement No. 3)
TO
780-A

Supplements Nos. ①1 and 5 contain all changes from the original tariff that are effective on the date hereof
(Supplement No. 4 rejected by the Commission)

STAMP HERE

DATE RECEIVED

FREIGHT TARIFF
OF
LOCAL AND JOINT RATES
APPLYING ON
LOGS, CARLOADS
(Except Boxwood, Butternut, Cedar, Cherry, Cocobolo, Ebony, Granadilla, Imported Cedar, Ironwood, Lancewood, Lignum Vitae, Mahogany, Rosewood, Sandalwood, Satinwood, Spanish Cedar, Teakwood, Walnut and Vermilion)

BETWEEN STATIONS ON
THE YAZOO AND MISSISSIPPI VALLEY RAILROAD IN LOUISIANA, WEST OF THE MISSISSIPPI RIVER
AND STATIONS ON
GULF AND SHIP ISLAND RAILROAD, ILLINOIS CENTRAL RAILROAD AND/OR THE YAZOO AND MISSISSIPPI VALLEY RAILROAD IN MISSISSIPPI AND LOUISIANA EAST OF THE MISSISSIPPI RIVER
AS PROVIDED HEREIN
WHEN FOR MANUFACTURE AND RESHIPMENT VIA ILLINOIS CENTRAL R. R., THE YAZOO AND MISSISSIPPI VALLEY R. R., AND/OR GULF AND SHIP ISLAND R. R.

CLASSIFICATION

Governed, except as otherwise provided herein, by the Southern Classification No. 50, Agent E. H. Dulaney's I. C. C. No. 44 and by supplements to or successive issues of said publication.

Governed by Agent F. A. Leland's Official List of Open and Prepay Stations No. 47, I. C. C. No. A-12 (I. C. R. R. and The Y. and M. V. R. R. Circular No. 311-V), supplements thereto or successive issues thereof, as to prepay requirements, changes in names of stations, additions and abandonment of stations, billing instructions from or to points not on railroads, restrictions as to non-acceptance or non-delivery of freight and changes in station facilities, except as otherwise shown herein.

ISSUED DECEMBER 16, 1932 **EFFECTIVE JANUARY 18, 1933**

①Special Supplement—Emergency charges.

WILLIAM HAYWOOD,
Freight Traffic Manager,
CHICAGO, ILL.

Issued by
J. L. SHEPPARD,
General Freight Agent,
135 East Eleventh Place,
CHICAGO, ILL.

JOSEPH HATTENDORF,
Assistant Freight Traffic Manager,
CHICAGO, ILL.

(1510)

(300)

(Made in U. S. A.)

(Cancels rates on page 6 of Tariff and page 2 of Supplement No. 3 to the extent shown below)

RATES OF FREIGHT

Applying On

Logs, Carloads, except Boxwood, Butternut, Cedar, Cherry, Cocobolo, Ebony, Granadilla, Imported Cedar, Ironwood, Lancewood, Lignum Vitae, Mahogany, Rosewood, Sandalwood, Satinwood, Spanish Cedar, Teakwood, Walnut and Vermilion, when for manufacture and reshipment via the Illinois Central Railroad, The Yazoo and Mississippi Valley Railroad and/or Gulf and Ship Island Railroad.

(For Application of Rates and Rules Governing, see pages 3 to 6, inclusive, of tariff)

DISTANCES (See Note 1)	In Cents per One Hundred Pounds
5 miles and less	(1)4½
10 miles and over 5	(1)4½
15 miles and over 10	(1)4½
20 miles and over 15	(1)4½
25 miles and over 20	(1)4½
30 miles and over 25	(1)5
35 miles and over 30	(1)5
40 miles and over 35	(1)5½
45 miles and over 40	(1)6½
50 miles and over 45	(1)6½
55 miles and over 50	(1)6½
60 miles and over 55	(1)7
70 miles and over 60	(1)7
75 miles and over 70	(1)8
80 miles and over 75	(1)8
85 miles and over 80	(1)8
90 miles and over 85	(1)8½
100 miles and over 90	(1)8½
120 miles and over 100	(1)8½
125 miles and over 120	(1)9½

DISTANCES (See Note 1)	In Cents per One Hundred Pounds
150 miles and over 125	9½
160 miles and over 150	9½
175 miles and over 160	10
180 miles and over 175	10
190 miles and over 180	10
200 miles and over 190	10
220 miles and over 200	10½
225 miles and over 220	10½
235 miles and over 225	11½
240 miles and over 235	11½
250 miles and over 240	11½
260 miles and over 250	12½
265 miles and over 260	13
270 miles and over 265	13
275 miles and over 270	13
280 miles and over 275	13
300 miles and over 280	13
315 miles and over 300	13½
325 miles and over 315	14

125 miles and over 120			325 miles and over 315		

MISCELLANEOUS RATES

(In cents per car regardless of weight)

For Application of Rates and Rules Governing, see pages 3 to 6, inclusive, of tariff.

Item No.	COMMODITY	FROM	TO	DISTANCES	RATE
(c) 5-B Cancels 5-A	Logs, carload, except Boxwood, Butternut, Cedar, Cherry, Cocobolo, Ebony, Granadilla, Imported Cedar, Ironwood, Lancewood, Lignum Vitae, Mahogany, Rosewood, Sandalwood, Satinwood, Spanish Cedar, Teakwood, Walnut and Vermilion.	Stations on: I. C. R. R. and The Y. and M. V. R. R. in Mississippi. (See Note 1) (L.U.-27-21)	Tallulah, La.	25 miles or less..	1700
				50 miles and over 25	2000
				75 miles and over 50	2250
				100 miles and over 75	2500
				125 miles and over 100	▲2750

Note 1—For list of stations and distances to be used in connection with rates published herein, see I. C. R. R. Tariff No. 36-E, I. C. C. 7614, and The Y. and M. V. R. R. Tariff No. 30-C, I. C. C. No. 7506

▲Reduction.

(c) Will not apply where rates published in Item 5-B or reissues produce a lower charge.

: Rates expire April 1, 1933, unless sooner cancelled, changed or extended.

Rule No.	SUBJECT	INSTRUCTIONS

(a) The rates shown on page 6 herein must not be used in way-billing shipments. All shipments must be waybilled at full joint rates as lawfully on file with the Interstate Commerce Commission; in effect on date of shipment from point of origin and freight charges will be collected by the agent at such rates, upon delivery, except as provided in paragraph (f).

(b) Except as provided in paragraph (f), and upon evidence, as provided for herein, of shipment via the Illinois Central Railroad, Gulf and Ship Island Railroad and/or The Yazoo and Mississippi Valley Railroad of articles manufactured from Logs, at full published freight tariff rates applying from the manufacturing point, proper (see Rule 7, page 4), the freight charges on Logs, into the manufacturing point, will be reduced to the basis of rates shown on page 6 herein, through the Freight Claim Department, on the following ratios:

WHEN ARTICLE SHIPPED IN IS	AND ARTICLE SHIPPED OUT IS	For each pound shipped out from the manufacturing point rates shown on page 6 hereof will be applied on not more than the number of pounds shown below shipped in
Logs	Automobile Body Parts, wooden, knocked down or flat, in the white or creosoted, loose or in packages	5
Logs	Baskets, viz.: Fruit or Vegetable, made of Veneer, not braided, plaited or woven	
	Grape, made of veneer, with solid wooden tops and bottoms, not braided, plaited or woven	
Logs	Boat Oars	5
Logs	Box Material	4
Logs	Chair Stock	3
Logs	Crate Material	4
Logs	Flooring, finished	3
Logs	Golf Head Blocks	5

	Logs	Crate Material	3
	Logs	Flooring, finished	5
	Logs	Golf Head Blocks	5
	Logs	Golf Head Billets	5
	Logs	Hames	4
	Logs	Handles	5
		Handle material, wooden, without metal attachments (not waxed nor primed), not further finished than sawed, bent, planed, sand belted or turned to shape	
Application of rates	Logs	Heading	5
	Logs	Hoops	4
	Logs	Insulator Pins	4
	Logs	Ladder Rungs	3
	Logs	Lumber	5
	Logs	Moulding, other than Ornamental	3
	Logs	Picker sticks	3
	Logs	Plywood	5
	Logs	Porch Columns	5
	Logs	Pumps	4
	Logs	Pump Tubing	4
	Logs	*Sawn Cross Ties	4
	Logs	Shoe Last Blocks	3
	Logs	Shuttle Block Billets	5
	Logs	Skewers	5
	Logs	Tobacco-Hogshead Material, viz.:	5
		Staves, heading, Liners	
	Logs	Staves	5
	Logs	Sucker Rods	4
	Logs	Tie Plugs	4
	Logs	Vehicle Stock	3½
	Logs	Veneer, ¼ of an inch and less in thickness	5
		Veneer, over ¼ of an inch in thickness	5
			3

(c) Claims must be supported by—

Paid freight Bills covering Logs shipped in, and such paid freight bills must clearly indicate the weight of the Logs. If the paid freight bills do not show this information or satisfactory evidence thereof is not furnished, such paid freight bills will not be available for securing protection of rates shown in this Tariff.

Copies of bills of lading showing the articles shipped out via the Illinois Central Railroad, Gulf and Ship Island Railroad and/or The Yazoo and Mississippi Valley Railroad and such copies of bills of lading must clearly indicate the characer and weight of the article shipped out: for example, Lumber, Plywood, etc. If the copies of bills of lading do not show this information or satisfactory evidence thereof is not furnished, such copies of bills of lading will not be available for securing protection of rates shown in tariff.

(Concluded on following page)

*Will not apply on Sawn Cross Ties consigned to I. C. R. R. Co., or The Y. and M. V. R. R. Co. for company material.

4

780-A

RULES AND REGULATIONS Continued

Rule No.	SUBJECT	INSTRUCTIONS
1 (Continued)	Application of rates	(d) The character of the article shipped out must also correspond with the character of the articles shipped in, in the following respect: Paid freight bill for Hardwoods shipped in must be surrendered against articles of Hardwood shipped out, and Soft Woods shipped in against Soft Woods shipped out. (e) For descriptions of Hardwood and Soft Wood, see paragraphs (b) and (c) shown under "List of stations from and to which rates shown herein apply" on page 2. (f) The rates shown on page 6 herein will be applied by Agent upon delivery of shipments of Logs, providing the consignee has duly executed suitable contract supported by bond satisfactory to the Illinois Central Railroad, Gulf and Ship Island Railroad and/or The Yazoo and Mississippi Valley Railroad for the shipment of the manufactured product via those roads at full published tariff rates applicable from the manufacturing point (see Rule 7, page 4), or in the event the manufactured product is not so shipped, for the payment to the Illinois Central Railroad, Gulf and Ship Island Railroad and or the Yazoo and Mississippi Valley Railroad, of the charges on basis of rates applicable to the manufacturing point, on such traffic when for disposition other than for manufacture and reshipment via the Illinois Central Railroad, Gulf and Ship Island Railroad and/or The Yazoo and Mississippi Valley Railroad. (g) The amount of the bond required in the preceding paragraph shall at all times be sufficient to fully cover the consignee's liability to the Illinois Central Railroad, Gulf and Ship Island Railroad and or The Yazoo and Mississippi Valley Railroad. When the amount of the liablity of the consignees to the roads mentioned exceeds the amount of the bond furnished, subsequent shipments of inbound Logs will be charged for at the rates lawfully applicable to point of manufacture, on such traffic when for disposition other than for manufacture and reshipment via the Illinois Central Railroad, Gulf and Ship Island Railroad and/or The Yazoo and Mississippi Valley Railroad until required outbound shipments reducing the liability shall have been made or a satisfactory bond furnished to cover the additional liability. (h) The shipment of Manufactured product outbound from the manufacturing point against the inbound Logs to be on basis of the ratios provided in paragraph (b). (i) Whenever the consignee at point of manufacture elects to use the basis authorized in paragraph (f) of this Note, he must, in consideration of the application of the rates authorized therein, keep upon forms prescribed or approved by the Southern Weighing and Inspection Bureau, or the Western Weighing and Inspection Bureau, record of receipts from all sources, of all disposition and of tonnage on hand of Logs and manufactured products. Further, to furnish affidavit when required as to the accuracy of such records. In the event of failure or refusal to keep such records, the application of rates as provided, in paragraph (f) shall be denied and shipments handled in accordance with provisions of paragraphs (a), (b), (c), (d) and (e).
2	Certificate to be attached to claims	Claims must be accompanied by certificate in following form: Tender is hereby made to the Illinois Central Railroad Co., The Yazoo and Mississippi Valley Railroad Co. and or Gulf and Ship Island Railroad Co. (as the case may be) of paid freight bills numbered and dated as specified below for the purpose of securing application of rates as provided in The Y. and M. V. R. R. Co., I. C. R. R. Co., or G. & S. I. R. R., Tariff No. 780-A, I. C. C. No. 7748 on the commodity covered thereby. This tender is made in good faith and with the specific guarantee on our part that such rates may legally be applied under the rules of said railroads as published in their Tariff No. 780-A, I. C. C. No. 7748 issued October 29, 1931, or supplements thereto. Paid Freight Bills ..... Pro. No. ..... Date ..... Manufacturing Point ..... (Signature of claimant) .....
3	Changes in rates and rules	In the event changes are made in Rates and Rules published herein after the Logs are shipped from points of origin, the Rates and Rules in effect on date of shipment from points of origin will apply.
4	Change of ownership of manufactured products	(a) The paid freight bills covering Logs may be used to secure application of rates as authorized under this Tariff where manufactured products are transferred by bona fide sale only when accompanied by certificate in the following form: This is to certify that there has been a bona fide sale of ..... (insert manufactured product) from ..... (insert manufacturer) to the undersigned, and such manufactured products or products manufactured therefrom consisting of ..... was forwarded over the ..... Railroad consignor (insert name of shipper) and ..... (insert name of manufacturer) is entitled to application of rates as authorized in Tariff ....., supplements thereto or reissues thereof on the tonnage contained in the following cars. Car No ..... Commodity ..... Weight ..... Date Shipment Moved .... (Signature of shipper of manufactured products) (b) When claims are made and certificate of this kind accompany claims, copies of bills of lading covering such outbound shipments will not be required.
5	Minimum charge	The minimum charge for carload shipment shall be Fifteen ($15.00) dollars per car.
6	Joint Rates	The joint rates published herein include all charges for switching, drayage or other transfer services at intermediate interchange points on shipments handled through and not stopped for special services at such intermediate interchange points.
7	Rates on Articles shipped out	The rates shown on page 6, herein apply only when the article shipped out is forwarded from point of manufacture, at full published freight tariff rates. Rates shown on page 6, herein, inbound, do not apply when the article shipped out is forwarded from point of manufacture, on reconsigning, reshipping, proportional or transit rates.
8	Shipments from connecting lines	The rates shown on page 6 herein, also apply from junctions of The Yazoo and Mississippi Valley Railroad, Illinois Central Railroad or Gulf and Ship Island Railroad, with connecting lines, on shipments originating at points on connecting lines from which no through rates are published, subject to the rules herein.

RULES AND REGULATIONS -Continued

Rule No.	SUBJECT	INSTRUCTIONS
9	Combination Rates	The rates shown on page 6 herein, are not subject to Rules for Constructing Combination Rates as provided in Agent B. T. Jones' Freight Tariff No. 228, I. C. C. No. U. S. 1, and by supplements to or successive issues of said publication.
10	Supervision and inspection	The traffic handled at the rates and under the rules shown in this tariff shall be subject to the supervision of an inspector or inspectors who shall have access to the records of the railroads and of the shippers for the purpose of determining the accuracy of the documents submitted in support of claims for protection of the rates shown in this tariff. Among other duties, it shall be the duty of the Inspector to: (a) Check, compare and certify the inbound roads freight bills. (b) Check the records of the railroads and shippers for the purpose of determining the actual character and weight of the outbound shipments, in order that the correctness of the claims may be fully shown.
11	Time Limit	Shipments of outbound tonnage must be made within one year from the date of paid freight bill covering inbound movement.
12	Terminal, transit and other privileges and charges.	In the absence of specific provision to the contrary shipments transported under this Tariff will be subject to all terminal charges and allowances relating to: Arbitraries — Diversion — Inspection — Storage Car Rentals — Drayage — Mileage on Private Cars — Switching Car Service — Grading — Milling — Transit Privileges Demurrage — Handling — Reconsignment — Wharfage together with all other privileges, charges, and rules which in any way increase or decrease the amount to be paid on any shipment between points named in this Tariff or as the same may be amended or which increase or decrease the value of the service to the shipper as provided in tariffs published and lawfully on file with the Interstate Commerce Commission. In the absence of specific provisions in this Tariff to the contrary, property destined to points beyond the tracks of The Yazoo and Mississippi Valley R. R. Co., Illinois Central Railroad Co., and or Gulf and Ship Island Railroad Company is entitled to such privileges and will be subject to such charges as provided in tariffs and supplements thereto published and lawfully on file with the Interstate Commerce Commission of the carriers granting the privilege and performing the service.

		forming the service.
13	Validity of paid freight bills reshipping certificate	In instances where the shipper at the transit point for commercial reasons forwards shipments from the transit point in the name of another party, firm or corporation, the actual transit shipper must add to the reshipping certificate quoted above the following: "For commercial reasons the shipment from..... (insert name of transit point) in car..... (insert car initial and number) shows consignor as follows ..... (Signature of Shipper)
14	Substitution of paid freight bills	The substitution of other freight bills for those previously used and cancelled in connection with Logs, handled under these transit arrangements is not permitted. Except that in case of bona fide error, upon application of the transit user to the Southern Weighing and Inspection Bureau the substitution of proper freight bills and the necessary correction of the transit account will be permitted, subject to the following: (a) The freight bill substituted shall be one that had transit value at the date of movement from the transit point. (b) The freight bill substituted shall be for one that had no transit value in connection with the outbound movement for which surrendered.

6 780-A

RULES AND REGULATIONS—Concluded

Rule No.	SUBJECT	INSTRUCTIONS
15	Minimum and estimated weights	(a) **Minimum Weights**— The following minimum weights apply on logs:

IN CARS OF	THE MINIMUM CARLOAD WEIGHT IS
Less than 40,000 pounds marked capacity	Marked capacity of car. (See paragraph (b):)
40,000 pounds or greater capacity	40,000 pounds. (See paragraph (b).)

Cars must not be loaded in excess of ten per cent above their marked capacity.

(b) Estimated Weights—On shipments of logs, moving between points where actual weight cannot be ascertained at point of shipment, or at destination, or in transit, the following estimated weights will apply, subject to the minimum weights specified in paragraph (b), owners to furnish invoice of certificate showing the number of feet and kind of logs shipped:

Ash	10,000 pounds per 1000 feet	Gum	10,000 pounds per 1000 feet
Chestnut	10,000 pounds per 1000 feet	Hickory	14,000 pounds per 1000 feet
Cottonwood	10,000 pounds per 1000 feet	Maple	10,000 pounds per 1000 feet
Cypress	10,000 pounds per 1000 feet	Oak	11,000 pounds per 1000 feet
Logwood	10,000 pounds per 1000 feet	Pine	10,000 pounds per 1000 feet
Elm	11,000 pounds per 1000 feet	Poplar	10,000 pounds per 1000 feet
		Sycamore	10,000 pounds per 1000 feet

(c) In the event there is a deficit between the actual weight and the minimum weight, applying in connection with the carload rate to the manufacturing point proper, such deficit shall be charged for on basis of the carload rate lawfully applicable on commodity contained in the car to manufacturing point when for disposition other than for manufacture and reshipment of the product via the Illinois Central Railroad, The Yazoo and Mississippi Valley Railroad and/or Gulf and Ship Island Railroad. In no case shall the total charges per car be less than would result from the application of the carload minimum weight provided herein at rates published in Tariff. (See Rule 1, pages 3 and 4.)

agent must specify kind of Logs shipped.

RATES OF FREIGHT

Applying On

Logs, Carloads, except Boxwood, Butternut, Cedar, Cherry, Cocobolo, Ebony, Granadilla, Imported Cedar, Ironwood, Lancewood, Lignum Vitae, Mahogany, Rosewood, Sandalwood, Satinwood, Spanish Cedar, Teakwood, Walnut and Vermilion, when for manufacture and reshipment via the Illinois Central Railroad, The Yazoo and Mississippi Valley Railroad and or Gulf and Ship Island Railroad.

(For Application of Rates and Rules Governing, see pages 3 to 6, inclusive)

DISTANCES	In Cents per One Hundred Pounds	DISTANCES	In Cents per One Hundred Pounds
5 miles and less	4	150 miles and over 125	9½
10 miles and over 5	4	160 miles and over 150	9½
15 miles and over 10	4	175 miles and over 160	10
20 miles and over 15	4½	180 miles and over 175	10
25 miles and over 20	4½	190 miles and over 180	10
30 miles and over 25	5	200 miles and over 190	10
35 miles and over 30	5	220 miles and over 200	10½
40 miles and over 35	5½	225 miles and over 220	10½
45 miles and over 40	6	235 miles and over 225	11
50 miles and over 45	6½	240 miles and over 235	11½
55 miles and over 50	6½	250 miles and over 240	11½
60 miles and over 55	7	260 miles and over 250	12½
70 miles and over 60	7	265 miles and over 260	13
75 miles and over 70	8	270 miles and over 265	13
80 miles and over 75	8	275 miles and over 270	13
85 miles and over 80	8	280 miles and over 275	13
90 miles and over 85	8½	300 miles and over 280	13
100 miles and over 90	8½	315 miles and over 300	13½
120 miles and over 100	8½	325 miles and over 315	13½
125 miles and over 120	9		

TABLE OF DISTANCES

For distances to use in connection with the rates published herein, refer to the I. C. R. R. Co. Tariff 36-E, I. C. C. No. 7014 The Y. and M. V. R. R. Co. Tariff 30-C, I. C. C. No. 7506 and G. and S. I. R. R. Circular G-1082, I. C. C. No. 1151, supplements thereto or successive issues thereof.

(Authority No. A-9257)

[fol. 884] Mississippi Railroad Commission

Regular Meetings First Tuesday Each Month

C. M. Morgan, President, Hattiesburg, Miss.; D. W. Brown, Commissioner, Fulton, Miss.; C. C. White, Commissioner, Jackson, Miss.; J. W. Williams, Secretary, Jackson; M. C. Moore, Rate Expert; N. B. Huey, Asst. Rate Expert; Lillian Runnells, Stenographer.

STATE OF MISSISSIPPI,
County of Hinds:

I, J. W. Williams, do hereby certify that I am Secretary of the Mississippi Railroad Commission and as such am the legal custodian of the records of said Commission and that the foregoing is a true and correct copy of the indicated portion of the afore mentioned tariffs duly filed with the Mississippi Railroad Commission.

Witness my hand and official Seal of the Mississippi Railroad Commission this the 16th day of February 1933.

J. W. Williams, Secretary. (Seal Mississippi Railroad Commission.)

JWW:R.

[fol. 885] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

In Equity. No. 695

[Title omitted]

ANSWER OF UNITED STATES OF AMERICA—Filed Feb. 24, 1933

United States, one of the defendants in the above-entitled case, for answer to the petition filed herein against it answers and says:

I

United States admits for the purposes of this suit that the matters, things and conclusions alleged in paragraphs I to X, inclusive, of the petition are true.

II

For answer to paragraph XI of the petition, United States disclaims any knowledge of the matters therein alleged, and is unable, therefore, either to admit or deny the same, but upon trial of this cause will demand strict proof thereof. Further answering said paragraph XI, United States denies that said order of the Interstate Commerce Commission will result in illegally or unlawfully [fol. 886] jeopardizing or affecting petitioner's business.

III

United States alleges that the matters, things and conclusions set forth in paragraphs XII to XIX, inclusive, of the petition are irrelevant, incompetent and immaterial to any issue which may properly be raised before this Court concerning the validity of said order, and alleges further that said allegations present facts which, even if true, are beyond the jurisdiction of this Court to consider in its capacity as a judicial and not an administrative tribunal. Further answering said paragraph XIX, United States alleges that since the petition herein was filed, said Commission reopened said proceedings, held further hearing and gave full opportunity to petitioner and all other interested parties to present any facts relative to such alleged changes in conditions, economically or otherwise, as might bear upon the validity of the order in question, all of which is set forth and alleged in the supplemental bill of complaint recently filed herein by petitioner.

IV

United States denies that the allegations contained in paragraphs XX and XXI of the petition are either relevant or material to the validity of said order of the Commission.

V

United States, for answer to paragraph XXII of the petition admits that petitioner filed with said Commission its [fol. 887] petition for intervention and further hearing; and affirmatively alleges that said petition was granted by said Commission and further hearings in said proceedings were held and conducted by the Commission, at which petitioner was given full opportunity to present its testi-

mony and argument, all of which is shown and alleged in petitioner's supplemental bill recently filed herein.

VI

Answering paragraphs XXIII to XXV, inclusive, of the petition, United States denies the allegations contained therein, and denies that the Commission's order is unreasonable, arbitrary, invalid or unlawful for the reasons set forth in said paragraphs, or for any of them.

VII

Answering paragraph XXVI of the petition, United States denies that the Commission's said order will cause irreparable injury or any legal damage whatever to petitioner.

Except as herein expressly admitted, United States denies each and every allegation contained in the petition, and in each of the separate paragraphs and sub-divisions thereof.

Wherefore, having fully answered the petition, United States prays that the relief therein prayed be denied and the petition dismissed with costs to the petitioner, and that it have the benefit of such other and further orders, decrees, [fol. 888] or relief as may be just and proper.

Elmer B. Collins, Special Assistant to the Attorney General. Clint W. Hager, United States Attorney.

[fol. 889] *Duly sworn to by Elmer B. Collins. Jurat omitted in printing.*

[fol. 890] [File endorsement omitted.]

In United States District Court

In Equity. No. 695

[Title omitted]

Answer of United States of America to Supplemental Bill of Complaint—Filed Feb. 24, 1933

United States of America, one of the defendants in the above-entitled cause, for answer to the supplemental bill of complaint filed herein against it answers and says:

I

United States admits that the allegations contained in the opening paragraph and paragraph 1 of the supplemental bill are true, with this exception: it denies the conclusion in the first subdivision of said paragraph 1 that the Interstate Commerce Commission "attempted to invade the domain of the State of Florida and to disestablish the scale of lawful rates" therein mentioned. And United States further admits that Exhibit C to the supplemental bill is a true copy of the petition for further hearing mentioned in [fol. 891] the last subdivision of said paragraph 1 as having been filed with the Commission on January 21, 1933, and denied by the Commission on February 8, 1933.

II

For answer to so much of the opening subdivision of paragraph 2 of the supplemental bill as constitutes a re-averment of the matters and things averred in complainant's original bill, United States hereby respectfully refers to, repearts, re-avers and adopts its answer to said original bill.

For answer to subdivision (a) of paragraph 2, United States denies that the conclusion alleged therein is relevant, material or proper as an allegation of fact, and, therefore, neither admits nor denies it.

Answering subdivision (b) of said paragraph 2, United States denies that the facts of record before said Commission lacks any essential or jurisdictional fact necessary to support the Commission's said order, and denies that the order is unlawful for anything alleged in said subdivision of said paragraph.

Answering subdivisions (c) and (d) of said paragraph 2, United States denies that the matters and things therein alleged, even if true, are relevant or material to any issue which may be properly raised before, or decided by, this Court in determining whether said order of the Commission is lawful.

Answering subdivision (e) of said paragraph 2, United States denies that said order of the Commission will result in irreparable injury or any legal damage whatever to complainant.

[fol. 892] III

United States disclaims any knowledge of the allegations contained in paragraph 3 of the supplemental bill, and, therefore, neither admits nor denies them.

IV

United States denies each and every allegation contained in paragraph 4 of the supplemental bill.

Except as herein expressly admitted, United States denies each and every allegation contained in the supplemental bill of complaint, and in each of the separate paragraphs and subdivisions thereof.

Wherefore, having fully answered the supplemental bill of complaint, United States prays that the relief therein prayed be denied and the supplemental bill of complaint and the original petition be dismissed with costs to the complainant, and that it have the benefit of such other and further orders, decrees or relief as may be just and proper.

Elmer B. Collins, Special Assistant to the Attorney General. Clint W. Hager, United States Attorney.

[fol. 893] *Duly sworn to by Elmer B. Collins. Jurat omitted in printing.*

[fol. 894] Recital as to Answer of I. C. C.

Note: (Item No. 35.) By agreement of Counsel and with the consent of the Court the answer of the Interstate Commerce Commission to the supplemental bill of complaint in Case No. 691, Wilson Cypress Lumber Company et al. v. United States et al., was taken as and stands for answer also to the supplemental bill of Complaint in Case No. 690 and 695.

[fol. 895] [File endorsement omitted]

[fol. 896] IN UNITED STATES DISTRICT COURT

In Equity. No. 695

[Title omitted]

PETITION FOR LEAVE TO INTERVENE—Filed Feb. 24, 1933

To the Honorable, the Judges of said Court:

Now comes Atlantic Coast Line Railroad Company, a corporation organized and existing under the laws of the State of Virginia, and respectfully represents unto this Honorable Court as follows:

1

Your petitioner is the railroad company whose rates are referred to in the above mentioned bill. It is engaged in interstate and intrastate transportation by railroad in the States of Florida, Georgia, Alabama, South Carolina, North Carolina, and Virginia. It has about twenty-one hundred (2,100) miles of line in the State of Florida. Its total mile-[fol. 897] age is something in excess of Fifty-one hundred (5100) miles. It is interested in this proceeding and desires to intervene therein for the protection of that interest.

Wherefore, your petitioner prays that it be allowed to intervene in this cause, pro interesse suo.

Respectfully submitted, Atlantic Coast Line Railroad Company, by Alston, Alston, Foster & Moise, Its Attys.

[fol. 898] [File endorsement omitted]

[fol. 899] IN UNITED STATES DISTRICT COURT

In Equity. No. 695

[Title omitted]

ANSWER OF ATLANTIC COAST LINE RAILROAD COMPANY, INTERVENOR—Filed Feb. 24, 1933

To the Honorable, the Judges of Said Court:

Now comes Atlantic Coast Line Railroad Company, intervenor in this cause and hereinafter referred to as "In-

tervenor", and for answer to the petition in this cause says:

I

Intervenor believes it to be true that petitioner is a corporation, organized and existing under the laws of the State of Florida, having its principal office in Jacksonville, and that it is engaged in the business of buying hardwood logs from the owners thereof after the same have been cut in Florida and either transporting the same or causing [fol. 900] them to be transported to its mill in Jacksonville and there manufacturing and selling lumber from its mill. While the said mill is located exclusively on the lines of the Atlantic Coast Line Railroad Company, it is connected with all the other lines of railroad running into Jacksonville, including Seaboard Air Line, Southern Railway System and Florida East Coast Railroad Company, as fully as located thereon. Switching charges are absorbed by each of these roads.

II

Intervenor admits the allegations of paragraph II.

III

Answering paragraph III, intervenor says that at a time antedating 1914, it did establish a scale of rates in Florida for the transportation of logs, which came to be known as the Cummer scale of rates, but denies that same were voluntarily continued in effect until February 9, 1929.

IV

The allegations of paragraph IV are admitted.

[fol. 901]

V

Intervenor admits that the Honorable the Supreme Court of the United States, in the case of State of Florida v. United States, 282 U. S. 194, reversed the findings which this court had previously made sustaining the order of the Interstate Commerce Commission referred to in paragraph IV. The terms and conditions of said reversal will be found in the opinion itself to which reference is made.

VI

Answering paragraph VI. Intervenor did reestablish the Cummer scale of rates on April 10, 1931 giving notice; however, at the same time to shippers and others at interest therein, that the rates under said Cummer scale were unjust and unreasonable and that it was undertaking to have the same set aside and annulled.

VII

Intervenor refers to the report and order of the Interstate Commerce Commission entered in the case of Georgia Public Service Commission versus Atlantic Coast Line Railroad Company, 186 I. C. C. 157 (Docket No. 18364), decided July 5, 1932 for its contents.

[fol. 902]

VIII

The allegations of paragraph VIII of the petition are admitted by this Intervenor.

IX

Intervenor admits the allegations of paragraph IX of the petition.

X

Answering paragraph X of the petition Intervenor avers that this court entered an order on September 14, 1932 suspending the Interstate Commerce Commission's schedule of rates for a period not exceeding sixty (60) days. The order is referred to for its terms.

XI

Intervenor avers that the mill plant at Jacksonville, Florida which is operated by petitioner and which is referred to in paragraphs I and XI of its petition, is not owned by it but that it is leased from another who is the owner. Intervenor has no information as to the number of persons employed in cutting logs in the interior of [fol. 903] Florida for shipment to petitioner's mill. Intervenor is informed and believes that petitioner purchases logs after they have been cut.

Intervenor states that petitioner began operation of its mill in June, 1930 which was while the rates fixed by the Interstate Commerce Commission on logs intrastate in

Florida were in force and which rates are the same as those now involved, and continued to do business with those rates in existence until they were replaced by the rates under the Cummer scale in April, 1931, in the circumstances above set out.

Intervenor alleges that for the period from June 30, 1930 to March, 1931, inclusive, the Buffum Company shipped an average of 9 cars of logs per month over its lines under the scale of rates fixed by the Interstate Commerce Commission. Intervenor cannot, for lack of information, answer as to the number of cars shipped by Buffum Company by truck and water.

[fol. 904] Intervenor says that during the period from April 9, 1931 to August, 1932, inclusive, the Buffum Company shipped over the rails of Atlantic Coast Line an average of 36 cars of logs per month. During the months of September, 1932, its shipments were 39 cars of which 12 cars moved during the latter part of September. From October 1, to October 15, 1932, the Buffum Company shipped by rail over the Atlantic Coast Line 17 cars. This intervenor alleges that during the period from June, 1930 to March, 1931 (when the Interstate Commerce Commission's scale of rates was in force), the Buffum Company shipped into its mill over railroad lines other than the Atlantic Coast Line 114 cars of logs and it also shipped during that period 89 cars of logs into its mills over the Atlantic Coast Line. Intervenor says that the rates under which the above mentioned 114 cars of logs moved into Buffum Company's mills over lines other than Atlantic Coast Line, were practically equivalent to the rates under the scale ordered into effect intrastate in Florida by the Interstate Commerce Commission in its proceeding, Docket No. 18364; so that the scale of rates now under consideration in this cause and prescribed by the Interstate Commission has been proved by actual test by the Buffum Company to be just and reasonable.

This intervenor is unable for lack of information, to admit or deny that about September 12, 1932, in expecta-
[fol. 905] tion that the rates would be increased under orders of the Interstate Commission, the cutting of logs at interior Florida points adjacent to Intervenor practically ceased. It denies that petitioner's mill has stopped operating.

Intervenor denies that any action of the said Buffum Company in operating or not operating its mill has been controlled by the action of Atlantic Coast Line Railroad Company. On the other hand, it alleges that during the period from June, 1930 to March, 1931, when the Interstate Commission's scale of rates was in force, the logs moved to the Buffum mill by lines other than Atlantic Coast Line amounted to 114 cars as compared with 89 cars over Atlantic Coast Line. The rates applicable to such movements of logs on the other lines were substantially higher than the rates under the Cummer scale of rates.

XII

The hearing before the Interstate Commission continued up to July, 1931.

A motion to reopen this case before the Commission was filed by the State of Florida, et al. on August 18, 1932 and was denied on August 25, 1932.

The Commission did order on October 21, 1932 a reopening of this case for the purpose of receiving evidence respecting any change in the rates on logs since the close of the last hearing, the circumstances connected with and the conditions which occasioned such changes; all of which is set out in the order itself which is referred to. That reopened hearing was had on November 21 and 22nd and the Commission handed down its report and order on January 9th, 1933, reaffirming its original report and order. This was done after considering the effect of the matters and things set out in paragraph XII of intervenor's petition. The action of the Commission was founded on ample evidence.

[fol. 906] The railroads have been operating not only under the stress of the depression, but also under the stress of new kind of competition—trucks and busses—with the result that Atlantic Coast Line is operating at a loss, has been operating at a loss for some time. Losses of Atlantic Coast Line and other railroads are so great that a member of the Interstate Commerce Commission in a recent decision has stated that:

"* * * we must recognize the fact that we face a railroad crisis so acute that the Government is called upon to loan money, not only to get the carriers through it, but to

remove so far as possible a menace to financial, insurance, and fiduciary institu-ons, which are heavy holders of the underlying securities of the carriers. The national well-being—directly, bank depositors, insurance-policy holders, public institutions, and credit—has become deeply involved."

Intervenor denies that the allegations of paragraph XII of the petition in this cause correctly states the circumstances of the filing of new tariffs by certain railroads fix-[fol. 907] ing rates on logs charged under "transit rules and regulations."

Intervenor denies that the situations carried by those tariffs are similar to the inbound movement of logs to petitioner's mill and the outbound movement of lumber over the line of the inbound carrier.

It denies that the transit condition is a fiction.

It denies that the rate comparisons set out in paragraph XII accurately represent the relation between those transit rates and the rates under the Cummer scale.

Intervenor avers that a net transit rate operates substantially as follows:

(a) A shipper makes a shipment of rough material, say, logs from point X on the lines of the carrier to point Y on the lines of the same carrier; the latter point being the point at which the rough material is to be manufactured; and known as the transit point.

(b) The shipper pays the local rate on the rough material from point X to Point Y and gets a receipted freight bill therefor, which shows the tonnage, point of origin, [fol. 908] point of destination, the date, the rate and the amount paid. The rate paid by the shipper is not the net transit rate referred to in paragraphs XII, XIII, XIV, XVII, and elsewhere in the petition, but is the regular local rate which is approximately twice as much as the net transit rate under normal loading. The difference between the two rates may be very much greater under extraordinary loading, if excess in proportion is not charged.

(c) The product is manufactured and the shipper ships the manufactured product over the lines of the originating carrier. The carrier charges the regular rate on the manu

factured product from the transit point to the point of destination of the manufactured product.

(d) The shipper pays the freight on the outbound movement and then the carrier recognizes in favor of the shipper a claim against it for the difference between the local rate paid on the shipment of rough material from the point of origin (X) to the transit point (Y) and from the transit rate shown by the filed tariffs from point X to point Y.

[fol. 909] (e) But the shipper is allowed this claim only for such portion of the rough material as has been manufactured. For instance, 200,000 pounds of logs have been shipped. Lumber has been manufactured from only two-thirds of that amount and is shipped out within the time specified in the tariffs, then the shipper must pay the local rate on that rough material which has not been manufactured into lumber and shipped out. The time is limited in the tariff for the shipment of the manufactured product, and in some of the tariffs, bond is required to be given by the shipper for the performance of the transit conditions.

The tariffs require as a condition to acknowledgment of the claim of the shipper against the carrier, varying schedules of percentages of the weight of the rough material shipped in to be manufactured into various products. For instance:

[fol. 910] When logs are manufactured into lumber, the lumber must equal 33⅓% of the weight of the logs shipped. If the logs are manufactured into other kinds of products there are other and different percentages, such as flooring chemically treated, the percentage is 18%; box shooks it must be 33⅓%. There are many of these percentages. So that the comparisons set out in paragraph XII of the petition in this cause do not at all represent the relation between the two classes of rates—local and transit, or—transit and Cummer scale.

XIII

This Intervenor makes the same answer to paragraph XIII of the petition as it has made to paragraph XII.

XIV

Intervenor makes the same answer to paragraph XIV of the petition as it has made to paragraphs XII and XIII.

XV

Intervenor makes the same answer to paragraph XV of the petition as it has made to paragraphs XII, XIII and XIV.

[fol. 911]

XVI

Answering paragraph XVI, of petition, Intervenor alleges that the Cummer scale is a mileage scale of rates applicable to brackets of miles up to 170 miles and applies to minimum weight of 50,000 pounds, with excess in proportion.

The other allegations of paragraph XVI this Intervenor is unable to admit or deny for lack of information.

XVII

Answering paragraph XVII, this intervenor denies that the comparisons set out in paragraph XVII correctly show the relation of the Cummer scale of rates to the scale of rates ordered into effect by the Interstate Commerce Commission; and makes the same answer to the remaining portion of said paragraph as it has made to paragraph XII.

XVIII

The allegation in paragraph XVIII that "such newly reduced logs rates are published in some instances as transit rates and in other instances as local rates" is too general and too indefinite to be answered.

[fol. 912] The rates under the Cummer scale are local rates; not transit rates; and they are not the same kind nor have they the same characteristics as those hereinbefore described as attributable to transit rates.

The Interstate Commerce Commission, in arriving at the conclusion that the rates under the Cummer scale were unjust, unreasonable and discriminatory against interstate commerce, made comparisons of the rates under the Cummer scale with many other kinds of rates and also made a cost study of transporting logs over the Atlantic Coast Line in Florida; and found that the rates under the Cummer scale did not pay the actual cost of such transportation even when taxes and return on investment were not considered. The findings by the Commission were made on

ample evidence and after long and faithful consideration; and were made by the entire Commission.

XIX

Intervenor denies the allegations of paragraph XIX and shows that at the reopened hearing before the Interstate Commission at Jacksonville, Florida on June 10, 11 and 12, 1931, the Railroad Commissioners of Florida were represented by their counsel, accountant and rate expert; that [fol. 913] the Jacksonville Traffic Bureau, Jacksonville Chamber of Commerce and Municipality of Jacksonville were represented and that there were various representatives of shippers including all of the shippers there described as "intervening Florida log shippers"; and also representatives of Standard Container Manufacturers Association and representatives of other crate manufacturers and a representative appeared for Southern Cypress Manufacturers Association.

In the original hearing before the Interstate Commission the Florida Commission appeared through its chairman, its counsel and its accountant.

XX

Answering paragraph XX Intervenor says that the Interstate Commerce Commission is empowered by § 13(4) of the Interstate Commerce Act to remove unlawful discrimination by prescribing "the rate, fare or charge or the maximum or minimum or the maximum and minimum thereafter to be charged," etc.

The order of the Interstate Commission is based upon ample evidence not only justifying the decision but, as Intervenor respectfully avers, upon evidence necessarily requiring the order entered.

[fol. 914] XXI

Intervenor denies the conclusions stated in paragraph XXI of the petition.

XXII

Answering paragraph XXII. Intervenor admits that the petitioner filed a bill described by it by way of intervention in the case of Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, I. C. C. Docket

No. 18364. Said petition was filed after the Commission had entered its order of July 5, 1932 and also after the Commission overruled the motion made August 18, 1932 by the State of Florida, et al. for reopening and reconsideration.

It is respectfully insisted by this Intervenor that this court has no jurisdiction to grant an order restraining the Interstate Commission's order, pending the Interstate Commerce Commission's action on the petition which it has brought and which the petitioner in this cause avers requires "a long time" for its determination.

Such an injunction would work irreparable loss and damage to Intervenor, whose condition has been hereinbefore referred to.

[fol. 915]

XXIII

Paragraph XXIII requires no answer.

XXIV

Intervenor denies the allegations of paragraph XXIV.

XXV

Intervenor denies the allegations of sub-paragraph (1) of paragraph XXV and further says that the Cummer scale of rates is less than one-half of the corresponding interstate scale fixed by the Commission as reasonable. The great volume of evidence offered before the Commission and on which the Commission acted justified and required the order entered by it.

Answering each of the other subparagraphs (2-43, both inclusive) of paragraph XXV, Intervenor denies each and every one of them and for further answer thereto says:

The petition in this cause before the Commission was filed on May 3, 1926. The first hearing was hade thereon at Valdosta, Georgia on October 20, 1926. At said hearing there [fol. 916] appeared three members of the Georgia Public Service Commission: James A. Perry, O. R. Bennett, and W. R. McDonald, and as well the rate expert, E. M. Price. For the Florida Railroad Commission there appeared R. Hudson Burr, A. S. Wells, and E. S. Matthews, members thereof; Fred H. Davis, Attorney-General; and J. H. Tench, Rate expert. There appeared counsel for Cummer Cypress Company, Wilson Cypress Company and Putnam Lumber

Company; representatives of Jacksonville Traffic Bureau, Georgia-Florida Saw Mill Association and Roofer Manufacturers Club of Georgia. Counsel for Southern Pine Association, Brooks Scanlon Corporation; and representatives of Savannah Traffic Bureau, of Board of Trade and City of Savannah, Florida Traffic Association, Seaboard Air Line Railway, Central of Georgia Railroad, Southern Railway, Atlantic Coast Line Railroad Company, Georgia, Southern and Florida Railroad, American Short Line Railroad Association and the Georgia and Florida Railroad.

Much oral evidence was taken and a great many exhibits [fol. 917] were offered. There was a further hearing on January 18-21, 1927 in Jacksonville, Florida. A great deal more evidence was taken, both orally and by exhibits. The Examiners for the Commission made their proposed report and the Commission made its finding, holding that the Cummer scale of rates was unjust, unreasonable, and a burden upon interstate commerce, and made a schedule of rates supplanting the Cummer scale. That schedule was the same schedule made by the Commission in its report and order of July 5, 1932.

Through a great deal of litigation that order became effective on February 9, 1929, it having been sustained by this court. It was then set aside by the Supreme Court of the United States for procedural causes on January 5, 1931 by opinion and order of the court entered in case of State of Florida v. United States, 282 U. S. 194.

The case was reopened before the Commission and further evidence was taken. It was tried practically de novo. [fol. 918] Evidence was taken in the reopened hearing on June 10, 11, and 12, 1931 at Jacksonville, Florida. The hearing was adjourned to Washington, D. C. and further evidence by way of oral testimony and exhibits was given on July 20 and 21, 1931. The case was submitted to the Examiners for the Commission on briefs September 25, 1931. The examiners made a report; exceptions were filed thereto and argued on February 3, 1932. The Commission made its final report and order on July 5, 1932.

Motion to postpone the effective date of that order was made and denied. Motion to reopen the case for rehearing and further consideration was made and denied.

Out of those proceedings come a vast volume of effort, evidence, study and consideration of the matters and things involved.

The Commission has found that

"* * * the operating costs per unit are generally higher in Florida than the average for the defendant's system as a whole either including or excluding Florida."

[fol. 919] It has found that the freight-traffic density in Florida, expressed in terms of revenue ton-miles per mile of road operated, was only 62.8 per cent of that for the system including Florida, and 50.4 per cent of that for the system excluding Florida. Using the year 1929 as illustrative, it found that freight-service train-miles in Florida were 30.63 per cent of those for the system including Florida, and freight-service locomotive-miles in Florida were 30.92 per cent of those for the system, including Florida, while loaded freight car-miles in Florida were 21.25 per cent of those for the system including Florida.

It found that the operating expense for transporting a car of logs intrastate in Florida for the average distance of 81.36 miles was $17.07 against gross revenue of $15.12; that when taxes and return on investment were included the cost was $24.69 against revenue of $15.12.

It has also found that the gross revenue for handling 18,602 cars of logs which moved over the Atlantic Coast [fol. 920] Line in Florida during the period of time beginning February 8, 1929 and ending January 31, 1931, when the rates fixed by the Interstate Commission in this cause were then applicable, was $571,508.94; whereas if those cars had moved under the Cummer scale the aggregate gross revenue would have been $281,225.75. In other words, the Cummer scale of rates produces less than one-half of what the scale fixed by the Commission produces. The scale of rates fixed by the Commission in its order of July 5, 1932 is the same as that established by it for interstate movements of logs from Florida to Georgia and which is now the interstate scale and which is unchallenged.

The Commission in its findings (186 I. C. C. 172) shows for a period of five years, 1926-1930 the total system traffic decline and the decline in the system log traffic in tons and cars.

The Commission found that there were 21,000,000,000 feet of pine timber standing in Florida on July 1, 1931 (21.913 billion feet). It was estimated that the annual production of cypress in Florida is around 200,000,000 feet.

[fol. 921] The Commission found that the defendant's freight-traffic manager testified that if Atlantic Coast Line transported 40 per cent of the logs to be produced in Florida from timber now standing it would lose $2,779,968 if forced to transport that timeber under the Cummer scale of rates; that being the difference between the Cummer scale and the interstate scale, based on average distance, etc.

The Commission found that

"The record as a whole warrants the conclusion that there will be a large Florida intrastate movement of logs over defendant's lines in the future."

The Commission found:

"We find that the circumstances and conditions surrounding the transportation of these logs intrastate in Florida are not on the whole as favorable as the circumstances and conditions surrounding the interstate movement of logs over defendant's lines."

[fol. 922] The Commission affirmed the finding of division 4 (p. 189 printed report July 5, 1932). That is the decision which is reported in 146 I. C. C. at 717. The Commission had in its first finding found that the rates under the Cummer scale were unreasonable and discriminatory and in 146 I. C. C. at page 724 it said:

"It is manifest, we believe, that the intrastate rates assailed, which on the average are less than half of the proposed interstate rates, are less than reasonable compensatory. The rate for 160 miles yields but 4.25 mills a ton-mile, and, based on a l-ding of 60,200 pounds, 12.8 cents a car-mile. They are approximately one-half of the rates prescribed in Rates on Chert, Clay, Sand, and Gravel, 122 I. C. C. 133, on sand and gravel in the southeast and less than one-half of the rates prescribed in the supplemental report in that case, 140 I. C. C. 85, to points in Florida south of the Jacksonville-River Junction line of the Seaboard Air Line."

At page 720 of its original report in this case, the Commission said:

"The record shows 128,163 carloads containing approximately 700,000,000 feet of timber transported under the

Carpenter-O'Brien contract from 1915 to 1926, both inclusive, * * *

The record also shows that intervenor

[fol. 923] "Brooks-Scanlon Corporation on August 31, 1926, owned timber in Wakulla, Jefferson, Madison, Taylor, Lafayette, and Dixie Counties Florida, estimated to contain 1,207,432,000 feet."

The Commission finds in its last report that the production of pine timber in Florida during the six years 1925-1930 totaled 4.564 billion feet and the regrowth in those six years was 2.129 billion feet, or a net depletion of 2.435 billion feet.

The loss resulting from the application of the Cummer scale of rates to this Intervenor, if that scale should remain in effect, would be so great as to completely destroy it.

The above stated facts and others set out in its report have been found by the Commission on ample and undisputed evidence; evidence which consisted not only in the comparison of rates, but also of accounting testimony and on the evidence of men who are producing the largest amount of lumber, shipping the largest amount of logs and who own the largest amounts of timber.

[fol. 924] It is respectfully submitted that the Interstate Commission's finding of unreasonableness of the Cummer scale of rates and of unjust discrimination worked by it against interstate commerce is supported by clear and definite findings which in turn are based upon a mass of uncontradicted evidence sufficient not only to justify but to require the Commission's finding.

Wherefore, this intervenor respectfully prays that the petition of F. S. Buffam Company, Inc. be dismissed and the relief prayed for denied.

Respectfully Submitted, Carl H. Davis, F. B. Grier, W. E. Kay, Alston, Alston, Foster & Moise, Attys. for A. C. L. R. R.

Feb. 24, 1933.

[fol. 925] *Duly sworn to by J. W. Perrin. Jurat omitted in printing.*

[fol. 926] [File endorsement omitted]

[fol. 927] IN UNITED STATES DISTRICT COURT

No. 695. In Equity

[Title omitted]

MOTION TO DISMISS OF ATLANTIC COAST LINE RAILROAD COMPANY, INTERVENOR—Filed Feb. 24, 1933

To the Honorable the Judges of the United States District Court for the Northern District of Georgia:

Now comes the Atlantic Coast Line Railroad Company, intervenor in the above mentioned cause, and moves to dismiss the petition of the petitioner in this case and for grounds of motion says:

A

There are pending before this court two other bills on the same subject matter (Nos. 690 and 691). These bills were brought by parties to the proceedings before the Interstate Commerce Commission. F. S. Buffum Company, Inc. was not a party to such proceedings. Its rights, if any it has, should be enforced by intervention in one or the other of the bills already filed.

[fol. 928]

B

Petitioner shows no adequate grounds for granting the relief prayed for.

C

The grounds for relief set up by petitioner include the allegation that important and vital changes have occurred since the hearing before the Interstate Commerce Commission as reported in 186 I. C. C. 157; that the knowledge is common that basic commodity prices persist at new low levels; that the reduction in railroad freight and passenger traffic, due to the rapid growth of motor vehicle and water competition has caused the railroad lines generally to cease their attempts to increase rates to make up for lost traffic and to inaugurate many widespread and drastic reductions in freight rates as the effective means of increasing their traffic and revenues in recognition of the fact that the price

of transportation must follow the general price level of the basic commodities transported.

The petitioner shows that those matters are not for consideration by this court in the first instance. They are for consideration by the Interstate Commerce Commission and until the Interstate Commerce Commission shall have considered the same and found thereon, this court has no jurisdiction over them.

[fol. 929]

D

The said petition sets up a number of traiffs filed by railroads other than the Atlantic Coast Line Railroad Company setting up schedules of rates for hauling logs interstate and those rates are alleged to be on a parity with or approximately on a parity with the intrastate rates on logs in Florida over the Atlantic Coast Line known as the Cummer scale of rates, and which were complained of in the proceeding before the Interstate Commerce Commission in its docket No. 18364; and that those rates under the schedules filed in August, 1932, have become effective.

Petition shows that this subject matter is not for consideration by this court in the first instance, but that the same is for consideration by the Interstate Commerce Commission and until said Commission shall have acted thereon, this court has no jurisdiction to act thereon.

E

Petition shows that said rates are in many instances transit rates; that is, they are rates on unmanufactured material shipped to points of manufacture and the manufactured product is to be shipped over the same railroad [fol. 930] line which brought the unmanufactured product to the point of manufacture, which is called the transit point; the transit rate is not the only reward of the carrier for the haul to the transit point.

The rates under the Cummer scale are not transit rates. Transit rates are usually about one-half of local rates.

It is for the Interstate Commerce Commission primarily to pass upon those facts and until the Commission shall have passed upon them, the court has no jurisdiction over the subject matter.

F.

Petitioner's petition shows that it began its business of manufacturing logs at the time when the Cummer scale of rates was not in operation, and when the rates fixed by the Interstate Commission in the order complained of were in effect, and which the litigation over the subject matter of rates was under way, and that the restoration of the rates prescribed by the Commission work no injury to the petitioner nor does it work any hardship upon it.

This Intervenor respectfully prays that the petition of petitioner in this cause be dismissed.

Respectfully submitted,

Carl H. Davis, F. B. Grier, W. E. Kay, Alston, Alston, Foster & Moise, Attorneys for Atlantic Coast Line Railroad Co.

[fol. 931] [File endorsement omitted]

[fol. 932] IN UNITED STATES DISTRICT COURT

No. 695

[Title omitted]

MOTION OF ATLANTIC COAST LINE RAILROAD COMPANY TO DENY MOTION OF F. S. BUFFUM COMPANY, INC., TO FILE SUPPLEMENTAL BILL—Filed Feb. 24, 1933

Now comes Atlantic Coast Line Railroad Company, intervenor in the above stated cause, and respectfully moves this court to deny the motion of F. S. Buffum Company, Inc., to file a supplemental bill of complaint in this cause; and, if the said motion to file said supplemental bill be allowed, it moves the court to deny the relief sought therein, and for grounds of motion says:

1

The additional matters set up in said supplemental bill are not sufficient to justify this court in granting the relief prayed, for that:

[fol. 933] (a) The supplemental bill which the plaintiff proposes filing shows that all the matters and things therein

mentioned have been considered by the Interstate Commerce commission which reopened its order and report of July 5, 1932 for the purpose of receiving and considering evidence as to the same; and that upon sufficient evidence, the Interstate Commerce Commission has found that the matters and things set up in said supplemental bill do not warrant the changing of the decision made by said Commission in said report and order of July 5, 1932, in its docket No. 18364.

(b) The record in this proceeding shows that F. S. Buffum Company, Inc., filed its petition with the Interstate Commerce Commission in October 1932, praying that the Commission reopen the proceeding in its docket No. 18364, for further hearing, and stay its order of July 5, 1932, pending rehearing and reconsideration as provided by the Interstate Commerce Act. The Atlantic Coast Line Railroad Company filed its response to said petition of F. S. Buffum Co. Inc.

(c) The Commission by its order of October 21, 1932 reopened said proceeding and rehearing was had thereon on November 21-22, 1932. A large amount of additional evidence was taken and arguments had at said rehearing. [fol. 934] By its report and order entered January 9, 1933, the Commission reaffirmed its previous findings and orders; and on full and ample evidence determined the issues in this cause against the complainant herein. The action of the Commission was after due consideration of all of the evidence and arguments offered at said rehearing.

(d) Thereupon the said F. S. Buffum Company, Inc. filed another petition with the Interstate Commission for postponement of the effective date of the Commission's orders of July 5, July 28, 1932 and January 9, 1933; and that the proceeding be reopened for further hearing and consideration. The said petition was considered by the Commission and denied by its order entered February 7, 1933.

(e) The record shows that like petitions have been filed by Wilson Cypress Company and Wilson Lumber Company of Florida and by the State of Florida and the Florida Railroad Commission; and that said petitions have been denied by order of the Commission entered February 13, 1933.

2

The record in this proceeding, including the plaintiff's supplemental pleadings shows that the action of the Interstate Commerce Commission was based on ample, relevant [fol. 935] and controlling testimony; and that the Cummer scale of rates have been determined to be, and are, unjust, unreasonable and confiscatory. These proceedings are in effect efforts to require the Atlantic Coast Line Railroad Company to continue in operation rates which are unjust, unreasonable and confiscatory.

3

This respondent respectfully prays that the motion of F. S. Buffum Company to file said supplemental bill of complaint be denied; and if the same be allowed, that the prayers thereof be denied; and that the order of the Interstate Commerce Commission of July 5, 1932 as amended July 28, 1932, be allowed to go into effect on February 25, 1933 as ordered by the Interstate Commerce Commission.

Respectfully submitted,

Carl H. Davis, F. B. Grier, W. E. Kay, Alston, Alston, Foster & Moise, Attorneys for Atlantic Coast Line Railroad Co.

February 24, 1933.

[fol. 936] [File endorsement omitted.]

[fol. 937] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF ATLANTIC COAST LINE RAILROAD COMPANY TO SUPPLEMENTAL BILL OF COMPLAINT—Filed Feb. 24, 1933

To the Honorable the Judges of the United States District Court:

Now comes Atlantic Coast Line Railroad Company, intervenor in the above stated case and answers the supplemental bill of complaint, and for answer, says:

1

Intervenor admits that the Buffum Company filed its original bill as is set out in paragraph 1 of the supple-

mental bill. It denies that the Interstate Commerce Commission, by its order of July 5, 1932, attempted to invade the domain of the State of Florida, and alleges that said Commission after long, patient and unprecedented amount of hearings and considerations, determined that a certain scale of rates on certain kinds of logs moving over the At- [fol. 938] lantic Coast Line Railroad Company for distances up to 170 miles, is unjust, unreasonable and discriminatory against interstate commerce; and the said Commission proceeded to fix a scale of rates to be applied to such transportation of logs, in lieu thereof, which the Commission determined to be just and reasonable. The Commission acted under the authority conferred upon it by the Commerce Act with amendments thereto, which said Act was adopted in pursuance of the commerce clause of the Constitution of the United States. Said commerce clause of the Constitution of the United States and the acts made in pursuance thereof, are superior to the Constitution and laws of the State of Florida. Said proceeding had been under consideration by the Commission for almost seven years.

This intervenor admits that this court on September 14, 1932 entered an order of suspension referred to in paragraph 1 of the supplemental ball; and it admits that no final judgment or decree has been entered by this court in either of the cases therein referred to. It admits that the Interstate Commission on October 21, 1932 reopened the proceeding before it in its docket No. 18364 for the purposes set out in said supplemental bill. A hearing was had on said reopened proceeding on November 21-22, 1932 and the Com- [fol. 939] mission made its second report on January 9, 1933, reaffirming the findings made by it in its previous report of July 5, 1932, and vacated its order of October 21, 1932 suspending the order of July 5, and ordered that thereafter its said order of July 5, 1932 as amended by order of July 28, 1932, "shall remain in full force and effect until further order of the Commission from February 11, 1933." The latter date was later changed to February 25, 1933.

Intervenor admits that on January 21, 1933 complainant filed its petition with the Interstate Commission, seeking to postpone the effective date of said order and praying for further hearing and reconsideration and on February 7, 1933, the Commission denied said petition.

Under the rules of the Interstate Commerce Commission a second application for rehearing by the same party upon

the same grounds as a former petition or application which has been considered and denied will not be entertained. Intervenor further alleges that the said petition before the Commission was without merit.

[fol. 940] 2

Answering paragraph 2 of said supplemental bill, intervenor says that said supplemental bill undertakes to set forth certain of the contentions of the aforementioned petition for rehearing which was filed by this complainant with the Interstate Commerce Commission on or about January 21, 1933, referred to in paragraph 1 of said supplemental bill. The petition itself is referred to.

3

Answering paragraphs 3 and 4 of said supplemental bill, this intervenor denies the allegations of each of said paragraphs.

Wherefore, respondent having answered the allegations of said supplemental bill, prays that the same be dismissed and the prayers thereof be denied; that the injunction and restraining order prayed for in said supplemental bill be refused and that this respondent have such other and further relief as may be meet and proper.

Carl H. Davis, F. B. Grier, W. E. Kay, Alston, Alston, Foster & Moise, Attorneys for Atlantic Coast Line Railroad Co.

February 24, 1933..

[fol. 941] *Duly sworn to by J. W. Perrin. Jurat omitted in printing.*

[fol. 942] [File endorsement omitted]

[fol. 943] IN UNITED STATES DISTRICT COURT

No. 695

[Title omitted]

PETITION OF GEORGIA PUBLIC SERVICE COMMISSION FOR LEAVE TO INTERVENE IN THE ABOVE STATED CAUSE—Filed Feb. 24, 1933

To the Honorable the Judges of the United States District Court:

Now comes Georgia Public Service Commission, and respectfully represents unto this Honorable Court that it was

the petitioner before the Interstate Commerce Commission in the proceeding in its Docket No. 18364, out of which the reports and orders of the Interstate Commission complained of in this proceeding originated; and prays to be allowed to intervene in this cause.

Respectfully submitted, Georgia Public Service Commission, by J. J. E. Anderson, Special Atty.

[fol. 944] [File endorsement omitted]

[fol. 945] IN UNITED STATES DISTRICT COURT

No. 695

[Title Omitted]

MOTION OF GEORGIA PUBLIC SERVICE COMMISSION, INTERVENER, TO DENY THE MOTION OF F. S. BUFFUM CO. INC., TO FILE SUPPLEMENTAL BILL OF COMPLAINT.—Filed Feb. 24, 1933

To the Honorable the Judges of the United States District Court:

Now comes Georgia Public Service Commission, intervenor, and respectfully moves this court to deny the motion of F. S. Buffum Company, Inc. to file a supplemental bill of complaint in this cause; and, if the said motion to file said supplemental bill be allowed, it moves the court to deny the relief therein sought, and for grounds of motion says:

1

The proceedings in this case show that all of the matters and things which are set out in the supplemental pleadings have been considered by the Interstate Commerce Commission which reopened its order and report of July 5, 1932 for the purpose of receiving and considering evidence as to the same; and that upon sufficient evidence, the Interstate Commission has found that the matters and things set out in [fol. 946] said supplemental bill do not warrant the changing of the decision made by said Commission in said report and order of July 5, 1932, in its Docket No. 18364.

2

The record in this proceeding in this court, including plaintiffs' supplemental pleadings shows that the action of the Interstate Commission was based on ample, relevant and controlling testimony; and that the Cummer scale of rates has been determined to be unjust, unreasonable and confiscatory.

3

This intervenor respectfully prays that the motion to file said supplemental bill be denied, and if the same be allowed, that the prayers thereof be denied; and that the order of the Interstate Commerce Commission of July 5, 1932, as amended July 28, 1932, be allowed to go into effect on February 25, 1933, as ordered by the Interstate Commission.

Respectfully submitted, Georgia Public Service Commission, by J. J. E. Anderson, Special Atty.

February 24, 1933.

[fol. 947] [File endorsement omitted]

[fol. 948] IN UNITED STATES DISTRICT COURT

No. 695

[Title omitted]

ANSWER OF GEORGIA PUBLIC SERVICE COMMISSION, INTERVENER, TO SUPPLEMENTAL BILL OF COMPLAINT—Filed Feb. 24, 1933

To the Honorable the Judges of the United States District Court:

Now comes Georgia Public Service Commission, intervenor in the above stated cause, and without waiving its motion that the court deny the motion of F. S. Buffum Company, Inc. to file said supplemental bill and its motion to dismiss said supplemental bill if the same should be filed, answers the same and for answer says:

1

This intervenor does not deem it necessary to answer the various allegations of said supplemental bill in detail. Intervenor states that the findings of the Interstate Commerce Commission in its report of August 2, 1928, and in its report on the reopened proceedings of July 5, 1932, and in its report and order on the second reopened hearing, of January 9, 1933, in this proceeding, known as its Docket No. 18364, are all based on ample and controlling evidence, much of which is wholly uncontradicted.

[fol. 949] 2

The findings of the Interstate Commission in said hearings represent the legislative action of the Commission on facts submitted to it after due notice to all parties concerned and in which all of the parties were permitted to offer evidence, to file briefs and to make arguments. All of the matters were considered with painstaking care over a long period of time. The Interstate Commission's findings on those facts are conclusive.

The Interstate Commission in its first report in this cause of August 2, 1928 established not only certain intrastate rates on logs for application in Florida, but also interstate rates for the transportation of the same kind of logs between points in Florida and Georgia. Those intrastate rates have since been reaffirmed by the Interstate Commission, and there has been no contest over the interstate rates.

This intervenor avers that there is, in its judgment, no reason why the intrastate rates involved in this proceeding on logs over six feet in length, in Florida, should differ from interstate rates on the same kind of logs moving from points in Florida to points in Georgia; and that as hereinbefore stated, the said interstate rates have not been contested.

[fol. 950] 3

Intervenor represents that this situation has been an unsettled one for about eight years now, and caused intervenor to suspend on the 25th day of May, 1925, a schedule of intrastate rates in Georgia which it had issued on April 15, 1925. That schedule of rates was comparable to and

almost in exact conformity with the interstate rates put into effect by the Interstate Commission in this proceeding, applicable to the transportation of certain kinds of logs between points in Florida and points in Georgia.

4

This intervenor prays that the injunction prayed for in said supplemental bill be denied and that the order of the Interstate Commerce Commission of July 5, 1932 as amended July 28, 1932 be allowed to become effective February 25, 1933.

Respectfully submitted, Georgia Public Service Commission, by J. J. E. Anderson, Special Atty.

February 24, 1933.

[fols. 951 & 952] IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

In Equity. No. 690

STATE OF FLORIDA AND EUGENE S. MATTHEWS, MAMIE EATON-GREENE, AND TUCKER SAVAGE, as and Constituting FLORIDA RAILROAD COMMISSION, Complainants,

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, Respondents

Petition for Injunction

In Equity. No. 691

WILSON CYPRESS COMPANY AND WILSON LUMBER COMPANY OF FLORIDA, Complainants,

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, Respondents

Petition for Injunction

In Equity. No. 695

F. S. Buffum Company, Inc., Complainant,

vs.

United States of America and Interstate Commerce Commission, Respondents

Order Consolidating Causes—Filed Feb. 24, 1933

It appearing that the foregoing bills attack the same orders of the Interstate Commerce Commission and involve the same subject matter and depend upon the same evidence, all parties consenting, it is ordered that they be consolidated into one bill under the style first stated above, and that the case hereafter proceed as a single cause.

This 24th day of February, 1933.

Samuel H. Sibley, Circuit Judge. E. Marvin Underwood, District Judge. Louie W. Strum, District Judge.

[File endorsement omitted.]

[fol. 953] [File endorsement omitted]

In United States District Court

In Equity. Nos. 690, 691 and 695

[Title omitted]

Consolidated Petitions for Injunction

Stipulation as to Record—Filed July 26, 1933

(A). Whereas, the complainants by and with the consent of all parties, did file in evidence in this Court a printed transcript of the record in the case of State of Florida, et al., vs. United States of America, et al., reported in 282 U. S., at page 194, instead of a certified copy of the record in the proceedings had before the Interstate Commerce Commission in its Docket No. 18364, entitled, "Georgia Public Service Commission versus Atlantic Coast

Line Railroad Company", prior to said decision of the Supreme Court of the United States, said printed transcript containing a copy of the record (including the testimony and evidence in said proceedings before said Interstate Commerce Commission in said Docket 18364) prior to said decision of said Supreme Court; and,

[fol. 954] (B). Whereas, the complainants did offer in evidence before the District Court in the above entitled consolidated causes a certified full copy of the transcript of all testimony and evidence before said Interstate Commerce Commission in all of the re-opened proceedings in its said Docket 18364, being all testimony and evidence in said Docket 18364 not comprehended in said printed transcript of record described in Paragraph (A) above; and,

(C). Whereas, the testimony comprehended in said re-opened proceedings described in Paragraph (B) above has been reduced to narrative form, pursuant to Equity Rule 75; and

(D). Whereas, it is in the interest of economy that the original record of the District Court in the above entitled consolidated causes instead of a transcript thereof be transmitted to the Supreme Court of the United States on this appeal.

Now, therefore, it is stipulated and agreed by and between the parties as follows:

1. That the printed transcript of the record in the case of State of Florida, et al., versus United States of America, et al., and companion cases, numbers 16, 17 and 18, October Term, 1930, in said Supreme Court, the opinion in which is reported in 282 U. S. 194, et seq., comprising the proceedings before said Interstate Commerce Commission in its said Docket 18364 prior to the time of said decision, and now on file in this Court, be transmitted to the Supreme Court of the United States instead of a transcript thereof and instead of a transcript of said proceedings before said Interstate Commerce Commission prior to said decision of said Supreme Court.

[fol. 955] 2. That the within and attached volume of condensed and narrative statement of testimony constitutes a true and correct transcript in condensed and narrative

statement form of all the testimony before said Interstate Commerce Commission in its said Docket 18364, in said re-opened proceedings, subsequent to said decision of said Supreme Court, and contained in said certified full copy thereof so offered and received in evidence as aforesaid and now on file with the Clerk of the District Court. That the Clerk of the above entitled District Court shall transmit to the Supreme Court of the United States, the within and attached volume of condensed and narrative statement of such testimony in lieu of the certified full copy of such testimony or a transcript thereof.

3. That the above entitled District Court may direct the original record (including all pleadings, evidence and exhibits and other proceedings) to be transmitted to the Supreme Court of the United States on this appeal, except that the printed transcript of record in the State of Florida, et al., vs. United States of America, et al., described in Paragraph 1 above, shall be transmitted with and as a part of said record as provided in Paragraph 1 above and except that the attached volume of condensed and narrative statement of such testimony shall be transmitted to said Supreme Court of the United States as a part of said record, in accordance with Paragraph 2 above, instead of the certified full copy of such testimony.

This July 26th, A. D. 1933.

Cary D. Landis, Attorney General of the State of Florida. Elmer B. Collins, Special Assistant Attorney General of the United States. T. T. Turnbull, Special Counsel, Florida Railroad Commis- [fols. 956 & 957] sion. J. Stanley Payne, of Counsel for Interstate Commerce Commission. J. V. Norman, R. H. Hill, August G. Gutheim, H. P. Adair, C. G. Ashby, of Counsel for Wilson Cypress Company and Wilson Lumber Company of Florida. W. E. Kay, Carl H. Davis, F. B. Greu, Robert C. Alston, Alston, Alston, Foster & Moise, of Counsel for Atlantic Coast Line Railroad Company, Intervener. Julian E. Fant, F. C. Hillyer, of Counsel for F. S. Buffum Lumber Company. J. J. E. Anderson, of Counsel for Georgia Public Service Commission, Intervener.

[fol. 958] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

In Equity. Nos. 690, 691 and 695

STATE OF FLORIDA ET AL., Complainants;

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Atlantic Coast Line Railroad Company, Intervenor, Respondents

Consolidated Petitions for Injunction

Findings of Fact and Conclusions of Law—Filed Feb. 24, 1933

Three bills were filed against the United States and Interstate Commerce Commission, one by the State of Florida and the Florida Railroad Commission, another by Wilson Cypress Company and Wilson Lumber Company, and the third by F. S. Buffum & Co., Inc. Each upon similar allegations seeks to set aside and enjoin an order of the Interstate Commerce Commission made July 5, 1932, and amended July 28, 1932, whereby rates were prescribed for intrastate carload shipments in Florida of logs of certain classes conforming to rates established as reasonable for like shipments in interstate commerce between Florida and Georgia. The Atlantic Coast Line R. R. Co., the carrier whose rates were involved, intervened. After the grant of an order suspending the operation of the rates the bills were by consent consolidated and heard before a court of three judges on the pleadings and on the evidence submitted.

FINDINGS OF FACT

The attacked order of the Commission is its final judg- [fol. 959] ment on a proceeding instituted in 1926 by the Georgia Public Service Commission to which the complainant and intervenor in the present bills became parties. The then existing interstate rates on logs between Florida and Georgia were complained of, and the Florida intra-

state rates referred to as the Cummer Scale were attacked as causing undue prejudice to persons and places in Georgia in their commerce with Florida, and unjust discrimination against interstate commerce under § 13 of the Interstate Commerce Act. After lengthy hearings, on Aug. 2nd, 1928, reasonable interstate rates were fixed, and upon a general finding that the intrastate rates in question caused discrimination against interstate commerce an intrastate rate was prescribed to conform to the new interstate rates. 146 I. C. C. 717. On attack in this court against that part of the order fixing the intrastate rate it was upheld as justified for the removal of discrimination against persons and places in Georgia by confining its application to north Florida. 30 Fed. (2d) 116. The order was, however, clarified by the Commission so as to require its application to the entire State, and upon further attack it was upheld as proper to remove a discrimination against the general interstate commerce of the carrier in that the State rates were so low as to be unremunerative and to burden the revenues of the carrier. 31 Fed. (2d) 580. On appeal the Supreme Court declined to consider the evidence but reversed the judgment because there were not distinct findings by the Commission of the facts going to show such discrimination by a burden on revenues, the Court holding that the general finding that there existed a discrimination against interstate commerce in the language of § 13(4) of the Act was insufficient to authorize the Commission to [fol. 960] exercise its powers under that section; but it was suggested that such findings might yet be made upon proper evidence. 282 U. S. 194. This court accordingly entered its decree setting aside and annulling the portion of the order complained of. Thereupon the Georgia Public Service Commission and the Atlantic Coast Line R. R. Company on due notice to all parties, including the present complainants, moved the Interstate Commerce Commission to reopen the case before it, which over objection was done, and much new evidence was added to that previously taken. A motion was made by the present complainants at the beginning of the hearing to dismiss the proceedings as respects any issue of burden on the revenues of the carrier, and to exclude all evidence directed to that contention. The motions were overruled by the examiner, and again by the

full Commission, which after argument made an elaborate and lengthy report of its findings, put aside the question of undue prejudice by the State rates to persons and places in Georgia as unnecessary to be decided, but held the rates to be burdensome on the interstate carrier's revenues and thus a discrimination against interstate commerce, which it removed by again prescribing under § 13(4) of the Act future State rates to conform to the interstate rates which it had established as reasonable. 186 I. C. C. 157.

We find the conclusions of fact in the Commission's report to be well supported by the evidence, and such as we would ourselves make therefrom. Referring to that report for details we summarize the ultimate facts most material to the present issues. The State rates known as the Cummer Scale were voluntarily established in substance in 1903 and 1904 by Jacksonville & Southwestern R. R. Co., when railroad and timber to be transported were [fol. 961] owned by the same interests. The rates were inherited by the Atlantic Coast Line R. R. Co., on purchasing the railroad involved, and were by it applied as carload rates over all its lines in Florida in 1914. The Florida Railroad Commission at the time asserted that it did not approve the rates though perforce it allowed them, considering them too low and even confiscatory if involuntarily enforced. They apply on no other railroad in Florida. In 1928 and in 1932 comparisons of these rates with other rates on logs and on similar traffic in the same and neighboring territories showed them to average less than half of most other comparable interstate and intrastate rates, and to be much the lowest of any of them. They are about one-half the rates fixed by the Interstate Commerce Commission for interstate traffic in the same logs in substantially the same territory. On the question of the cost of the service figures were considered which showed the average cost of hauling logs over the Coast Line system, exact figures for the particular traffic in Florida not being available. But it appeared that the cost of the service in Florida was probably higher than elsewhere. It was found that there was no profit but an out-of-pocket loss to the carrier in the log traffic under these rates, not considering taxes and return on the investment, and that consequently there was no contribution to the maintenance of the carrier as an efficient instrumentality of commerce, but

a drain upon it. The total amount of this drain before 1929 was not found, nor could it be approximated from the evidence. But for the two years, 1929 and 1930, when the interstate rates fixed by the Interstate Commerce Com- [fol. 962] mission were enforced, the log traffic under them was 18,602 cars and the gross revenue from this intrastate traffic was $571,508.94, whereas if the Cummer Scale had been applied it would have been $281,225.75. Although the traffic fell off greatly during this period it is found to be more due to the universal depression in business and to the moving of mills to the timber than to the raise in rates, because there was no substantial increase after the Cummer rates were restored following the decision of the Supreme Court above referred to. Abundant available timber still exists in Florida, and is being rapidly reproduced, so that the future traffic will likely amount to at least 7,431 cars per year, and the average gross revenue on it under the new rates will be more than $100,000.00 per year greater than the Cummer Scale would yield, thus converting a loss on the business into a profit of that approximate amount. As showing that the carrier as an instrumentality of interstate commerce cannot afford to absorb the loss under the Cummer Scale, or to forego the support to be derived from the new scale, it is found that the carrier's net return on its investment is steadily falling from year to year, and in 1930 was only 2.54%. On these findings the general finding was made that the Cummer rates are and in future will be unjustly discriminatory against interstate commerce, and that such unjust discrimination can and should be removed by rates not less than the scale prescribed for interstate commerce. Pending this litigation in October, 1932, the Commission reopened its order and took further evidence which showed that many voluntarily reduced rates had been established since the order by other carriers on low-grade traffic in raw materials comparable to the log rates in dispute, in the western part of [fol. 963] the southern territory and in southwestern territory. It found, and the evidence well warranted the finding, that the reductions were a temporary experiment made in the effort to recapture traffic which had been taken away by trucks, and generally the lowered rates carried an obligation that the manufactured article should also be moved by the carrier making the rate. The experiment has met

with but little success. No such rates exist in the Florida territory here involved, nor is truck competition there such as to make unremunerative rates judicious as likely to improve net revenues. On January 9th, 1933, the Commission reaffirmed its order of July 5th, 1932.

CONCLUSIONS OF LAW

We are of opinion that the particular findings are sufficient to support the general finding of unjust discrimination by the State rates against interstate commerce by undue burden on the interstate carrier's revenues, and to [fol. 964] justify an order removing the discrimination by establishing the new rate prescribed.

The contention is vigorously renewed that the proceeding before the Commission never was one in which a burden by the State rates on the revenues of the carrier was made an issue, so that the Commission could properly so find and on that ground prescribe a State rate under § 13(4) of the Act. We adhere to the views expressed in our former decisions, 30 Fed. (2d) 116: 31 Fed. (2d) 580. It is true that the Georgia Public Service Commission in its original complaint did not ask that the Florida State rates be raised, and it rather preferred that interstate rates should be lowered, but the complainant directly challenged the State rates, alleged that they caused a discrimination against interstate commerce within § 13 of the Act, and prayed for its removal. The State of Florida was duly notified as required by that section, and on full hearing discrimination was found to exist and sought to be removed by prescribing a new State rate by virtue of § 13(4). This court held that discrimination by revenue burden was within the case before the Commission, and upheld the order on that ground only. The Supreme Court, 282 U. S. at p. 209, so far from disagreeing said: "As the Florida Railroad Commission appeared in defense of the intrastate rates, and the Railroad Company the rates of which were in question and other parties in interest, both shippers and carriers, were heard, the question now presented relates to the substance of the determination of the Commission and its support in the evidence, rather than to mere matters of pleading and procedure. In making its [fol. 965] order the Commission could exercise all the authority conferred by the Interstate Commerce Act for

the purpose of removing such unjust discrimination as it found to exist. If the Commission had made adequate findings, supported by evidence, upon the point under consideration we should not be disposed to conclude that the order must be upset because of the manner in which the proceeding was initiated or because of the generality of the allegations of the complaint." Much more forcibly do these words apply, now that the parties have had another full hearing upon this precise issue, with full knowledge that courts and Commission regarded that issue not only as present but as controlling. The Commission having in due form found that the State rates do cause an unjust discrimination against interstate commerce by the very words of § 13(4): "It shall prescribe the rate * * * thereafter to be charged * * * in such manner as in its judgment will remove such discrimination." It is the judgment of the Commission and not the wish or the prayers of the Georgia Stata Commission that is to determine what shall be done about the discriminatory State rate.

Early in the reopened proceedings before the Commission the complainants made a written demand on Atlantic Coast Line R. R. Company that it produce a statement, supported by individual car-record movements, showing certain details as to cars of logs moving on its lines between points in Florida and Georgia for each of the years 1926, 1927, 1928, 1929 and 1930, a like statement concerning cars moving within the State of Florida for each of those years, and a statement showing the gross earnings from both interstate and intrastate shipments of such logs for each of those years. The Railroad Company in answer stated [fol. 966] that it expected to furnish certain appropriate data about its log traffic, but could not get up the statements requested for lack of time and because its records did not show the distinctions in log traffic required. The Railroad Company did produce details of its log traffic since 1928, but not before. The Commission refused to compel further compliance. It will be noted that no specified books or papers were asked to be produced, nor any specified witness called on to tell what he might know. We are aware of no rule of law or practice which would require a litigant laboriously to compile information for his adversary, even if it were in his power to do so. Certainly it

would lie in the discretion of the tribunal to decline to compel it. We find in such refusal no cause to upset an order founded on evidence which was duly produced before that tribunal.

But it is said that the information demanded was essential to a finding of unjust discrimination, the revenue before 1929 under the State rates being one of the things mentioned by the Supreme Court as necessary to be established. We do not understand that the revenue, either gross or net, produced by the State rates must be exactly established, but only that the operation of those rates and their effect upon the carrier must be investigated and found. It was here established that the State rates produced a loss, and were a drain on the carrier. It might have been desirable to show the extent of the loss, but if that be impracticable, and if it appear that the loss will be in the future substantial and the carrier is not in position to absorb it without detriment to his service and support as an interstate carrier, a sufficient case is made to find an unjust discrimination against interstate commerce, [fol. 967] and to require its correction.

The ascertainment of the general fact of loss is said to be unlawful because the witnesses and the Commission dealt in part with the average costs of similar service over the Coast Line System and the general cost of hauling freight in the division which substantially embraces the State of Florida, rather than the actual cost of hauling logs in Florida. But it was shown that the latter information could not be gotten; that the cost of service in Florida for reasons given was greater than elsewhere in the System, so that average costs for the System really showed a less cost than the Florida costs if they could have been separately ascertained. The difference in cost between hauling logs and other carload freight was also given attention. Not infrequently the best evidence obtainable has to be used as a basis for inferences, and conclusions of fact made therefrom with due allowance or possible inaccuracies are not invalidated because the best evidence logically possible was not at hand.

Appendix E of the Report entitled "Estimated Costs of Transporting Logs in Florida for the Average Distance of 81.36 miles based on A. C. L. Average Costs per Unit for Calendar Year 1929 Applied to the Average Units In-

volved in Hauling Logs in that State.", is attacked as being evidence considered by the Commission which was not introduced in the proceeding so that opportunity should be given to the parties to meet it, contrary to Interstate Commerce Commission vs. Louisville & Nashville R. R., 227 U. S. 88. We do not understand the Appendix to be evidence considered by the Commission. It is rather the Commission's conclusion as to the cost of hauling logs in Florida [fol. 968] for the distance shown to be the average under the Cummer Scale, based on the evidence which had been produced to it as tending to show such cost. So far from vitiating the order made it rather tends to show the care and discrimination with which the inexact evidence of cost was examined and considered.

A contention strongly urged is that the direct prescription by the Interstate Commerce Commission of an intrastate rate is prima facie an unconstitutional invasion of the province of the State, so that the burden is on the defendants here to justify it before the court, and that in order to justify it the facts of justification, to-wit, those showing the State rate to be an unjust discrimination against interstate commerce, must clearly appear to this court, the findings of the Commission not being conclusive, nor in themselves weighty on the very point of the Commission's jurisdiction. It is not doubted that the power of the Commission to make an order is a judicial question, and that the Court may examine it independently. When, however, the very fact upon the existence of which the power to act depends has been contradictorily tried before the Commission itself, its conclusion fully expressed upon its record affirming the existence of the fact is certainly sufficient to put the burden upon those who deny it. While at one time all findings of the Commission were declared by the statute to be only prima facie evidence of their correctness, that language has now been retained only with reference to money awards and to valuations of property by the Commission, and it is well established that under the enlarged and positive powers with which the Commission is now vested its findings of fact within the scope of its powers will not be reviewed by the courts if supported by evidence. [fol. 969] Merchants Warehouse Co. vs. United States, 283 U. S. 501. Where the matter examined relates to its power to act at all the decisions are perhaps not so explicit, but we

may refer to the following expressions of the court as bearing directly upon it: In I. C. C. vs. Northern Pacific R. R. Co., 216 U. S. 538, 544, it was said: "We are of the opinion that the Commission had no power to make the order if a reasonable and satisfactory through route already existed, and that the existence of such a route may be inquired into by the courts. How far the courts should go in that inquiry we need not now decide. No doubt in complex and delicate cases great weight should be attached to the judgment of the Commission." In Interstate Commerce Commission vs. Union Pacific R. R. Co., 222 U. S. 541, 547, in discussing fundamental questions of the Constitutional and statutory power of the Commission it was said: "In determining these mixed questions of law and fact the court confines itself to the ultimate question whether the Commission acted within its power * * * Its conclusion, of course, is subject to review, but when supported by evidence is accepted as final; not that its decision, involving as it does so many and such vast public interests, can be supported by a mere scintilla of proof, but the courts will not examine the facts further than to determine whether there was substantial evidence to sustain the order." In interstate Commerce Commission vs. L. & N. R. R. Co., 227 U. S. 88, the court held that the power of the Commission to alter rates depended upon the fact of their unreasonableness, but that the Commission having found on evidence that they were excessive, its order was not to be disturbed. In United States vs. L. & N. R. R. Co., 235 U. S. 314, 320, the language held is: "It is not disputable that from the beginning the very purpose for which the Commission was created was to bring into existence a body which from its peculiar charac- [fol. 970] ter would be most fitted to primarily decide whether, from facts disputed or undisputed, in a given case preference or discrimination existed, and the amendments by which it came to pass that the findings of the Commission were made not merely prima facie but conclusively correct in case of judicial review, except to the extent pointed out in the Illinois Central and other cases supra, show the progressive evolution of the legislative purpose and the inevitable conflict which exists between giving that purpose effect and upholding the view of the statute taken by the court below. It cannot be otherwise since if the view of the statute upheld below be sustained the Commission would

become but a mere instrument for the purpose of taking testimony to be submitted to the courts for their ultimate action." We need not decide whether in this case the Commission's finding of unjust discrimination is entitled to any less weight because it is a prerequisite of its jurisdiction as well as the meritorious basis for its exercise, because we have examined the evidence independently and are led to the same conclusion that the unjust discrimination exists.

In the evidence of lower voluntary rates recently made by other carriers in other territory we find nothing to require a different conclusion. A situation may thereby arise requiring inquiry as to other discriminations, but it throws little light on the revenue problem of the Atlantic Coast Line Railroad Company as an interstate carrier. If log traffic done in Florida on the Cummer Scale is at an out-of-pocket loss, the less of it done the better. The destruction of it would help by stopping a loss. If but a little business be done on remunerative rates so much profit would be substituted. The Commission has given full and expert [fols. 971 & 971a] attention to the situation, and has found that adherence to the level of log rates it has previously established as reasonable in interstate commerce and has applied as a minimum in intrastate commerce in Florida should be continued. We find no such plain case to the contrary as to warrant court interference. The findings and the evidence show the Cummer Scale of rates to constitute such a substantial revenue burden on the interstate carrier and on interstate commerce as to cause a discrimination against the latter and to give the Commission power to remove it under Interstate Commerce Act, § 13(4). The action to be taken in removing it is left by the section to the judgment of the Commission. It having power in this case to prescribe a proper intrastate rate, its judgment as to the level of the rate to be established in order to accomplish the desired revenue result ought not to be overridden when sustained by evidence and violative of no law. We uphold the orders of the Commission.

Samuel H. Sibley, Circuit Judge, E. Marvin Underwood, District Judge, Louie W. Strum, District Judge.

[fols. 972-975] IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

In Equity. Nos. 690, 691 and 695

STATE OF FLORIDA ET AL., Complainants,

Versus

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, Atlantic Coast Line Railroad Company, Intervenor, Respondents

Consolidated Petitions for Injunction

FINAL DECREE—Filed Feb. 24, 1933

This consolidated cause came on for hearing for a final decree on Feb. 24, 1933, and was submitted upon the pleadings and evidence introduced then and theretofore to a special court composed of Honorable Samuel H. Sibley, Circuit Judge, Honorable E. Marvin Underwood, District Judge, and Honorable Louie W. Strum, District Judge.

Pursuant to the findings of fact and conclusions of law filed herewith, it is now considered, ordered and decreed that the orders of the Interstate Commerce Commission made July 5, 1932, and the order of the Interstate Commerce Commission confirming the same made Jan. 9, 1933, as set forth in the pleading, be and are hereby sustained, and the prayer to annul and set aside and enjoin the same is refused, and that the respondents recover of the complainants their costs in this behalf to be taxed by the Clerk.

This February 24, 1933.

Samuel H. Sibley, Circuit Judge, E. Marvin Underwood, District Judge, Louie W. Strum, District Judge.

[File endorsement omitted.]

[fol. 976] BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 18364

GEORGIA PUBLIC SERVICE COMMISSION, Complainant,

vs.

ATLANTIC COAST LINE RAILROAD COMPANY, Defendant

Narrative statement of testimony

Jacksonville, Florida,
June 10, 1931, 10 a. m.

Before E. J. Hoy, Examiner

Met pursuant to notice.

APPEARANCES OF COUNSEL:

E. M. Price, for Georgia Public Service Commission.

Robert C. Alston, and Frank W. Gwathmey, for Atlantic Coast Line Railroad Company.

T. T. Turnbull, Counsel, E. S. Matthews, Chairman, Fred Pettijohn, Accountant, J. H. Tench, Rate Expert, L. D. Ragin, Commissioner, for Florida Railroad Commission (Tes. p. 937).

H. P. Adair, C. G. Ashby, C. E. Cotterill, August G. Gutheim, for intervening Florida Log shippers.

J. V. Norman, for Wilson Lumber Company of Florida, intervenor.

E. C. Green, for Jacksonville Traffic Bureau, Jacksonville Chamber of Commerce and Municipality of Jacksonville.

Thomas D. Guthrie and Russell W. Bennett, for Standard Container Manufacturers' Association, Nocatee Crate Company, Southern Veneer Company, Mutual Crate Company.

T. M. True, for Southern Cypress Manufacturers' Association (Tes. p. 938).

E. C. Mitchell for Cummer Cypress Company.

[fol. 977] Examiner Hoy: The Interstate Commerce Commission has set for further hearing at this time and place Docket 18364, Georgia Public Service Commission versus Atlantic Coast Line Railroad Company (Tes. p. 939).

E. M. PRICE, recalled as a witness, having been previously sworn, testified as follows:

Mr. Adair: On behalf of the intervening lumber companies we ask leave to either ourselves inquire of the Georgia Public Service Commission and its counsel or ask that the Examiner will inquire of them whether they have abandoned the position formerly taken by them at the former hearings in this cause, to wit, that the thing here sought by the Georgia Commission was to establish a reasonable rate for the transportation of logs interstate from points in Florida to points (Tes. p. 942) in Georgia and that this was not a revenue case, and that there was no reason in this case for the increase of any rates. Upon the former occasion the Georgia Public Service Commission expressly disclaimed any attempt to prove a revenue burden upon the revenues of the carrier under Section 13. We desire to know now at the beginning of this hearing whether that is still the position of the Georgia Commission.

Mr. Norman: Mr. Examiner, I would like to say in that connection that if that be still the reason that we develop that at this time, because if that is the present position of the complainant, the Georgia Public Service Commission, it is our position that the defendant, Atlantic Coast Line Railroad may not in this proceeding bring in issue under the 13th section of the Act the question of a revenue burden because the Act provides that where they seek to do that, they must do so by application under the 13th section, and the Commission may order an investigation.

Mr. Turnbull: Mr. Examiner, on behalf of the Florida [fol. 978] Railroad Commission I would like to make a statement or rather read a statement that Mr. Matthews, Chairman of that Commission would make if he were here this morning, and desire to make and enter in the record:

"I am chairman of the Florida Railroad Commission. The Interstate Commerce Commission has notified (Tes. p. 943) our Commission that these proceedings were to be held here today and that further testimony would be taken.

"At the very commencement of this hearing I desire to state the position of the Florida Railroad Commission with respect to it. Our position is that the Interstate Commerce Commission has no jurisdiction in this proceeding to prescribe intrastate rates on logs between points

in Florida. The Supreme Court of the United States, in its opinion in this case, declared that the authority to determine the reasonableness of these very intrastate rates lay with the Florida Railroad Commission and not with the Interstate Commerce Commission.

This intrastate log rate was voluntarily initiated more than fifteen years ago by the Atlantic Coast Line Railroad Company. When once established by the Railroad Company it became the lawful state rate, and the laws of Florida prohibit any change or increase in it without consent and approval of the Florida Railroad Commission, after due notice to the interested parties and a hearing upon it. During all the years it has been in effect, neither the Railroad Company nor other interested parties have ever complained to the Florida Commission about the level of that rate, though our doors all that time have been open to anyone dissatisfied with that rate. The result of these [fol. 979] proceedings before the Interstate Commerce Commission has been to injure and destroy intrastate commerce within the State of Florida, and to injure and destroy industries (Tes. p. 944) and whole communities without benefiting anyone in Georgia or in Florida. The laws of Florida provide the means by which an application may be made for any proper revision of this or any other rate, by the Atlantic Coast Line Railroad Company or by any other party at interest that may see fit to bring the matter in a proper way before the Florida Commission.

"Speaking for the Florida Commission, we consider that not only is the Interstate Commerce Commission without power to invade the domain of the State in this matter, but if it had the power to do so it should not exercise this power until the Railroad Company has applied to the State of Florida for such relief as it may deem itself entitled to have, as to the intrastate rates on logs between points in the state of Florida."

Mr. Alston: I did not gather from the statement which you have read on behalf of the Chairman Matthews as to whether the position of the Florida Railroad Commission is that the Cummer scale is reasonable or whether it is unreasonable. Would you mind saying.

Mr. Turnbull: I made no statement with reference to that. It is involved in this hearing and there is an application here to consider the intrastate rates. My recollec-

tion of a motion of the Atlantic Coast Line Railroad Company to reopen for a rehearing in this case, there was a prayer attached to the motion asking that lawful intrastate rates be fixed by (Tes. p. 945) the Interstate Commerce Commission, and it is our position that that is within the province of the Florida Railroad Commission and that until [fol. 980] some application has been made to the Florida Railroad Commission by the Atlantic Coast Line seeking a revision of this rate, that the Interstate Commerce Commission has no jurisdiction, especially Mr. Alston since the Supreme Court of the United States has found, the former examiner found, the Interstate Commerce Commission found, and the Supreme Court of the United States found that there was no interstate traffic involved, and that as there was none there could be no discrimination, therefore if there is no discrimination the Florida Railroad Commission has the right per se to fix these rates.

Mr. Altson: We do not admit the statements as to the result of the finding of the Examiner or the Commissioner or the Court, as stated by counsel, but counsel does not answer the question which is, does the Florida Commission claim that the present Cummer scale of rates known as the "Cummer scale" is a reasonable scale.

Mr. Cotterill: That is immaterial.

Exam. Hoy: I don't think it is necessary to go into that at this time. That is something probably that the evidence may show some light on a little later on. My ruling on your question is that we will proceed with the testimony of Mr. Price, and it is not necessary for him to state whether (Tes. p. 946) his position is changed or not. The examiner may want to ask him some questions himself later on, I do not know. But, I might add that his position in the case heretofore is shown by the record in this case, and he is going to offer some further testimony and I presume his position has not changed, until somebody develops it has changed either by his own testimony or by cross examination.

Mr. Norman: Then, Mr. Examiner, if his position has not changed, if that is admitted I wish to move to exclude

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[fol. 981] Exam. Hoy: Let us find out first—let us proceed with the testimony and find out.

Mr. Norman: I thought you said it was admitted. If it is admitted.

Exam. Hoy: Go ahead, Mr. Price.

Direct examination:

If I understand correctly the previous record has been reopened and will be considered in this rehearing.

In the original hearing I submitted by exhibit No. 1 that shows discrimination against shippers at various points in Georgia. That condition has changed to the extent that on the order of the Commission in this case the interstate rates from Florida to Georgia that were used in my exhibit have been slightly reduced. The exhibit shows the interstate rates that were in effect at the time of the hearing, and I want to (Tes. p. 947) show now the extent to which that has been changed by referring to Bainbridge, Georgia, which is one of the points referred to in my exhibit No. 1.

If the manufacturer at Bainbridge purchases logs at Springer, Florida, a distance of 51 miles under the present rate fixed by the Commission in this case he would pay 4½ per 100, and for 150,000 pounds of logs, which is equivalent to one car of lumber outbound he would pay $67.50. If Bainbridge ships to Boston, Massachusetts, he pays a rate of 45 cents a 100 on his lumber, and for a car of 50,000 pounds, which would be the result of 150,000 pounds of logs, his lumber cost would be $225.00, or a total cost at Bainbridge for the logs inbound and the lumber outbound of $292.50. The distance from Springer to Bainbridge is 51 miles.

[fol. 982] The distance from Lake Butler to Jacksonville is 53 miles or approximately the same distance from Springer to Bainbridge. The present intrastate rate from Lake Butler to Jacksonville is 2.1 per 100 pounds, for 150,000 pounds of logs the cost would be $31.50. The rate on lumber from Jacksonville to Boston is 45 cents, or the same as the rate from Bainbridge to Boston. The lumber cost being $225.00 or the total cost of the logs inbound and the lumber outbound of $256.50; that Bainbridge is at a disadvantage as compared with Jacksonville of $36.00 per car, both drawing their logs from approximately the same distance, both having the same outbound rate. (Tes. p. 948)

Mr. Norman: Just a minute. Mr. Examiner, I wish to enter an objection to any evidence as to lumber rates because they are not in issue in this proceeding and move to exclude the evidence that has been offered with reference thereto.

Mr. Adair: Mr. Examiner, permit me to enter an objection to this line of testimony not only because lumber rates are not here in issue but also it has been made to appear that no logs are available at Springer, Florida, for shipment either to Bainbridge, Georgia, or to any Florida point, and it has not been shown that there is any interstate commerce moving from Springer, Florida to any Georgia point in logs.

Exam. Hoy: That is something I think to be developed by you. There is a rate apparently, and the witness is testifying as to the rates on logs and the rate on lumber. He is not testifying that there are movements under the rates.

Mr. Adair: I wanted to make the seasonable objection before.

[fol. 983] Exam. Hoy: If there are no movements I presume you are going to show that.

Mr. Norman: We think it is incumbent upon them to show that there is a movement.

Exam. Hoy: It will go to the weight of their evidence, but the testimony is perfectly proper I think to show the rates on lumber from various points to compare the rates on logs shipped inbound, and to show discrimination, to also (Tes. p. 949) show the rates on lumber in connection with them. It is true the rates on lumber are not in issue.

Mr. Norman: Will you note an exception.

Exam. Hoy: The record will note an exception.

Witness Price (continuing:) These points I have mentioned are already in the record and are shown in my exhibit No. 1. At Thomasville, Georgia. Should Thomasville, Georgia, and Jacksonville, Florida, buy logs at the same place, Baker's Mill, Florida, the distance from Baker's Mill, Florida to Thomasville is 99 miles; the present interstate rate on logs from Baker's Mill to Thomasville is 6 cents, or for 150,000 pounds, $90.00. The lumber rate from Thomasville to Boston is 45 cents, and for 50,000 pound car, $225.00, making a through charge on the logs inbound and the lumber outbound $315.00. The distance from Bak-

er's Mill to Jacksonville is 138 miles or 39 miles greater than it is from Baker's Mill to Thomasville. The intrastate rate from Baker's Mill to Jacksonville is 3.4 cents per 100 pounds. For 150,000 pounds of logs $51.00, and the rate on lumber from Jacksonville to Boston is 45 cents, or the same as it is from Thomasville, and the lumber charge would be the same (Tes. p. 959) or $225.00, making a total [fol. 984] charge on the logs inbound and the lumber outbound of $276.00, or a discrimination against Thomasville of $39.00 per car.

At Quitman, Georgia. Should Quitman and Jacksonville both purchase logs at Suwannee, Florida, the distance from Suwannee to Quitman being 85 miles, the present interstate rate on logs is 5.5 per 100 pounds and for 150,000 pounds would be $82.50. The rate on lumber from Quitman to Boston is 45 cents and the lumber charge for 50,000 pounds would be $225.00 or a total charge for the logs inbound and the lumber outbound of $307.50. The distance from Suwannee to Jacksonville is 135 miles or 50 miles greater than from Suwannee to Quitman. The rate on logs from Suwannee to Jacksonville is 3.4 cents per 100 pounds or for 150,000 pounds $51.00. The rate on lumber from Jacksonville to Boston is 45 cents per 100, or the same as it is from Quitman; the charge for 50,000 pounds being $225.00, making a total charge of the logs inbound to Jacksonville and the lumber outbound of $276.00 or a discrimination against Quitman of $31.50, notwithstanding Quitman is 50 miles nearer the point of the shipment of the logs than is Jacksonville.

Should Valdosta and Perry, Florida, purchase logs at the same point, Mandeville, Florida, the distance from Mandeville, Florida to Valdosta being 144 miles, the interstate rate on logs being 7.5 per 100 pounds or a charge for 150,000 pounds (Tes. p. 951) of $112.50. The rate on lumber from Valdosta to Boston is 45 cents per 100 pounds and the charge for 50,000 pounds would be $225.00, making the total charge on the logs inbound and the lumber outbound of $337.50. The distance from Mandeville, Florida to Perry, Florida is 148 miles; the rate on logs being 3.4 cents per 100 pounds and the charge for 150,000 pounds of [fol. 985] logs being $51.00. The rate on lumber from

Perry, Florida to Boston is 46 cents per 100 pounds making the lumber charge for 50,000 pounds $230.00, or the total charge on the inbound movement of logs and the outbound movement of lumber of $281.00, or a discrimination against Valdosta of $56.50 per car.

It is that changed condition so far as the rate situation is concerned that we wanted to bring to the attention of the Commission to show that the change is very slight and that the discriminations still exist against manufacturers of lumber at these Georgia points particularly those that are shown in my exhibit No. 1. (Tes. p. 952)

Exam. Hoy: Are there any intervenors supporting the complainant at all here:

Mr. Cotterill: Yes, there are Georgia intervenors.

Mr. Adair: They are not in support of the complaint.

Cross-examination.

By Mr. Alston:

Witness Price (continuing:) My exhibit No. 46 in the original case, which appears at page 386, is now correct, modified by the change in the interstate rate to which I have just referred. (Tes. p. 953) The new interstate rates are published in Agent Glenn's Southern Lumber Tariff I. C. C. A-659. There are changes in the interstate rates, to which I have referred, which were worked up by order of the Commission in this case. Looking at exhibit No. 36, of witness Reeves, page 361 of the record in the Supreme Court, which is a list of saw mills and planing mills operating on the Atlantic Coast Line in Georgia; and Exhibit 37, which is a continuation of that exhibit with more detail as to the output and so forth of those mills, there has been a change in conditions in that I understand that the Jackson Brothers Mill was destroyed by fire. They are now [fol. 986] operating what they call a small band mill. So far as I know the conditions of these mills (Tes. p. 954) otherwise in this territory as shown in those exhibits are the same.

By Mr. Alston:

Q. As to the difference in the cost of putting lumber in certain northeastern cities in this country, beginning about Baltimore and running up to Portland, Maine, as compared

with lumber manufactured by one of these mills mentioned in one of these exhibits, and when the lumber is manufactured in Florida, the logs moving over comparable distances, please say whether or not in your opinion that added cost to the lumber at the market in the territory, beginning say at Baltimore and running up to Portland, Maine, is sufficient to exclude the Georgia manufacturer from that territory?

Mr. Adair: It seems to me in the first place, your Honor, that the witness has not been qualified to testify as an expert with respect to the lumber business. In the second place, nobody said anything about Portland, Maine, so far as I have heard yet in this proceeding.

Exam. Hoy: I take it you are referring to the previous record, when you said the rates on lumber from Baltimore to Portland. Of course here he has only given the rates on lumber to Boston. (Tes. p. 955)

Mr. Adair: I don't think it has been established that any of these Georgia shippers sell in those markets.

Exam. Hoy: Certainly Mr. Price has not been qualified yet as an expert in the marketing of lumber so that he could testify as to whether any rate would keep a manufacturer out of a market or in it.

Witness Price (continuing:) As to whether the rates from these southeastern destinations to those northeastern destinations are rather blanket rates covering the entire [fol. 987] northeastern territory, it is true that the rates going up to North Atlantic coast, beginning at Baltimore are built up—the rate at Boston being higher than the rate at Baltimore, and the rate from the Georgia shipping point and the Florida shipping point would be the same, but would reflect whatever differential there might be at Baltimore, therefore any disadvantage that the Georgia shipper would have at Boston would be the same as at Jersey City, Baltimore, Philadelphia, and so on up the coast. (Tes. p. 956). In other words the purpose of my exhibit here is to show that this discrimination is in the cost of the logs. I have simply traced it through to Boston, and if I recall correctly some of the Georgia shippers testified as to reaching these markets in the previous case.

I have been rate expert for the Georgia Public Service Commission since October 1, 1919, and prior to that I was

in the railroad service subsequent to 1889 in various capacities from messenger boy on through, and the greater part of the time has been in the traffic department. From my experience I have become familiar in a general way with the things which effect the making of rates, and the movement of traffic, and the effect of the rates on the movement of traffic.

By Mr. Alston:

Q. From your knowledge gained in the manner you have described I suppose you found that the disparity against the Georgia manufacturer and in favor of the Florida manufacturer in the cost of putting logs, lumber, into Boston and northeastern (Tes. p. 957) points of the United States was in the extent and in the manner which you have described, and then suppose you found that the Georgia manufacturer was not in those northeastern markets that he [fol. 988] did not market, he did not sell in those markets at all, and you found therefore that——

Mr. Adair: We object, your Honor. He is attempting to do by indirection, which your Honor said he could not do directly, and that is to say for him to testify as an expert when he plainly is not qualified.

Exam. Hoy: He has qualified him as an expert in rates and based on that knowledge he has asked him what he would attribute a failure not to sell.

Mr. Cotterill: There is no proof of failure to first, your Honor.

Exam. Hoy: But, if there was a failure, if the Georgia men could not get into the market, upon what he would attribute his failure to get into the market.

Mr. Cotterill: That would be material.

Exam. Hoy: It is a hypothetical question but he can answer it.

Mr. Adair: He has not qualified himself as knowing anything about the marketing of lumber—of the manufacture or marketing of lumber.

Exam. Hoy: He has qualified himself as a rate expert and the question is whether based on his rate knowledge he can (Tes. p. 958) attribute the failure to get into a market to any particular cause. Is that right?

Mr. Alston: Yes.

Exam. Hoy: He may answer the question.

Witness Price (continuing:) I would first investigate, Mr. Alston, if I was handling an adjustment of that kind with [fol. 989] a view of determining just what the cost was. I don't know just what position you want to place me in as the investigator, whether I will be representing the carrier or the shipper, or what not.

By Mr. Alston:

Q. Suppose you were representing a manufacturer?

A. If I was representing a manufacturer, and my company could not or was not selling lumber or any other commodity in a given territory but, my competitors were shipping into that same territory I would of course investigate to determine why my company could not get in there.

Q. And suppose you found that the cost—the combined freight cost of your logs and your lumber to points of destination as compared with your competitor represented the disparity against you which you have just testified, would you then consider that disparity as contributing to or causing the condition—your exclusion from that market?

Mr. Norman: I object.

Mr. Adair: Same objection, your Honor.

Exam. Hoy: I think I will sustain that. You are presupposing you are—he is a lumber dealer now (Tes. p: 959).

Mr. Alston: I am just following him along.

Mr. Adair: If you will permit me to say, not following but leading.

Q. Mr. Price, from your knowledge as a rate expert would you consider the disparity in the rate cost of getting the logs to the mill and the lumber to these northeastern points which exist against the Georgia manufacturer and in favor of the Florida manufacturer to which you have testified as being sufficient to exclude them from those markets.

Mr. Adair: Your Honor the same objection. Also I would [fol. 990] like to get this further objection into this thing.

Exam. Hoy: Just wait a minute. That is presupposing he is a manufacturer of lumber too, Mr. Alston. I think certainly that Mr. Price will probably testify from his knowledge as a rate expert that he would probably testify that if his competitor had a better rate than he had, it would make him suspicious, whether it was lumber or any other commodity.

Q. Mr. Price, in your own way please tell what in your opinion as a rate expert would be the effect of the disparity which you have described against the Georgia shipper in the markets to the northeast?

Mr. Adair: Same objection, your Honor. Your Honor, I would like also to interpose a further objection and this will go to all this line of questions. In all the tribunals with which I am familiar where there is a controversy made up from (Tes. p. 960) the issues where the complainant in a case is asserting one thing and the defendant has answered and has denied the thing asserted by the complainant, it is very strange to see the defendant attempting to prove by the complainant that the answer of the defendant is wrong and that the complainant and the defendant is right. I don't understand that.

Exam. Hoy: Well, we are here to hear this evidence, and we do not care about any more speeches on the record than we can have need for. Now the complainant is here on the stand he is subject to cross examination. Now, let the cross examination proceed. The last question I think was improper cross examination, or any other question that presupposes that Mr. Price is a manufacturer of lumber.

Witness Price (continuing:) I, as a representative of the [fol. 991] Commission have been representing the Georgia manufacturers in these proceedings. I have become acquainted with the status of their business and the needs of their business in reference to these Florida log rates and to their rates in reaching the territories of the country, the markets of the country, only to the extent that the winesses for the manufacturers themselves have testified. When these complaints come to the Georgia Commission I then proceed to investigate the rate situation to determine whether or not (Tes. p. 961) there was any foundation for the complaint, and found the conditions as is shown in my exhibit No. 1 and is shown this morning in my testimony, the change which has taken place subsequent to the Commission's order.

By Mr. Alston:

Q. Did you attribute it—from your examination then, what did you find was the effect on the Georgia shippers in the markets of this difference in rates?

Mr. Adair: Same objection, your Honor.

A. As to the ability to sell in the market I could not say about that Mr. Alston. The witness for the manufacturers testified as to that themselves.

By Mr. Alston:

Q. Now, when you investigated that condition, was that what you were referring to when you said that the evidence submitted at the rehearing——

Exam. Hoy: Just a second, I don't think you ought to put in this record reference to pages of the Supreme Court record because that is not a part of the record. Reference to the witness' testimony in the record in this case, and the page in our record if it is in there, if you have got that there.

Q. (continued) As said in your previous testimony when you wrote on July 16, 1925 in the quotation appearing in [fol. 992] the evidence of Mr. Perrin in the original record, about folio (Tes. p. 962) 605 as follows: "The evidence submitted at the rehearing reveals, what is in the opinion of the Commission as intolerable situation as regards the rates in Florida as compared with the interstate rates between Georgia and Florida and the effect on this situation the suspended rates authorized in the Commission's order."

A. I don't recall. Is that part of my testimony.

Q. That is part of your letter.

A. Before the complaint was brought by the Georgia Commission?

Q. It was on the rehearing?

A. Before the Interstate Commerce Commission?

Q. Yes, in '25.

Mr. Adair: I would like to have the question reread, I have lost the drift of it.

Exam. Hoy: Let us see this.

Mr. Adair: Top of page 604, your Honor.

Exam. Hoy: Just should have reference to his previous testimony without giving any page to Mr. Perrin's previous testimony in which he quoted Mr. Price. If Mr. Price will kindly identify it.

Witness Price (continuing:) As to whether this is a correct statement of my letter which Mr. Alston has just read,

I could not answer that definitely without seeing the letter. I don't like to testify concerning another (Tes. p. 963) man's exhibits or testimony. I do know that prior to the bringing of this complaint by the Georgia Public Service Commission, the Georgia Commission reopened for further hearing the matter of rates of Georgia intrastate traffic from complaints from the Georgia shippers, and at that hearing it was brought to the attention of the Georgia Com- [fol. 993] mission the existing Florida conditions, brought about by the Cummer scale of rates. Under the Georgia law creating the giving powers to the Georgia Public Service Commission whenever in the opinion the Georgia Commission any interstate rates are unreasonable, or discriminate against Georgia shippers it is the duty of the Georgia Commission to bring the matter to the attention of the carriers at fault and if proper adjustment is not made in the opinion of the Georgia Commission, then, the Georgia Commission is required to bring the matter to the attention of the Interstate Commerce Commission with a request that relief be granted. Now in this particular case I handled the correspondence for the Georgia Commission and did have some correspondence with the traffic officials of the Atlantic Coast Line Railroad. I found the condition which I have described and brought about by the Cummer scale as objectionable. That was the opinion of the Georgia Public Service Commission (Tes. p. 964).

Referring to Exhibit No. 1 page 2, as to whether or not there are any logs at Springer, Florida available for shipping to Bainbridge, Georgia or elsewhere, I testified on that point at the original hearing to the effect that I did not know whether or not there was any movement of logs from these various Florida points to Georgia points, but I really did not see how there could be any movement with the discrepancy in the Florida intrastate rates and the interstate rates. As to whether there are any logs shipped from Springer, Fla., or not personally I do not know. As to whether or not there are any logs shipped from Florida to Georgia or available for shipment from Florida to (Tes. p. 965) Georgia from any of those points that I specified in my exhibit No. 1 page 2, from my personal knowledge I do not know. I do know that the rates are published and [fol. 994] the carriers as a rule weed out all paper rates and do not carry rates except where there is a movement, or a prospective movement:

By Mr. Adair:

Q. But you do not know that there are any logs available?

Exam. Hoy: No, he does not.

Witnes Price (continuing:) I do not know of my own knowledge whether any movement of logs has taken place from Florida points of origin to Georgia destinations of logs of the tariff description here involved since February 8, 1929, which was the date that the order of the Interstate Commerce Commission went into effect. I don't know that there has been any movement at all.

By Mr. Norman:

Q. Mr. Price, Mr. Alston asked you with reference to a list of Georgia mills contained in your exhibits. I think you referred to it as complaining Georgia mills. You don't mean that the mills here listed are complaining (Tes. p. 966) about the Florida rates do you?

A. I did not understand that he mentioned the complaining Georgia mills. He mentioned the list of mills shown in that exhibit, which was not my exhibit.

Q. Now, Mr. Price, in your previous testimony you stated that this is not a revenue case. I wish to ask you if you are now as the complainant in this case undertaking to have the rates applicable within Florida for the movement of logs of the description here involved increased because they are a revenue burden on interstate commerce?

A. Mr. Norman, the Interstate Commerce Commission [fol. 995] is the body that would have to determine whether or not they are a burden on interstate commerce. The complaint of the Georgia Commission deals with discrimination.

Q. What kind of discrimination?

A. Well, we are complaining under Section 13 for one, and under Section 3.

Q. Well, are you complaining that the Florida intrastate log rates are unduly low and a burden on interstate commerce from the revenue standpoint, and asking the Interstate Commerce Commission for that reason to increase the Florida intrastate rate?

Mr. Gwathmey: If the Examiner please, I submit that the complaint filed by the Georgia Commission speaks for itself

and is the best evidence of what it shows; and in that connection (tes. p. 967). I refer you to paragraph II of the complaint itself.

Exam. Hoy: I think that that question is not necessary and not proper, Mr. Norman. The complaint alleges a violation of Section 13, which is what we just said it was, a revenue question.

Mr. Norman: I know but, if the Examiner please, the complainant has expressly disavowed in the first hearing any intention or desire to make this a revenue case. Now, I am asking him if that is still the basis of the complaint.

Exam. Hoy: As I understand it the complainant has never withdrawn his Section 13 allegation in this case; the Section 13 allegation is in there. The Section 13 allegation is passed on by the Commission, went to the Supreme Court and the Supreme Court passed on the Section 13 allegation. It certainly considered Section 13 and refused to uphold the order of the Commission.

Mr. Norman: Now, if the Examiner please, in all orderly [fol. 996] procedure, before any tribunal, it is fundamental in our law that the parties are entitled to know what the charges are and what the complainant is claiming.

Exam. Hoy: And the complaint says what the charges are, Mr. Norman, as I understand it, and one of the charges are a Section 13 violation.

Mr. Cotterill: But, at the former hearing when we were engaging in just such a discussion as this your Honor, counsel for the complainant who is not now present, and later the witness on four different occasions first in the beginning and at the end of the case, especially disavowed in terms any endeavor for purposes of such complaint to seek an increase in the intrastate rate.

Exam. Hoy: Apparently the Commission did not consider what was shown on the record as a withdrawal of the Section 13 allegation. They passed on the Section 13 feature and the Section 13 feature went to the Supreme Court, and the Supreme Court said the Commission was wrong in making a Section 13 finding on that record without having made their findings to support it but, the Supreme Court did not intimate in its decision as I have read it that there is not a Section 13 allegation in this case. And now, I do not think it is proper to cross examine a man to try to make him show whether he is amending his com-

plaint at this time to withdraw Section 13. I think we will proceed on the assumption that Section 13 is in here. Now, if Mr. Price cares to explain his position he can do so. If he does not why, I don't think it is proper cross examination to make him say whether he is standing on his complaint or intends to amend his complaint; it is there; we will have to accept that as the complainant's complaint until they want to amend it.

[fol. 997] By Mr. Norman:

Q. First Mr. Price, do you care to answer (Tes. p. 969) the question I just asked, or rather let me put it this way. Do you care to state whether the Georgia Public Service Commission is here asking the Interstate Commerce Commission to order an increase in Florida intrastate log rates because these rates constitute a revenue burden on interstate commerce.

Exam. Hoy: Do you care to answer the question, Mr. Price?

A. I will answer in the same way that I answered the previous question at a previous hearing, and that is that the Georgia Public Service Commission is standing on the complaint as it was filed with the Interstate Commerce Commission alleging violation of Section 13 of the Act.

Exam. Hoy: I think that is sufficient.

Mr. Cotterill: It seems so, your Honor, that this question since the Florida Log Rate Case was tried came before the Commission as a whole, and quite fortunately seems to be settled by a majority of opinion, we read. "The Commission holds under such circumstances. * * *

Exam. Hoy: What case?

Mr. Cotterill: 172 I. C. C. 319. The majority opinion was written by Commissioner Lewis and there were dissents by Commissioners Eastman, McNamee, Farrow and Lee, on one branch of the case and another dissent by Commissioner Brainard on another. "The holding is under such circumstances as we have here that the allegations of violations of Section 13 must therefore be presumed to be raised on the provisions of (Tes. p. 970) paragraph 4, which appear to be undue or unreasonable preference or prejudice as between persons or localities in interstate commerce on

the one hand, and intrastate or foreign commerce on the [fol. 998] other". We stand most respectfully upon the holding of the Commission in that case that when on a record such as is here presented the complaint itself reads by reference to Section 13 as if it intended a violation of any part of Section 13. Then, when the case goes to trial it appears that the complainant's counsel by way of interpreting reference to Section 13 disavows any attack on the measure of the freight rate as in itself too low or constituting a burden on interstate commerce; then we now have the Commission's declaration that such a reference in the complaint to Section 13 must be and will be presumed to be confined to paragraph 4 of Section 13 which has to do with prejudice and disadvantage as between persons and localities and we most respectfully say, your Honor, that as to the question of getting at this true cross-examination we fully agree with you that this is the most awkward way to get at it, and our own thought was that we were entitled to raise this question and have it cleared up before the witness took the stand, but we deferred to your Honor's suggestion that it be covered through cross examination as to their position in the case.

Exam. Hoy: Well, my ruling is that Section 13 is in issue here. That the witness says that the complainant is relying (Tes. p. 971) the complaint as drawn, which involves Section 13.

Mr. Cotterill: What part of Section 13?

Exam. Hoy: Section 13.

Mr. Cotterill: We are entitled to know, under the ruling of the Commission.

Exam. Hoy: That was on the facts in that case.

Mr. Cotterill: We have the facts here. The complaint [fol. 999] refers to Section 13, but counsel at the former hearing disavowed any reliance upon the discrimination under paragraph 4 of Section 13.

Exam. Hoy: My ruling is that the unjust discrimination feature of Section 13 is an issue in this case.

Mr. Cotterill: And that the Georgia Public Service Commission, contrary to its previous declaration on this record, its declaration to the Georgia lumber manufacturer, as testified to in this case, Mr. Price, now sits here and acknowledges the correctness of the Examiner's ruling that

they are endeavoring to increase the Florida state rates on logs.

Exam. Hoy: The Commission in this case with a record which they have had before them made a finding of unjust discrimination of interstate under Section 13. The Commission thought that that was in issue at that time. There has nothing happened since. It went to the Supreme Court and as I understand the decision of the Supreme Court that question was there (Tes. p. 972).

Mr. Cotterill: No, your Honor is wrong.

Exam. Hoy: That question was there. They passed specifically on the question of unjust discrimination under Section 13, and they did not say that the issue was not present in the case; the Supreme Court did not say that.

Mr. Adair: May I read, your Honor, from the opinion on that.

Exam. Hoy: Yes.

Mr. Adair: "If the Commission had made adequate findings supported by evidence upon the point under consideration, we should not be disposed to conclude that the order must be upset because of the manner in which the proceeding was initiated or of the generality of the allega-[fol. 1000] tions of the complaint."

Exam. Hoy: The Commission said it was in issue.

Mr. Cotterill: They never have said it was in issue yet.

Exam. Hoy: They made a fitting.

Mr. Cotterill: That was only in the terms of the complaint itself.

Exam. Hoy: They made a finding, and that is my ruling here. That unjust discrimination under Section 13 is in issue in this case. Now of course you can get your exception on the record and raise that later on.

Mr. Cotterill: Your Honor permitted the cross examination of the witness as to their position in this case. I think (Tes. p. 973) you said:

Exam. Hoy: Yes, he said his position today is not changed that he was relying on the complaint as made—is that right?

The Witness: That is right. As to the transportation costs on lumber in and logs out at various manufacturing points from various origins to various destinations, my exhibit No. 1 did not give any such comparisons as that.

It did give information on the logs inbound from these specific points. In my testimony heretofore I have referred to lumber rates, cost of lumber transported, only in a general way as to discrimination against the Georgia manufacturer in reaching the Northern and Eastern markets on account of the log-rate situation. As to whether for a period of approximately two years there was in effect up to February of this year rates on the same level intrastate in Florida and interstate from Florida to Georgia, I don't know whether there was any movement of logs from Florida to Georgia. As to whether any Georgia [fol. 1001] shipper has been (Tes. p. 974) benefited by increasing the Florida rates, I have not investigated that feature of it. I am interested in that phase of the case very largely. That is why we are here today.

By Mr. Norman:

Q. Which you have not investigated to find out?

A. That there should be a parity of intra and interstate rates.

Q. You have not investigated to find out whether anybody is injured by lack of the parity, or anybody benefited by the parity?

Exam. Hoy: He said he had not, Mr. Norman.

Mr. Norman: All right.

Witness Price (continuing): Those rates have been in litigation all the while up to this time. I testified with respect to logs for anything. Rates on short logs and blocks for the near mills are not involved here at all. I think that was cleared up in the previous hearing.

Mr. Guthrie: That is the point we want to get entirely clear in this proceeding, Mr. Examiner, which we understand is (Tes. p. 975) a rehearing of the former case, at which proceeding, or in which proceeding short length logs or blocks were specifically excepted; we want it entirely clear on this record that this proceeding does not contemplate or include anything with reference to short length logs or blocks.

Exam. Hoy: Did you specify?

A. The Georgia Commission's complaint does not include short length logs; and if I recall correctly I testi-

fied to that effect in the previous hearing. It is not our purpose to involve the short length logs. There are specific rates on short length logs which today have been brought down to the interstate rates that we are now showing in [fol. 1002] our exhibits.

By Mr. Adair:

Q. Mr. Price, referring again to your exhibit No. 1, and the several sheets and pages of it and your testimony with respect to it, did I understand you to say that all of those questions were—all of those figures and comparisons were hypothetical to the extent that they were merely made to show the difference in rates existing as distinguished from any movement of logs or lumber under them?

A. I would not call it hypothetical, Mr. Adair, for the reason that it is a fact that these rates are published. (Tes. 976)

Q. Yes, sir; but——

Exam. Hoy: Wait a second the witness has testified that this is a comparison and to Mr. Norman's question he testified that he did not know of any movement of logs under any of those rates, isn't that so?

The Witness: And, in my opinion there could be no movement under the present discrepancy of interstate and intrastate rates.

Q. As to the period when there was no disparity was there any movement?

A. How is that?

Q. During a period of two years when there was no disparity?

A. I didn't say that there had been no movement; I said I did not know.

Exam. Hoy: He said he did not know whether there was any movement of logs under those rates at any time.

The Witness: That is right.

Exam. Hoy: That is what he has testified to.

By Mr. Adair:

Q. What I am getting to, as a matter of fact, you do not [fol. 1003] know that there has been any movement intrastate from those various points there do you to points in Florida?

A. I only know this, Mr. Adair. That these rates are actually published, and that the Georgia lumber manufacturers complained to the Groegia Commission of the situation which is outlined in our complaint to the Interstate Commerce Commission (Tes. p. 977) and which is illustrated here in my exhibits.

I have testified that I have no personal knowledge whatever of the movement of logs either interstate or intrastate between the points shown on sheet 2 of my exhibit No. 1, or any other sheet of the exhibit. I took the exhibit as a whole so far as my personal knowledge is concerned. Our Commission had to rely upon evidence that was submitted to it just the same as the Interstate Commerce Commission has to rely upon the evidence submitted to the Interstate Commerce Commission. The Interstate Commerce Commission would not know personally whether there was any movement or not but, if the complaint comes in there that there would be a movement there can not be a movement under a certain rate condition, then the investigation is made to determine what is that rate condition; and that is what the Georgia Commission did, and it resulted in this complaint.

Q. Did you ever get any complaint as to intrastate shipments (Tes. p. 978) as to any of these particular stations mentioned in your exhibit No. 1.

A. You mean interstate shipments?

Q. As to the interstate rates, did you ever get any complaints from Georgia shippers with respect to the rates from any of these points in your exhibit No. 1?

A. I don't recall whether the specific points of shipment were specified or not. I do know that witnesses or Georgia manufacturers as witnesses did refer to specific points in their testimony where they could purchase logs under a reasonable rate adjustment. That was in this proceeding, and I am referring to this case on original hearing. As [fol. 1004] to whether that testimony of theirs to which I referred identified one tract of timber known as the Eppinger & Russell tract, there were other witnesses and various witnesses as I recall that refused to say where the timber was located, did testify that they were in possession and knew where timber was under a proper rate adjustment, but refused to say where it was. (Tes. p. 979). That is true.

As to whether or not after the Georgia Public Service Commission filed the complaint in this proceeding it was visited by representatives of the Georgia lumber mills in respect to the intention of this complaint, and whether a conference was held between my commission and representatives of the Georgia lumber mills regarding that matter, I don't recall. As to whether any Georgia manufacturer requested the filing of this complaint before it was filed, there were various Georgia manufacturers that asked the Commission to reopen the case that was then pending before the Georgia Commission concerning an order that had been issued by the Georgia Commission, and the Commission, when it was made known to the Georgia Commission, found that additional evidence could be submitted, the Georgia Commission reopened that proceeding, suspended the rates and had that hearing, and these Georgia shippers brought before the Georgia Commission the Florida situation. It was brought into the record before my commission (Tes. p. 980) the existence of the Cummer scale within Florida. I don't recall whether it was set up as a comparison with the tentative rates pending before the Georgia Commission but, it was a complaint that they were already at a disadvantage with the Florida shipper. I do nof mean to say that owing to the higher rates on logs [fol. 1005] within Georgia than within Florida the Georgia lumber manufacturer was complaining to us that he was already at a disadvantage. The complaint to the Georgia Commission was as I recall it that right across the border the Florida man could haul his logs at so much between points in Florida and yet the Georgia man could not go into that same tract of timber or for an equal distance and draw logs into the Georgia shipping points. As to why that was complained of to us, and as to whether we had anything to do with those interstate rates (Tes. p. 981) our Commission has a great deal to do with it under our law. The matter was brought to our attention and the Georgia Commission then suspended the intrastate rates and complied with the Georgia law that we have of getting the interstate adjustment associated to it, first by going to the Atlantic Coast Line Railroad, and then appealing to the Interstate Commerce Commission for relief. The case before our Commission concerned rates on logs between points in

Georgia. As to whether the rates between points within Florida that were brought to the notice of our Commission or rates from Florida to Georgia in that particular proceeding, as I recall it, Mr. Cotterill, I know that the rates between points in Florida were brought to the attention of the Georgia Commission. As to whether this was by showing the comparison with our tentatively * * * now it has been four or five years since (Tes. p. 982) that hearing, and I could only speak from memory.

By Mr. Cotterill:

Q. It was by way of comparison between Florida Cummer scale and your own tentative log rates in Georgia, that the Florida log rates were brought to your notice?

A. The Georgia rates, of course, are not involved here, and I want it understood, Mr. Examiner, that I am not discussing the Georgia rates here at all—may have been brought into the record, but I do know that the Georgia [fol. 1006] shippers were complaining as to the intrastate Florida rates versus the interstate rates, and that brought on this complaint in the Georgia Commission. That is my recollection. They may have compared the Georgia rates that were under suspension. Following the information that I obtained at that time, which I have just been describing, I then brought the matter to the attention of the Atlantic Coast Line Railroad (Tes. p. 983). The request that we made of the Atlantic Coast Line Railroad was to remove what in the opinion of the Georgia Commission was a discrimination against the Georgia shipper. As to what I mean by removing that discrimination, I don't recall that the Georgia Commission suggested how that discrimination should be removed. As to whether I am now undertaking to correct my former testimony in this case on that point, I don't recall just how I testified on that particular point. As to whether I testified that "the matter was brought to the attention of the Atlantic Coast Line traffic officials with the request that they consider extending the Florida intrastate rates complained of into Georgia," that may have been. As to whether it was or not, I say it has been four or five years since that matter was handled, and I can only testify now from recollection. I was not testifying from recollection then, at that time. (Tes. p. 984) I had my files with me at that time. It is more likely that

what I said then was correct than any point of past recollection.

Q. Now then if such was the request which you made upon the Atlantic Coast Line Railroad and which was declined you then filed this complaint.. Was it for the same purpose?

A. The complaint of course speaks for itself. I drafted [fol. 1007] the complaint myself. I know what was in my mind when I dictated the language used in that complaint.

Q. Now, granting that the complaint speaks for itself, I am now not concerned with the language use- in the complaint as lawyers or courts would chew over its effect—I am talking about your own state of mind entirely. Did you in the choice of language which you used in that complaint undertake to secure by that complaint the thing which you asked the Atlantic Coast Line Railroad to do, and which they declined to do?

A. I did not, Mr. Cotterill. If my correspondence with the Atlantic Coast Line Railroad asked them to extend the Florida intrastate rates into Georgia, our complaint to the Interstate Commerce Commission was strictly in accord with the Georgia (Tes. p. 985) law, which requires that the Georgia Commission shall appeal to the Interstate Commerce Commission for relief, and that is the gist of our complaint, we appealed for relief alleging this discrimination.

Q. Yes. I am now concerned with what relief in your own attitude of mind, you were appealing regardless of the accident of the language you happened to use in drafting your complaint—and I want to know whether the relief which you then contemplated was the same as that which you had asked the Atlantic Coast Line Railroad to give you?

Mr. Alston: We object to that. The Commission has ruled on substantially the same question.

Mr. Cotterill: I am accepting the Examiner's ruling insofar as he has ruled, and I am not now passing to any appeal from that ruling, but I am going——

Exam. Hoy: I will sustain that objection, Mr. Cotterill. [fol. 1008] The complaint shows what is in issue and we are not interested so much as to what was in the man's mind as when he drew the complaint, we are interested in what the complaint alleges.

By Mr. Cotterill:

Q. Now, Mr. Price, when you were on the stand in the prior hearing of this case you testified that this is not a revenue case.

Mr. Alston: We renew our objection.

Mr. Cotterill: I am asking you what did you mean by that statement (Tes. p. 986).

Exam. Hoy: I think that is immaterial, Mr. Cotterill. The witness is testifying that he stands on the complaint as drawn. I have made a ruling that the complaint as drawn alleges unjust discrimination under Section 13, and unjust discrimination under Section 13 is a revenue case.

Mr. Norman: No, you are mistaken about that Mr. Examiner, I respectfully submit.

Exam. Hoy: Under unjust discrimination under section 13.

Mr. Norman: I do not want anything on the record except an exception to that statement of the law.

Mr. Cotterill: Your Honor, perhaps it would determine the line of examination in which I was undertaking by candidly asking your Honor, if you are disposed—I realize you don't have to do so—if you are disposed to indicate the ruling which you have made, that it goes to the length of declaring that in terms of the complaint, and such legal inferences as may be drawn therefrom control in disregard of any contrary declarations by the complainant in the course of the proceeding. Now, if your Honor would aid us to a complete understanding of your ruling on that [fol. 1009] point, it perhaps will end this discussion entirely.

Exam. Hoy: Well my thought is this that the complaint alleges a violation of Section 13, the Commission when it originally decided the same said Section 13 was in there, and made a finding, a Sec[illegible] 13 finding. The case went to the (Tes. p. 987) Supre[illegible] Court. The Supreme Court did not say that Section 13 was not in issue. The case is reopened for further hearing. The witness testifies and states that the complainants rely upon the complaint as drawn which, as I understand alleges Section 13 violation. Now, I think it is entirely immaterial to inquire what was in his mind when he drew the complaint. What was in his mind is not the important thing, it is what he alleges

in his complaint is important, what the issues are. Now, I think it is useless to ask him further questions as to whether he intended this, or whether he intended this or that, or whether he wants to change. He has already stated that he does not want to change his complaint, he stands on it.

Mr. Cotterill: Your Honor's ruling I take it then is——

Exam. Hoy: So I take it we should go along and introduce our evidence from the issues as I understand them to be. Of course you can make your exceptions to my ruling as to what the issues are, as you have done, and then you can argue that.

Mr. Cotterill: I do not want to misstate the Examiner's ruling, but it controls whether I undertake to express it or not. Under your Honor's ruling it is in the terms of the complaint which prevail as against any declaration by the complainant's counsel or witnesses in the former hearing, or such as might be elicitated by further examination here.

[fol. 1010] Exam. Hoy: Well if the witness, or the witness and counsel want to explain further his complaint or he wants to (Tes. 988) change his complaint, if he wants to withdraw a part of it, of course he is at liberty to do so, but he has said two or three times that he has alleged Section 13, and he says he wants to stand on that complaint as drawn. Now, the complaint as drawn, with what the complainant testified to, and with what explanation he made of that complaint at the former hearing, on that old record, the Commission said there was a Section 13 allegation in there and made a finding on it. Now, if he wants to change it further, or if he wants to rely on his complaint as interpreted in the previous record, he can do so, he can change it.

Mr. Cotterill: I think your Honor's ruling is now perfectly plain to us, and I take it the original exception to the ruling operates as well to the enlarged statement.

Exam. Hoy: Certainly. The record will now show.

Mr. Cotterill: I shall not pursue this line of inquiry further. We will try out the other question as we go along.

Mr. Norman: I want to ask this question then as to your ruling. Of course Section 13 covers undue prejudice and preference as between persons and localities and revenue burden.

Exam. Hoy: Yes, when I said Section 13 is revenue I meant unjust discrimination against interstate commerce, that is in Section 13. I did not mean to say that Section 13 was solely revenue but, I did mean to say that it was revenue (Tes. p. 989).

Mr. Norman: Now if your Honor please, the complainant has offered no evidence either in the previous hearing [fol. 1011] or now under the revenue burden provisions of Section 13 and we therefore insist that that question is not in this case any longer, and that the defendant cannot offer evidence as to revenue burden in a proceeding wherein the complainant has not done so.

Exam. Hoy: My ruling will be that the defendants may introduce such evidence. Of course, you can make your exceptions at that time.

Mr. Gutheim: Are the defendants to be permitted now to make a Section 13 case in face of the denial in their answer that there is no Section 13.

Exam. Hoy: In face of the denial by whom?

Mr. Gutheim: They answered, a general denial.

Mr. Gwathmey: Mr. Examiner, I will have to have a word here. I hate to prolong the discussion. There has been a great deal said up to this time what position the Georgia Public Service Commission has taken in this case at one time or another, and I had intended to suggest that the record be allowed to speak for itself on that subject. Now, these gentlemen are undertaking to state in the record what the defendants have or have not done in their pleadings and I shall ask leave to refer to the answer filed by defendants and particularly paragraph 9 of that answer (Tes. p. 990).

Witness Price (continuing): As to my testimony in reply to some questions just propounded to me to the effect that the Georgia shippers made complaint to the Georgia Commission as to these Florida rates, which we call the Cummer scale of rates, that was in 1925 at the time of the rehearing on some of the Georgia Commission's proposed lumber rates, or log rate scales. As to the nature of the complaint which the Georgia shippers then made against the Florida rates, I do not recall the details of it but, it [fol. 1012] is all in this record in my additional testimony at Valdosta. I quoted the very complaint which was submitted to the Georgia Commission in that rehearing, which

is quoted in this record here, and that applies now. That of course remains unchanged (Tes. p. 991).

My headquarters are Atlanta, the state capitol, yes, sir. In the course of my duties I go about throughout the State of Georgia from time to time occasionally. As to my personal knowledge of the location of any lumber mills now in operation on the line of the Atlantic Coast Line Railroad in South Georgia, I know of a mill at Valdosta and Waycross and the mill in Albany, Albany being served by the Atlantic Coast Line; I don't know whether that mill is on the tracks of the Atlantic Coast Line or not but, it is located at Albany. I have seen those mills, yes. I do not know anything about where those mills get their logs. Personally I do not know where they ship their lumber. I am speaking from personal knowledge (Tes. p. 992). I can only rely on what those witnesses from those points have testified in this case and previous cases. I have not any further witnesses. That is complainant's case.

Mr. Cotterill: Your Honor, we reserved until this time the recording officially a motion which of course we understand is hardly addressed to any function of the Examiner but which we are now stating, we announce our intention to rely upon and will press in brief and argument at least that far in the matter. Come now intervening shipper defendants herein, and in the light of the Examiner's ruling declaring that the undue burden issue is involved in this case by the proceedings of the complaint, respectfully move dismissal of that part of the complaint of the Georgia Public Service Commission, which as thus con-
[fol. 1013] strued, would allege that the Cummer scale of the Florida intrastate log rates unduly burdens interstate commerce. The ground of this motion is the absence of any legal interest in such matter of the Georgia Public Service Commission or any Georgia shippers or any (Tes. 993) showing or attempt to show this on this record; and I am reminded that since the complainant has now announced the complete close of its case, we ground a motion of dismissal so as well upon the further contention that the complete and purposeful omission of the complainant to submit any evidence whatsoever in support of any such allegation compels a ruling that no such matter is now in issue, and that in any event the complaint as to such issue must be dismissed because of the failure of the complain-

ant to introduce any evidence whatsoever intended to support it.

Exam. Hoy: Of course, Mr. Cotterill, I have made my ruling on what is in issue, you know that, and I cannot dismiss the complaint.

Mr. Cotterill: I said that in the beginning your Honor. This is merely an indication of our attitude towards that matter which we will follow up later.

DEFENDANT'S TESTIMONY

J. W. PERRIN, recalled as a witness, having been previously sworn, testified as follows:

My relations to the Atlantic Coast Line now are the same as they were when I testified (Tes. p. 994) before. At the time of the previous hearing I held the title of Assistant Freight Traffic Manager, and I am now Freight Traffic Manager. I have maintained my connection and authority over, and jurisdiction over these rates and matters involved in this case during all this time. I will [fol. 1014] review the exhibits previously filed by me in this case, indicating what changes have taken place that affect the correctness of these exhibits as of this date. In my exhibit No. 11 are shown mileage scales of rates on Atlantic Coast Line Railroad to, from and between points in Florida. At this time the interstate rates to and from North Florida points, as prescribed by the Commission in this case, and interstate rates to and from South Florida points made 15 per cent higher than the scale prescribed to and from North Florida points are in effect and are shown in Supplement No. 52, pages 75 and 76, to Agent Glenn's I. C. C. No. A-659 (Tes. p. 995).

The scale prescribed by the Commission, to which I refer as our standard scale, is substantially the same scale that has been prescribed or approved by the Commission for application on the Atlantic Coast Line in all situations that have been dealt with by the Commission. The scale originated with the Commission's decision and order in the case of Pierpoint Manufacturing Company versus Southern Railway, 50 I. C. C. 81, and was prescribed to apply from Southern Railway stations in South Carolina

to Savannah, Georgia. Subsequently, in the case of Southern Veneer Association, 62 I. C. C. 669, the Commission prescribed this scale on logs from South Carolina points on the Atlantic Coast Line and Seaboard Air Line to North Carolina destinations. This was followed by the case of the Southern Cotton Oil Company versus Atlantic Coast Line Railroad, 120 I. C. C. 190, in which case the Commission prescribed this same scale of rates to Savannah, Georgia, from points on the Atlantic Coast Line in South Carolina. As reported in 136 I. C. C. 370, the Commission approved the same log rates from North Carolina points on the Atlantic Coast Line to Virginia Cities. In the meantime, the Alabama Railroad Commission adopted [fol. 1015] this same scale, which is now in effect on the Atlantic Coast Line in Alabama, and the Public Service Commission of Georgia likewise adopted it for intrastate application in Georgia, but as has been previously shown in the record, the Georgia Commission suspended the application of (Tes. p. 996) this scale because of the existence of the Cummer scale in Florida. The South Carolina Commission prescribed this same scale for application in that State, but subsequently made some reductions based upon the comparison with intrastate rates in North Carolina that have not yet been revised on basis of this scale. The trunk line carriers in North Carolina filed with the North Carolina Commission a petition seeking the application of our standard scale, on which a hearing has been held, but the North Carolina Commission has withheld its decision. The Corporation Commission of Virginia approved this scale for application on the Atlantic Coast Line in Virginia and it is now in effect in that state. Therefore, our standard scale, dating from its establishment in the Southern Veneer Association Case, has become effective in all interstate situations on the Atlantic Coast Line, and has become effective for intrastate application in Alabama and in Virginia. The reasons for its non-application in Georgia were explained at the previous hearings, and I have just stated the circumstances under which this scale is not yet applicable for intrastate application in North Carolina and South Carolina. The record in the present case shows the conditions under which it is not being applied within the State of Florida (Tes. p. 997).

So far as interstate traffic is concerned, the changes made in the rates from North Carolina to Virginia Cities resulted in increases, but in all other interstate situations [fol. 1016] substantial reductions resulted. In the intrastate situation in Alabama the use of this uniform scale produced increases in previously existing rates, while in Virginia there were both increases and reductions.

As to the desire of our Company to secure uniformity in the level of log rates between all points on our lines, I have previously explained that when, on May 29, 1925, the Georgia Commission suspended intrastate rates that had been authorized to become effective April 15, 1925, the Atlantic Coast Line adopted as its general interstate basis of log rates the same scale of rates that had been submitted to the Georgia Commission as net rates on logs handled under transit, notwithstanding the substantial reductions in interstate rates that resulted from the adoption of that scale, and that scale, as shown in my exhibit No. 17, was in effect at the time of the previous hearings in this case. Nevertheless, because of the decisions of the Interstate Commerce Commission in the several cases involving our interstate log rates in particular situations, we submitted at the first (Tes. p. 998) hearing of this case the present standard scale, which is substantially the same scale as prescribed by the Commission in the several cases to which I have previously referred, and this scale was prescribed by the Commission in this case. Notwithstanding the resulting reductions from every revision that has been made in our interstate rates, except from North Carolina to Virginia, and notwithstanding the fact that the interstate rates previously in effect were not unreasonable except as influenced by consideration of differences in rates in our immediate territory, we have felt that the losses resulting from these reductions would be offset by the revision of intrastate rates if this reduced level of interstate rates could be made uniform in its application [fol. 1017] throughout our system. Except in Florida logs are handled on our line in and between the several states that we serve under very much the same condition, and, unless we differentiate the Peninsula of Florida as is done with regard to general traffic, there appears to be no reason for a difference in the level of log rates between any parts of our lines. Logs have constituted, and still

constitute, a substantial portion of the traffic transported by the Atlantic Coast Line, which, because of our geographical location, is a large handler of forest products generally, including logs. Because of the large volume of log traffic, its existence along the entire length of our line and the similarity of conditions under which logs are (Tes. p. 999) transported, it readily appears that there is urgent need of such uniformity as will remove discrimination and of a general revision on a fairly compensatory basis. Except in Florida the conditions under which logs are transported are so nearly uniform as to condemn low and unremunerative rates in one situation while applying no higher than fairly remunerative rates in other situations on our system.

The interstate basis of rates on logs prescribed by the Commission for application between Georgia and Florida is now applicable interstate over the entire system of the Atlantic Coast Line except that in South Florida the present interstate scale is 15 per cent higher.

By Mr. Gwathmey:

Q. Would the Atlantic Coast Line Railroad Company ever have proposed to the Interstate Commerce Commission the scale of rates which the Commission adopted in this case for application interstate between Georgia and Florida except upon the expectation that those same rates would likewise be adopted intrastate in the various states served by the Coast Line?

[fol. 1018] Mr. Adair: Just a moment. That seems to me to be a very broad assumption, what they would or would not have done.

Mr. Gwathmey: I am asking the opinion of a Coast Line official (Tes. p. 1000).

Mr. Adair: Contrary to the previous testimony that they were not proposing new rates in this proceeding.

Mr. Gwathmey: Is that the ground of the objection?

Mr. Adair: That is one of them.

Mr. Gwathmey: It seems to me you are right on that.

Mr. Adair: And also it calls for a conclusion what they would not have done under certain circumstances that are not shown here to exist.

Exam. Hoy: You may answer the question.

A. We would not. As a matter of fact the record at the previous hearing when this scale was submitted called attention to the fact that the Interstate Commerce Commission had prescribed this scale in their interstate situations, and that we were proceeding with the several intrastate commissions to secure the adoption of this uniform level of rates.

By Exam. Hoy:

Q. You also testified at the former hearing did you not that you intended to make no change in the intrastate rates in Florida?

A. Except as ordered by the Commission; yes, sir. In my previous testimony on that subject that applied (Tes. p. 1001) to the conditions existing at that time which were fully explained in the record of this case. I offer exhibits, Nos. 54 to 77 inclusive.

My exhibit No. 54, marked No. 54, is for the purpose of showing the abnormally low level of the so-called Cummer [fol. 1019] scale as applied in Florida. It is supplemental to exhibits that I filed at the first hearing of this case, Nos. 18, 19 and 20, in which I set forth the comparison between rates and revenues on logs under the Cummer scale and rates and revenues on the lowest grades of traffic that we handle, consisting of brick, gravel, sand, lime and cement.

The rate practices of the railroads in the South as a whole differ as to the method of assessing charges on sawmill logs. Lines in the eastern part of the South have no transit on logs, while lines farther west publish both local log rates and net transit log rates. The practice of lines such as the Atlantic Coast Line, Southern, Clinchfield, Nashville, Chattanooga & St. Louis and Seaboard Air Line is to apply flat local rates to manufacturing points, the ultimate collection of charges on the logs being made upon delivery at the manufacturing point. On the other hand, the Frisco, Illinois Central, Mobile & Ohio, Gulf, Mobile & Northern and Louisville and Nashville provide both local rates to be used independent of transit and net transit rates as a basis for charges on the weight of the logs corresponding to the weight of the lumber shipped out from the manufacturing point.

In this exhibit No. 54, there are shown the local rates of all the lines listed in the exhibit except the Frisco, whose

tariff of local rates was not available when the statement was prepared. The exhibit also shows the net transit rates of those lines operating under that plan. In the case of the Atlantic Coast Line in Florida, the so-called Cummer scale applies to the mill without transit features, and likewise the local scale shown under the column headed "Atlantic Coast (Tes. p. 1003) Line Railroad" applies in all inter-[fol. 1020] state situations and in the intrastate situations in which this scale, which is the scale prescribed by the Commission in this case, has been adopted. Manifestly, under the plan of local rates to the mills these local rates apply whether or not the output of the mills is shipped via the line transporting the logs, and said local rates also apply even in cases where there is no manufactured product to be shipped by rail. On the other hand, under the transit system of some of the lines in the South, the local rates do not have final application on the logs, but are subject to the reduced net transit rates as a cut back against the weight of the logs corresponding with the weight of the product shipped out; consequently, logs moving on the lines using transit pay much higher freight charges when there is no reshipment under transit.

In order to present the situation both as to local shipments of logs and as to shipments of logs handled under transit, I have made in this exhibit the comparison to show both effects. In addition to showing the abnormal low level of the Cummer scale, whether applied on logs to be manufactured and reshipped as lumber or on logs for other disposition, this comparison tends to justify as not too high the interstate scale of the Atlantic Coast Line as prescribed by the Commission, which, incidentally, the exhibit shows is the same as the scales of the Southern Railway and Seaboard Air Line (Tes. p. 1004), and substantially the same as the scale of the C. C. & O. Railway, and the same as the net transit rates of the Louisville & Nashville. It will readily appear how closely the net transit rates of the Frisco, the Illinois Central and the Mobile & Ohio correspond with the local interstate scale of the Atlantic Coast Line, while the local rates of the Frisco, Illinois Central and Mobile & Ohio are very greatly in excess of [fol. 1021] this local scale of the Atlantic Coast Line. As to the Gulf, Mobile & Northern Railroad, the reshipping or net transit rates vary from one-half cent to 1 cent from

the Atlantic Coast Line's local scale, while the local rates of the Gulf, Mobile & Northern are practically twice as high as the Atlantic Coast Line's scale. The Louisville & Nashville Railroad's transit rates, which are the same as Atlantic Coast Line local rates, conform quite closely with the transit rates of the Frisco, the Illinois Central and Mobile & Ohio, while the Louisville & Nashville's local rates are as high as, or higher, than the rates of the Illinois Central, Mobile & Ohio and Gulf, Mobile & Northern.

Throughout the history of logging operations on the Atlantic Coast Line the practice of this company has been to make its local log rates available on logs to be used in the manufacture of lumber; this practice having begun more than forty years ago when lumber represented more than a third of our total traffic, and this practice resulted in a low level (Tes. p. 1005) of local log rates, that is reflected in our present rates.

Nevertheless, logs move from Atlantic Coast Line stations to the ports for export, and logs are shipped from our stations to manufacturing points in the south on other lines and to the East, on all of which logs are applied the low level of the rates that have been made in consideration of revenue on manufactured product. This exhibit shows not only that the application of our interstate scale of rates as prescribed by this Commission fully protects the users of logs in their competition with the users of logs in all other parts of the South, but it also shows the extent to which the Cummer scale of *of* log rates in Florida gives an [fol. 1022] advantage to the users of logs in Florida.

Q. Now, combining log transportation costs with lumber transportation costs, please explain your exhibit marked No. 55.

Mr. Norman: Now if the Examiner please, this defendant here is offering evidence apparently to show that the Cummer scale of rates applicable in Florida is unreasonable. Now I wish to object to any evidence that goes to the reasonableness to the Cummer scale of rates, the Supreme Court in its opinion in this case said, "The authority to determine the reasonableness per se of intrastate rates lay with the state itself and not with the Interstate Commerce Commission." That is the law of this case, and we submit that they should not be allowed to offer evidence

as to the reasonableness of (Tes. p. 1006) the Florida intrastate rates.

Mr. Alston: Mr. Examiner, we admit that the statement read is the law of this case. We have no idea of undertaking to transpend it. Unreasonableness in a legal rate may very well be an element in working discrimination against another interstate rate or interstate commerce, and it is only as an element of proving discrimination that we are going into the question of reasonableness. This particular question that we are now proposing is not alone addressed to unreasonableness, it is addressed directly to discrimination against persons, places and traffic.

Mr. Norman: Now, if the Examiner please, the question of reasonableness does not have the bearing upon the question of undue prejudice; the Supreme Court of the United States has held although rates may be reasonable and still constitute undue prejudice, they may be unreasonable and [fol. 1023] constitute undue prejudice. So that we insist that it is not competent to go into the question of reasonableness in order to establish a question of undue prejudice.

Exam. Hoy: I think it is competent to go into the question of reasonableness under Section 13 allegation, which I construe this means unjust discrimination against interstate commerce. Because if the Interstate Commerce Commission finds unjust discrimination against interstate commerce, it would be incumbent upon them to fix a reasonable basis of (Tes. p. 1007) rates to remove the discrimination thus found, and in connection with that Section 13 allegation I think the evidence is admissible.

Mr. Norman: Mr. Examiner, the Section 13 allegation in view of the evidence offered by the complainant, and the position of the complainant must be taken to be an undue prejudice.

Exam. Hoy: Well, I have made my ruling Mr. Norman, that Section 13 is in there, including unjust discrimination against interstate commerce.

Mr. Norman: By that you mean revenue burden.

Exam. Hoy: Yes.

Mr. Norman: If you will just indulge me while I read a few lines of the case of——

Exam. Hoy: I don't think it will be necessary, that is just to use more time, to make the ruling. Now, if my ruling is right you can refer to that ruling in the Berry case.

Mr. Norman: Well, it is ordinarily customary to be *be* heard on an objection like that especially if you have a case which you claim is decisive of the question.

Exam. Hoy: Well, I don't think that would decide the [fol. 1024] question. Because the facts in a particular case can not determine what the issues in another case are.

Mr. Norman: That is a statement of law and not of facts made here, by the Commission.

Exam. Hoy: Well, the decision has been referred to in the (Tes. p. 1008) record once, by Mr. Cotterill.

Mr. Norman: All right.

Mr. Adair: May I just call your Honor's attention to one thing on the question of this reasonableness. Our good friends, the Atlantic Coast Line Railroad Company at no time and at no place in any pleading, not even the subsequent motion have asserted that this so-called Cummer scale was a burden on interstate commerce, they have not done so directly or by implication, back and forth, or up and down.

Exam. Hoy: I do not think that is any reason why this evidence is not admissible. They can put it in evidence as I see it, not having done so previously.

A. This exhibit is for the purpose of showing the relationship of transportation costs between manufacturers of lumber in Florida and in Georgia when in both cases rail transportation of logs to the mills is necessary. It assumes the three-for-one rule heretofore presented in this case whereby approximately three cars of logs are consumed in producing one car of lumber. The exhibit shows the transportation cost on 150,000 pounds of logs, approximately three cars, for distances ranging from 25 to 150 miles, based upon the Cummer scale to the Florida milling points and upon the interstate scale to the Georgia milling points. It then shows the transportation cost on a 50,000 pounds [fol. 1025] car of lumber to (Tes. p. 1009) representative Eastern destinations and a consolidation of the log transportation costs with the lumber transportation cost as the total transportation cost to and from each of the mill points. The same lumber rates apply from all South Georgia stations on the Atlantic Coast Line to Eastern destinations, while the lumber rates from Florida points are the same as from Georgia points from Jacksonville, 3 cents per 100 pounds higher than Georgia points from Loughman and

Groveland, Florida, and 1 cent per 100 pounds higher than from the South Georgia points from Perry, Gainesville and Palatka, Florida. Incidentally, the relationship between the lumber rates may be assumed to be correct, inasmuch as the rates were prescribed by the Interstate Commerce Commission. In the last three columns of the exhibit are shown the amount of money disadvantage against the Georgia manufacturer as against manufacturers at the Florida points in the sale of lumber at the Eastern destinations used as illustrations. Manifestly the disadvantage in transportation cost as against the Georgia manufacturer is altogether because of the differences between the level of the log rates within Florida and from Florida to Georgia. It will be noted that as against the Florida mill points the minimum disadvantage of the Georgia manufacturer is $11.85 per car of lumber on a log haul of 25 miles, with a maximum disadvantage of $61.50 per car of lumber on a log haul of 150 miles. (Tes. p. 1010)

My exhibit No. 56 shows the lines of the Atlantic Coast Line in Florida, the location of Perry, Florida, as a point receiving logs, and by a system of solid line circles there are shown what portions of the state of Florida are embraced within the several circles measuring 50, 75, 100, 125 [fol. 1026] and 170 miles from Perry, together with the rates applicable to Perry under the Cummer scale from points included within each of these circles. By a system of dotted circle lines around the location of Perry there are shown the rates to Perry as they would be under the interstate scale prescribed by the Commission in this case from points included within these circles. The exhibit is merely a convenient method of indicating the differences in the extent of territories from which logs may be shipped at the same rates per 100 pounds under (Tes. p. 1011) the Cummer scale and under the scale prescribed by the Commission in this case. To illustrate, the log rate of 3.2 cents per 100 pounds under the Cummer scale covers a movement up to 125 miles, while rate of 3 cents under the interstate scale would cover a movement up to 20 miles. The rate of 3.2 cents in the Cummer scale would cover a movement from points as far south as Lacoochee, while the interstate rate of 3 cents would apply only from adjacent points within 20 miles. The succeeding four exhibits show the same char-

acter of information as to Jacksonville, Palatka, Loughman and Lacoochee as points of destination. It will be noted that under the Cummer scale to points near the center of the state, such as Loughman and Lacoochee, rate of 3.7 cents per 100 pounds would cover the movement of logs from practically the most remote points on the Atlantic Coast Line in Florida, while under the interstate scale a rate of 3½ cents per 100 pounds would cover a movement for a distance no greater than 30 miles. This set of exhibits is not intended to show that from every point within each of the circles measuring the Cummer scale the rate would necessarily be the rate shown as applicable for distances within that circle, because circuity of route would in some cases make the distance greater than the air line distance measured by the circles, but they illustrate in a [fol. 1027] graphic way the differences in rates under the Cummer scale and under the interstate scale as applied to (Tes. p. 1012) these particular situations in Florida.

My exhibit marked No. 61 is a statement showing for the period February 9, 1929, to January 31, 1931, the movement of long length logs between Atlantic Coast Line stations in Florida. February 9th coincides with the date of the effectiveness of the Interstate Commerce Commission's order. January 31, 1931, was nearly the period up to which the Accounting Department could carry this statement. In other words within the limit of the time they brought it up to January 31st. On the title page is shown a recapitulation of the contents of the succeeding pages. The statement shows shipping points, destinations, distances, number of cars, weights as billed and revenue collected on basis of the scale prescribed in this case by the Interstate Commerce Commission, together with the revenue that would have been collected if the so-called Cummer scale had been applied. There are twenty destinations to which logs moved during that period. Attention is called to the fact that the statement includes only the long length logs as distinguished from logs of six feet or less in length. It may be necessary to explain that the weight as billed does (Tes. p. 1013) not always correspond with the weight on basis of minimum of 50,000 pounds per car, because under the scale of rates actually applied the carload minimum is 40,000 pounds, while under the Cummer scale the carload minimum is 50,000 pounds, so that in re-rating the traffic under

the Cummer scale it is necessary to observe on each car minimum of 50,000 pounds. The recapitulation shows the movement to have consisted of 18,602 cars, on which reve- [fol. 1028] nue collected amounted to $571,508.94 and on which the revenue computed under the Cummer scale would have been $281,225.75, a difference of $290,283.19. It may not be amiss to call attention to the fact that if the same quantity of logs had moved interstate on our line for the same distances as set forth in this statement the charges would have been slightly more than double the charges that would accrue under the Cummer scale in Florida.

This exhibit No. 61 shows the logs that have actually moved in Florida during the period in which the intrastate rates were advanced as ordered by the Interstate Commerce Commission. The figures on this exhibit were taken from the way-bills by our Auditing Department.

As showing the general distribution of these movements of logs in the different parts of the State of (Tes. p. 1014) Florida, my exhibit No. 62 is a map of the lines of the Atlantic Coast Line in the State of Florida on which are shown the names and locations of the twenty points of destination to which the logs moved as per the preceding exhibit, No. 61. The purpose of the map is to show at a glance that the movement of logs is not restricted to any particular part of the State. On this exhibit are listed the destinations and the minimum and maximum distances which logs moved to each of those destinations. I am afraid that I could not take this exhibit and indicate in a general way the location of the line passing through Burnetts Lake, which has been referred to frequently in this proceeding. It does not appear on that exhibit. That line so far as this map indicates would pass across the State approximately in the vicinity of Gainesville as shown on the map. As to what extent the statement of this movement of logs in- [fol. 1029] cludes train load movements: there were 7,350 cars by special train movement from Hines to Palatka and 2,862 cars in special train movement from (Tes. p. 1015) Homosassa to Lacoochee. All over movements were in regular trains handling logs and other traffic promiscuously. There were, therefore, 10,214 cars handled in special log train service, and 8,388 cars handled in ordinary pick-up service. I spoke of special trains moving from Hines to Palatka, these were movements to the Wilson

Cypress Company. As to how often that train moves in ordinary course, I think it is running every other day, yes sir, and that accounted for 7,350 cars. The 2,862 cars to which you refer was also a special train movement from Homosassa to Lacoochee. I referred to the total as 214 a little while ago. It would be 212 of this 1,652. Here is 810. There is a little discrepancy of 2, that is all (Tes. p. 1016).

Now those shipments to Homosassa and Lacoochee went to Cummer Cypress Company. There was 8,388 cars handled in ordinary pick-up service. They are widely scattered in points of origin and destination; the statement shows the points of origin and the destination and so far as the destinations are concerned this exhibit No. 62 shows to what extent the movement was in the several parts of the State of Florida. In other words the destinations named like Perry, Live Oak, Baldwin, Cross City, and Otter Creek, and so forth, on this map are the destinations of the logs. They are the destinations for all of the cars on this map. It shows all of the destinations. It shows Palatka and Lacoochee and so forth.

By Mr. Alston:

Q. In your exhibit No. 61 it is shown that on the long length logs moved in Florida for the period February 9, 1929, to (Tes. p. 1017) January 31, 1931, inclusive, the [fol. 1030] charges would have been reduced slightly more than one-half of the actual charges if the so-called Cummer scale had been applied. What would have been the approximate effect upon the revenues of the Atlantic Coast Line during the same period if the Cummer scale had been in effect for interstate and intrastate movement of logs throughout your system?

A. During the years 1929 and 1930 the movement of logs on our system, including the long length logs in Florida, consisted of 3,450,765,300 pounds, of which the interstate movement consisted of 456,134,800 pounds, leaving intrastate movement of 2,994,630,500 pounds. The revenues from all of these logs amounted to $1,483,424.87, of which the revenue on interstate movements amounted to $266,654.12 and the intrastate earnings amounted to $1,216,770.75. If the Cummer scale had been applicable on all of our log movement the reduction in revenues would have been approximately as follows:

Virginia, intrastate	$2,926.20
North Carolina, intrastate	95,804.17
South Carolina, intrastate	89,933.48
Georgia, intrastate	29,068.53
Florida intrastate long logs	290,283.19
Alabama, intrastate	13,245.47
Interstate	144,259.88

As a summary, if the Cummer scale had been uniformly (Tes. p. 1018) applied the earnings of the Atlantic Coast Line would have been reduced approximately $665,520.92. These figures represent approximate losses, and they are not based upon an actual re-rating of the tonnage, except upon the long length logs in Florida, the losses on the interstate movement and on the intrastate movement other than [fol. 1031] in Florida having been arrived at on basis of the percentage that the Cummer scale is of the actual scales applied.

Outside of Florida the long length and short length logs carry the same rate. I have referred to the gross poundage of those logs shipped over the period 1929 and 1930. There are in the State of Florida and throughout the State of Florida still vast tracts of timber as yet uncut. That applies generally in the northwestern portion of the Peninsula as well as throughout the Peninsula and down the lower part of the Peninsula.

Q. If the Cummer scale could be proven to be fair and reasonably remunerative for the transportation of logs in Florida is there any condition existing throughout the Atlantic Coast Line's system that would justify higher rates than the Cummer (Tes. p. 1019) scale?

Mr. Norman: We object to that question.

A. None that I have been able to find.

Mr. Norman: If the Examiner please, I object to that question. This is a traffic witness. Now he is asking him a transportation question.

Exam. Hoy: Well, traffic and rates I take it. From the rate making standpoint, I was looking at it that way rather than a transportation standpoint. Looking at it that way I think he is qualified to answer it.

A. None that I have been able to find. I have previously referred to the conditions under which logs are transported

between all points on our lines, and there is no condition at any point on our lines that would justify higher rates on logs than those applicable within the state of Florida.

As to what, in my experience with the State Commission [fol. 1032] in the States that our line serves, has been the effect upon intrastate log rates of lower rates existing in the other States; in the instant case the record shows the influence upon the Georgia rates by the intrastate rates in Florida. In South Carolina the State Commission, after having approved our present interstate level of rates, reduced the log rates in South Carolina because specifically the rates in North Carolina are lower than the South Carolina rates then in (Tes. p. 1020) effect. In the case that is now before the North Carolina Commission the existence of rates between points in Virginia on a line other than the Atlantic Coast Line, but operating also in North Carolina, is one of the principal obstacles in the way of securing the application of our uniform scale in North Carolina. As the Interstate Commerce Commission's records will show in every case involving our interstate rates on logs, the existence of lower levels of rates within some of the States that we serve has been urged as a justification for lower interstate rates on logs.

My exhibit No. 63 is a comparison between the Cummer log scale and the log scales now applicable intrastate between points in Virginia, between points in North Carolina, between points in South Carolina, between points in Georgia and between points in Alabama. I have previously referred to the status of the intrastate rates in each of these states and to the efforts that have been made to secure authority to apply uniformly the scale of rates now applicable interstate on our line. The Cummer scale is 48.1 per cent of the Virginia scale; 59 per cent of the North Carolina scale; 52.8 per cent of the South Carolina scale; 56.4 per cent of the transit scale in Georgia; and 45.9 per cent of the Alabama (Tes., p. 1021) scale, which is the same as our [fol. 1033] interstate scale.

By Exam. Hoy:

Q. Just how did you get those percentages?

A. That is a mathematical average of the scale for all of the distances, of course, comparing in the case of Virginia, which has rates only up to 72 miles, comparison

would run against the Cummer scale only up to that distance.

As indicating the impropriety of the Cummer scale in its progression as distances increase I will explain my exhibit No. 64. In my exhibit marked No. 64 is set forth the Cummer scale as contrasted with rates as they would be if made certain percentage of first class rates prescribed by the Interstate Commerce Commission in the Southern Class Rate Case, Docket 13494, 113 I. C. C. 200. There is shown a comparison between the Cummer scale and what the rates would be if made 5.03 per cent of first class rates; 5.03 per cent being the relationship between the log rate under the Cummer scale for five miles, representing the minimum rate of the log scale. Similarly, is shown the comparison with rates as they would be if made 3.54 per cent of first class rates, which is the relationship between the log rates under the Cummer scale for 110 miles, the middle or mean rate of the log scale, and, finally, the comparison between the Cummer scale and log rates that would result from using 3.85 per cent of first class rates, which is the relationship between the maximum rate of the log (Tes. p. 1022) scale and the first class rate for 170 miles. The exhibit is intended to show that as measured by the Commission's scientific progression of the class rates the progressions and the resulting rates under the Cummer scale are irregular and abnormal.

This exhibit, marked No. 65, shows an extension of the [fol. 1034] Cummer scale up to 320 miles. Incidentally, the average haul of all traffic in the United States during the last year was 317 miles. The present Cummer scale for 160 miles is equivalent to 3.4 cents per 100 pounds, this rate having been arrived at by extending the previously existing Cummer scale by adding $1.00 per car for the increased distance of 30 miles over 130 miles. By observing the same progression in distance in 30-mile blocks and by adding $1.50 per car the Cummer scale at 320 miles would be equivalent to 5.2 cents per 100 pounds. The use of the additional $1.50 for each 30 miles increase in distance is in order to be well within the bounds of the effect of a logical extension of the scale, and otherwise the addition for each additional 30 miles of distance might well be $1.00 per car, which was the addition for increase in mileage from 130 miles to 160 miles. The exhibit then shows per

ton mile, per car and per car mile results from the existing Cummer scale and also the extension of the Cummer scale. (Tes. p. 1023) By any system of comparison of per car mile earnings on low-grade heavy loading tonnage elsewhere in the country will be indicated by abnormally low level of the Cummer scale.

I will give some examples indicating the action of the Interstate Commerce Commission in connection with rates producing low per ton mile and per car mile revenue results. In I. & S. Docket 3381, reported in 161 I. C. C. 477, involving rates on sand, gravel and strippings from certain points in Illinois to certain points in Indiana the record shows that the average loading was approximately 53 tons per car and that the Commission found below a reasonable minimum a proposed rate of 65 cents per ton for an average distance of 89 miles, yielding earnings of 7.3 [fol. 1035] mills per ton and 38.7 cents per car mile. Compare these figures with the earnings under the Cummer scale for 89 miles, viz., 5.1 mills per ton mile and 15.3 cents per car mile. In Docket 14573, decided May 17, 1924, involving rates on animal manure from Nevada points over distances ranging from 1141 miles to 2799 miles the Commission found that the rates proposed by complainants would yield revenues ranging from 4 mills to 7.3 mills per ton mile and from 14.8 cents to 21.8 cents per car mile, the average for all groups being 5.78 mills per ton mile and 17.3 cents per car mile, and the Commission, although characterizing animal manure as a low-grade commodity, (Tes. p. 1024) characterized the rates so proposed as less than reasonable. In I. & S. Docket 3251, reported in 156 I. C. C. 575, decided July 18, 1929, dealing with lumber from Pacific Coast points to points in Colorado, New Mexico and Texas reference was made by the Commission to its decision in the matter of rates on sulphur to California terminals, 100 I. C. C. 369, in which it was found that a proposed rate of 40 cents per 100 pounds with a minimum of 80,000 pounds per car for the distances involved, ranging from 1631 miles to 2252 miles, producing ton mile earnings from 3.5 to 4.9 mills and per car mile earnings of from 14.2 to 19.6 cents, was not shown to be reasonably compensatory. In I. C. C. Docket 18984, reported 139 I. C. C. 252, decided January 31, 1928, involving rates on green salted hides, carload, weighing 38,800 pounds per car, from Macon,

Georgia, for a distance of 1144 miles, yielding 18.31 cents per car mile, it was found that the rate sought of 54 cents would obviously be too low. In I. & S. Docket 2800, decided April 16, 1927, involving rates on unmanufactured tobacco from points in Kentucky to St. Louis and East St. Louis for dis- [fol. 1036] tances ranging from 350 to 400 miles, a rate of 35 cents per 100 pounds, yielding car mile earnings of 17.5 cents, was found to be obviously too low, judged by any standard.

In Fourth Section Application 12655, filed by the Seaboard Air Line Railway, seeking Fourth Section relief on paved (Tes. p. 1025) brick from Tennessee, Alabama and Georgia points to Tampa, St. Petersburg, Palmetto, Bradenton and Sarasota, Florida, the Fourth Section relief was denied in an opinion in which it was stated that from Robbins, Tennessee, and Campania, Georgia, to Tampa the proposed rates would yield 4.55 mills and 5.6 mills per ton mile, respectively, and that the per car mile earnings under the proposed rates to Tampa from Robbins and Campania would be 18.23 cents and 22.26 cents respectively; it was also shown that the average operating expenses of the Seaboard Air Line for the year 1923 amounted to 10.3 mills per ton miles and 19.8 cents per car mile for an average haul of 175 miles, while the distances to Tampa were, from Robbins 812, and from Campania 557 miles. As the per ton mile and per car mile revenue under any mileage system of rates must inevitably grow less with increases in distances, a comparison of the revenue returns under the rates covered by the Commission's decisions to which I have just referred, and bearing in mind that most of them are for distances very much greater than those embraced in the Cummer scale, it seems obvious that the rates under the Cummer scale are abnormally low, and, as measured by the rates deal- with by the Commission, are not remunerative.

Mr. Norman: Now if the Examiner please, I want to object to all those citations and decisions of the Commission. If he wants to rely on the decisions of the Commission let [fol. 1037] (Tes. p. 1026) him put them in evidence, where all of the facts are shown. The Supreme Court of the United States held in Robinson versus Baltimore & Ohio 222 United States, that that was the way to introduce a

decision of the Interstate Commerce Commission, was by offering it in evidence.

Mr. Alston: You mean the Interstate Commerce Commission can not take cognizance or call attention to it.

Exam. Hoy: I think he has got the right to refer to the rates as to what the Commission said, of course, what weight will be given the evidence is another thing, but under our practice we are allowed such reference to rates in comparison with other rates to go into the record.

A. My exhibit No. 66 compares the Cummer scale with the iron ore rates involved in I. & S. Docket 1514, reported in 69 I. C. C. 589, found by the Commission to be not justified because unreasonably low. The exhibit shows, among other things, the per car mile revenue under the Cummer scale and similar information under the iron ore rates prohibited by the Commission. The comparison is for the same distances in both cases, and it is readily apparent that the rates condemned by the Commission as too low are very substantially higher than the rates under the Cummer scale (Tes. p. 1027). That was an interstate rate that I referred to as being compared by the Interstate Commerce Commission.

My next exhibit marked No. 67, shows both the Cummer scale and the interstate log scale prescribed in this case as compared with rates prescribed by the Commission on logs in Central territory, from which it is readily apparent how much lower are the Cummer scale and our interstate scale than log rates in Central territory. The exhibit also shows comparison with rates as they would [fol. 1038] be made by using 17.875 per cent of first class in Southern territory, which corresponds with 65 per cent of sixth class in Central territory. Notwithstanding the general practice of lower rates in Central territory than in the South, this exhibit shows to what extent that practice has been departed from in making log rates. I was referring to the present sixth class in Central territory. In other words the exhibit shows the existing lumber rates made 65 per cent of the present sixth class rate (Tes. p. 1028), using the Disque scale. I will next explain my exhibit No. 68 comparing the Cummer scale and our interstate scale with 65 per cent of the lumber rates approved in Southern territory. In I. & S. Docket 2479 the Commission approved a scale of lumber rates to apply between South-

ern points and destinations in Virginia, 157 I. C. C. 280. In this exhibit have been shown the lumber rates so approved, together with the rates made 65 per cent of said lumber rates as compared with log rates under the Cummer scale and under the interstate scale prescribed in this case. The Commission has prescribed on logs 65 per cent of lumber rates in the case of Marvil Package Company, reported 140 I. C. C. 78, applicable from North Carolina and Virginia points to points in Maryland, Delaware and New Jersey, and in Williamson Veneer Company, 171 I. C. C. 687, applicable from points to Virginia to Baltimore. It is readily apparent that the scale prescribed in this case is substantially lower than log rates on basis of 65 per cent of lumber rates and that the Cummer scale is but little more than one-third of the rates made 65 per cent of lumber rates.

I have prepared exhibits showing comparisons between the Cummer scale of rates on logs and rates prescribed by (Tes. p. 1029) the Commission on other low grade traffic for application in the South.

[fol. 1039] There are eight of such exhibits, numbered 69 to 76, inclusive. Each of these exhibits contains not only the rate comparisons, but the other information necessary to use in connection with the comparison of rates such as the loading weights and values, and each of them shows reference to statements made by the Commission with respect to the rates prescribed. The exhibits cover charcoal, cement, old worn-out bags, hay, fertilizer, cullet, brick, sand, gravel, etc. On all of these commodities, except the old-worn-out bags, the rates prescribed by the Commission have general application throughout Southern territory. Without exception the comparison is as to rates, revenue per ton mile and per car mile applicable on commodities on which the Commission, because of low value or because of other considerations stated in the exhibits, has made some very low rates. These exhibits in addition to supplementing the comparisons between the Cummer scale and the rates on other low-grade traffic shown in exhibits filed by me during the previous hearing of this case, are also of particular value in showing the abnormally low level of the Cummer scale in that the rates shown therein were made by the Interstate Commerce Commission. It means

that last line, the rate made on these commodities were by (Tes. p. 1030) the Interstate Commerce Commission.

My last exhibit marked No. 77, is a comparison of the Cummer scale with various scales of log rates approved or prescribed by the Interstate Commerce Commission for application to Chattanooga, Nashville, Mobile and Barbourville. The comparison also runs against the interstate scale prescribed in this case. The comparison not only tends to fully justify the level of our interstate scale, but to show the unusually low level of the Cummer scale.

[fol. 1040] Mr. Alston:

Q. Mr. Examiner, we now tender in evidence the exhibits Mr. Perrin had identified from 54 through 77, both inclusive.

Mr. Norman: Mr. Examiner, I desire to object to the receipt of these exhibits, and I object to exhibits 61 and 62 on the ground that they are addressed to the question of establishing a revenue burden caused by the Florida intrastate rates on interstate commerce, and that that question is not here because of the fact that the complaint simply alleges a violation of Section 3 and 13. As to 13 that states in what respect that violates that provision, and the complainant having offered no evidence except on the question of undue prejudice to shippers and localities (Tes. p. 1031).

As to the other exhibits I object to them because they are addressed solely to the question of the reasonableness of the Florida intrastate rates, a question which the Supreme Court has said is not within the jurisdiction of the Interstate Commerce Commission, and said in this particular case as to these particular rates, that that question is not for the Interstate Commerce Commission.

Mr. Cotterill: And your Honor, to that statement of objections I think should be added as well that if to any extent the evidence is directed to an issue of undue prejudice as between interstate shippers and communities that it is inadmissible certainly at this time because of the absence of any evidence from this or any other witness holding that there is or has been any interstate commerce.

Exam. Hoy: The objections are overruled and the exhibits will be admitted. I think what I previously said will explain why I have overruled the objections.

(The statements were received in evidence and marked "Respondent's Exhibits 54 to 77, inclusive, Witness Perrin") (Tes. p. 1032).

[fol. 1041] A. In Exhibit No. 61 I do not purport to show any interstate movement in so-called long logs between Florida points and Georgia points. I cannot say whether or not there has been any such movement over the Atlantic Coast Line Railroad Company during the period commencing February 9, 1929, to January 31, 1931. As to whether there has been any I don't know. I have not made any inquiry to ascertain. I know that our general office made no inquiry to ascertain whether there had been any such movement. It is a fact that I have compiled here and testified to the extent of our interstate movement over our entire system—our aggregate movement in logs in interstate commerce. I made no attempt to segregate our movement, if any, from Florida to Georgia in the compilation of that aggregate (Tes. p. 1033) interstate movement. I do not know whether there was any movement from Florida to Georgia.

By Mr. Adair:

Q. There was none that you know of?

A. Well, I don't know. Exhibit No. 61 was compiled in my office from data furnished by the Accounting Department. Our Accounting Department compiled the data which included the aggregate movement of logs in interstate commerce over the Atlantic Coast Line Railroad to which I have testified at this hearing, and I mean to say that from that accounting I am unable to testify as to whether there was any movement from Florida to Georgia or not. I mean that. I should perhaps say that it would be a very difficult and laborious thing to segregate interstate traffic, whether it moved from Florida to Georgia, Georgia to Alabama, South Carolina to Georgia, and so forth. In other words not eliminating or segregating interstate traffic, it is a very simple thing to take that in the way-bill (Tes. p. 1034), but if you were to try to do that separately as between the several interstate stations you [fol. 1042] would have an endless job. I compiled the intrastate movement between points in Florida.

Q. Is there any more reason why the interstate movement could not—between points in Florida and Georgia—could not have been compiled?

A. Well, it could have been but every time you try to do that you are merely adding expense of the operation. It was of course a very laborious thing and expensive thing to compile this information in this exhibit 61. As to whether, in compiling this exhibit as intrastate movement, I had to have had examined every way-bill covering the movement of logs from every station on our line in Florida, I did not see any way-bills at all, and as to whether I had to have that done, I don't know now. You are asking about how the Accounting Department went about it. I don't know how they did that. They take it from the way-bills. They had to examine all of the way-bills in order to find out (Tes. p. 1035). It would have been a simple proposition when they had to examine those way-bills anyway to see what if any of them showed a movement from Florida to Georgia, but if you are going to examine every such way-bill separately, you have got some tremendous job on you.

Q. You would not have had to examine it separately. You had to examine all those way-bills anyway to make up this information. I mean you had to have it done, and while it was being done it would have been the most simple matter to have taken out of them any movement from Florida to Georgia, wouldn't it.

A. I could not tell you whether it would or not.

Q. As simple as it was to take a movement from any one [fol. 1043] point in Florida to another point in Florida?

A. You would have to ask the Accounting Department.

Mr. Norman: Well then we ask that they be brought here.

A. Ask Mr. Lamb he will tell you that when he gets on the stand. Yes, he knows all about how it was done.

Q. Was this data prepared under his direction as to that?

A. He is general auditor and knows what is necessary to do it. I could not tell you.

Q. Who was it prepared this, Mr. Perrin?

A. In the Accounting Department, he can tell you who did it (Tes. p. 1036), I don't know. I don't know what officer or employe or employes, I only know the individuals under whose general direction it was done, and that was

Mr. Ingram. Mr. Ingram is not here. I have no available data showing the respective amounts of logs that were moved during either year of this two year period, that is to say, data so that I could show how much moved in the year 1929 and how much in 1930. As to whether that data is available, ask Mr. Lamb. It came to us without separation; now whether it is available in the Accounting Department I do not know. I do not know whether the details of this data are available as to the particular dates of shipment. I do not know who has the work sheets upon and from which this data was compiled (Tes. p. 1037). I imagine Mr. Lamb would know about that.

Q. Upon direct examination as I recall it you said that you saw no reason for higher rates in other states than Florida for the transportation of long logs. I am correct in that am I not?

A. Based upon the question as I recall assuming that the [fol. 1044] Florida rates could be shown to be fair and reasonable rates.

Q. You saw no reason for any difference?

A. No. I said there was no reason why they should be higher, which conversely means that there is no reason why they should be lower in Florida. I testified that in all this movement out of approximately 18,000 cars 10,000 of those cars moved in solid train loads regular movement. I would not say that it is a fact that that is quite an unusual proportion and an unusual movement, and an unusual proportion of an aggregate movement in any state anywhere to go in train loads. I think that is equally true in (Tes. p. 1038) North Carolina, we had trainload movements in North Carolina that constitute perhaps just as great a percentage of the total as these operations in Florida.

Q. As 10 is to 18. Well, is it not a fact though that in North Carolina you have a great many special rates from point to point rates as distinguished from one general rate which alone is applicable to the transportation of logs intrastate in North Carolina?

A. We did have rates per thousand feet but, there is no operation under those rates now in North Carolina. We still have in North Carolina any number of point to point rates, which, however, are not moving any logs. In other words the proposition was to substitute this uniform scale for all point to point rates, or to the present rates for

40,000 pounds as fixed by the State Commission. It is true that substitution has not yet been allowed by the North Carolina Commission but as to these point to point rates that you speak of they are what we call "paper" rates because there is no operation of them. That is true of that trainload movement (Tes. p. 1039). The trainload movement in North Carolina moves under the ordinary local [fol. 1045] rates on the 40,000 pound basis of the State Commission. As to whether I agree with Mr. Price that all published rates are used rates, I imagine there are lots of rates that are never used, rates that are published but not used, of course, that is generally speaking. We always try to eliminate rates that are not used. It is always desirable. This trainload movement in North Carolina of which I speak is I think maybe 20 miles long, either 20 or 25 miles. That movement is between two eastern North Carolina points, I am not quite sure of the region. I think it goes to Washington, North (Tes. p. 1040) Carolina. That movement pays the same rate the same as single carloads of logs pay in general transportation in North Carolina. They have recently endeavored to secure a lower rate there which we could not do; in fact they have recently made arrangement to seek water transportation in view of the fact that we could not give them the rates per 1,000 feet. We are about to lose that movement in North Carolina but we don't lose much. I would say that this is about half of the North Carolina intrastate movement, it is pretty close to it. As to how often they run the trains I am not sure about that.

Q. Mr. Perrin, in the compilation of your data here was that compiled for you or was that compiled so far as you know any data showing the gross—any data showing the revenue for the transportation of logs intrastate between points in Florida during 1925, 1927, or 1928, under the Cummer scale?

A. I didn't catch your point in connection with that statement 61?

Q. No, in connection with the preparation of your data generally, did you prepare any data or memoranda showing the amount of revenue that your railroad received from the transportation (Tes. p. 1041) of logs intrastate between [fol. 1046] points in Florida during 1926, 1927, or 1928?

A. Not that I know of.

Q. We asked your company to prepare and furnish us such data did we not?

A. Certain kinds of data. Do you want me to say why we could not do it? My recollection, while I have not got the record here, the request that you made would have required such a segregation as between the different kinds of logs, as it would have been physically impossible. For one reason, you made a distinction between long length logs, and short length logs. There is no distinction in our other states as between those two characters of logs. There is no interstate between Florida and Georgia.

Q. I think you are mistaken about that. I think there was (Tes. p. 1042) some testimony showing that on the last hearing?

A. On the last hearing, but that is water gone over the dam, since the last hearing, but that distinction is still preserved within the state of Florida. Now, there may have been some other, I don't remember the detail of it, but I think there were some other segregation as being between the kind of logs that our people could not have worked out.

Q. The request was in accordance with the tariff was it not? I mean the Cummer scale and the classification of the Cummer scale. I am talking about the intrastate movement now.

A. No, the request as I recall, perhaps if you have the request it would be better to submit it and then we can tell about the merits of it.

Q. The point I want to know if you had prepared the [fol. 1047] data for the years in respect to the intrastate movement if any, and this movement 1926, 1927 or 1928?

A. No, we had not. It is a fact, known to me, that the Brooks-Scanlon until January—January or February, 1929, was moving trainloads of logs nearly every day from the neighborhood of Perry to Eastport. (Tes. p. 1043). That stopped at or about the time that this new rate went into effect.

Q. Is it not a fact that until a few months before this new rate went into effect the Putnam Lumber Company was moving several trainloads a week from the neighborhood of Perry to Milldale at Jacksonville?

A. The Putnam Lumber Company as I recall announced at the hearing that they were already prepared to move. I think their preparations were already under way. I could not tell you exactly when they did move. I have no idea as to the amount of revenue that we received from the Brooks-Scanlon during the years 1927 and 1928 for the transportation of logs. I could make an estimate by an average basis but I have not got any record of it. It would be a pretty wild guess, (Tes. p. 1044) in respect to the Putnam while they were operating.

By Mr. Norman:

Q. Mr. Perrin, as long as you are on your exhibit 61, we will continue with that. In order to get the matter in the record in precise form I would ask that you have prepared in the same manner that you have prepared exhibit 61, a similar exhibit showing the movement for the same period if any, from various origin points if any in Florida to destinations in Georgia, if there has been, showing the same information which you have shown on your exhibit 61. That is the point of origin, number of cars, the weight and the amount collected. The same detail as is shown on the supporting sheets of that exhibit. That is [fol. 1048] to say as to this interstate movement, if any, all the information shown as to the intrastate movement except the column using the so-called "Cummer" scale. You can show that also if there is any such movement.

Mr. Norman: Now Mr. Examiner, I submit that there is no reason—this is information that is solely within the knowledge of this defendant—there is no reason why it could not be produced with one one-hundredth of the work that has been required to make exhibit 61, and I think it is much more germane to this case than is exhibit 61 (Tes. p. 1045).

Mr. Gwathmey: We expect the information to show that there was no movement.

Mr. Norman: Yes, sir; practically no movement.

By Mr. Gwathmey:

Q. How much of a job would it be to undertake to compile that information.

A. I have no information about it at all.

Mr. Gwathmey: Will you pass that question for the moment.

Exam. Hoy: I would suggest, Mr. Norman, that we pass that until some later time during the hearing, until they can confer amongst themselves and possibly they will be able to get you what you want by tomorrow morning.

Mr. Gwathmey: You want a check made of all the records of those two years to see what movement there was if any, as I understand it.

Exam. Hoy: From Florida to Georgia.

Mr. Norman: To go back over your way-bills that you have been over once.

Exam. Hoy: During this same period of time, about six months.

[fol. 1049] Mr. Gwathmey: You see we have already been over the way-bills once covering shipments between Florida and Georgia.

Mr. Norman: In order that they may consider this other request at the same time I desire to also request that you furnish for the period two years prior to the period for which your exhibit 61 furnishes the information a like statement (Tes. p. 1046) showing the number of cars moving and the amount of freight that you collected during those two years under the rates then in effect.

Exam. Hoy: Is that interstate?

Mr. Norman: Intrastate.

Exam. Hoy: Intrastate in Florida, but not interstate from Florida to Georgia.

Mr. Norman: Yes. The basis for that request, Mr. Examiner, is the Supreme Court said the Commission made no finding as to the revenue which had been derived by the carrier from the traffic in question or which could reasonably be expected under the increased rate, or that the alteration of the intrastate rates was likely to produce additional income, to produce undue burden upon the carriers' interstate revenues and maintain adequate transportation service. In other words if this showing, this evidence of revenue burden is competent at all in order for the Commission to base a decision on it there must be a showing here that they have lost revenue by reason of the change in rates—gained revenue by reason of the change in rates, and that can only be shown——

Exam. Hoy: Well Mr. Norman, don't you think we could pass over that until the defendants report here tomorrow morning as to whether they are going to furnish that.

Mr. Norman: Yes.

[fol. 1050] Exam. Hoy: Then, we will take it up again (Tes. p. 1047).

Mr. Gwathmey: So that we can thoroughly understand this. You are asking now as I understand it for exactly the same data covered by Exhibit 61 for the two years preceding.

Mr. Norman: What I want you to show is what the movement was, and what your revenue was under the Cummer scale, so that we can compare it with what your movement was, and what your revenue was during the two years that the higher scale was in effect.

Exam. Hoy: Well, let us continue with the cross-examination now.

By Mr. Norman:

Q. I don't want to go into detail in it, into these various exhibits but referring to your exhibit No. 67, you recite what the Commission did, not to any other rates, and then make a comparison of rates here involved with what the Commission did in that other case. I will ask you if the Commission did not in that case say that 65 per cent of sixth class resulted in much higher rates than obtained in the South but that other conditions were so wholly different surrounding log traffic in the South than that in the Central Freight Association territory that the comparison was not of any value?

A. I am not aware of that.

Exam. Hoy: You are talking about 67 aren't you Mr. Norman?

Mr. Norman: I said 67 (Tes. p. 1048).

Exam. Hoy: I thought you said 66.

Q. You are equally aware are you not of the circumstances and conditions under which the Commission fixed other rates that you have used here in your comparisons in your exhibits 65 to 67 inclusive?

[fol. 1051] A. Well, I have some familiarity with a great many of these rates that they fixed in the South for general application.

As to trainload movement in North Carolina I did not say that it was about as great as it was in Florida. I said that we have a train load movement in North Carolina that probably represents as great a percentage of the total as the train load movement in Florida. Not the number of cars, but the relationship between the train loads and the less than train loads (Tes. p. 1049).

Q. The movement of logs in Florida intrastate is more than three times as great on the Atlantic Coast Line Railroad than it is in any other state which you serve. The movement of logs in Florida is more than three times as great on the Coast Line in Florida than it is in any other State that the Atlantic Coast Line serves?

A. I would not like to say that offhand. Of course, you appreciate this, and my general impression is that our log business in Florida is approximately 50 per cent of the log business of the system, but the Atlantic Coast Line in Florida has 40 per cent of its entire mileage, and the movement of logs on the Atlantic Coast Line intrastate in all states is about six or seven times the movement interstate in all states. I would not say six or seven but it is certainly a very large proportion of it is intrastate. I gave figures as to the effect of applying the Cummer scale to the movement in the various states and also interstate, and it shows [fol. 1052] that it would reduce our revenues interstate $144,000 whereas in Florida alone it shows that it would reduce it $290,000 and for the intrastate movement (Tes. p. 1050) as a whole about $665,000. That is about right. Our interstate movement on our entire system of logs is about one-eighth of the intrastate movement, approximately that. I have not any information as to how the movement of logs intrastate in Florida was affected by the increase in rates which became effective February 9, 1929. As Freight Traffic Manager of the Atlantic Coast Line Railroad I have no such information, none whatsoever, for this reason; under normal conditions it would be a very simple matter to reach a conclusion about that effect but under the conditions now existing you can not attribute to a rate change any effect upon the movement of logs (Tes. p. 1051). I mean the conditions under which logs are milled today are in a state of more or less stagnation throughout the whole country. The falling off of the logs in Florida in the volume of the log traffic in Florida has

been no greater percentage than in other states that we serve. I have not the figures but I am familiar with the fact that many ordinarily prosperous mills are not operating today under the conditions as they exist. I cannot attribute it to a change in the rates, the variation in the movement of logs; that is a condition that would result whether you changed the rates or not.

Q. Can you, or not, attribute to the change in the rates the loss of the Brooks-Scanlon traffic?

A. I can not attribute to the change in the rates the loss of the traffic. I would say that perhaps they would have stayed (Tes. p. 1052) at Eastport if they had known this rate was going to continue in effect. That is the best I can [fol. 1053] say about that. Now, whether there were other conditions that justified their moving other than the freight rate, of course, I am not prepared to say that.

Q. Well then do I understand you to mean by your statement that in your opinion there has been no greater falling off in Florida than there has in other states, That you do not consider that the increase in the rates which became effective in February, February 9, 1929, affected at all the movement of logs within the State of Florida?

A. I just merely said this. You asked about the absence of information on my part as Freight Traffic Manager of the railroad, and I say that there is nobody could size up the effect of the rate change on the log movement whether or not, or to what extent the logs decreased in movement is comparable to a change in the freight rate, it is impossible to say because regardless of any change in freight rate, we know that the log movement would naturally decline.

Mr. Norman: Mr. Examiner, with the reservation if and when the information we have asked is furnished I would like to further examine this witness, and I am through.

A. As to what kind of a year was the calendar year 1929 in railroad circles, a prosperous (Tes. p. 1053) or an unprosperous year, the first part of it was rather normal but our lack of prosperity began earlier than 1929, and we went steadily down the hill ever since, and it is only within the last few months that we have reached a basis of comparison, that is the two years—or two months during the previous years—that we have been able to make any showing of increased traffic at all.

As to whether I am prepared to say what kind of a year 1929 was in the mill business, or whether 1929 was a good year or a bad year in the saw mill business in this fair [fol. 1054] state, and in Georgia for manufacturers, I do not know about that (Tes. p. 1054). As to logs transported and logs sold in respect to the year 1929 I could not give you any definite figures about it; but there has been a steady decline throughout the years 1929 and 1930 in the saw mill business.

I stated in relating the history of these log rates in the various states of the Southeast that the regulatory bodies of these states had been applied to to fix intrastate rates of the Atlantic Coast Line. As to why we have never applied to the Florida Railroad Commission to provide for them, I think the history of this whole case would indicate that. In the first place for the last five years these rates have been in litigation in the courts and up to that time we operated under a contract that we were maintaining. We could not have gone to the Florida Commission for an increase in rates that we could not take advantage of without violating the contract. As to the attitude of the Florida Commission during the five years of litigation (Tes. p. 1055) towards the Cummer scale, whether it was reasonable or unreasonable, whether they intended to enforce it or not enforce it, I could only judge by the expressions in the record. Chairman Wells criticized the scale as an unreasonable scale.

By Mr. Adair:

Q. May I not inquire that he criticized the reasonableness of the scale under the conditions under which it was operated in the State of Florida?

A. Well, I don't know about the qualifications.

Mr. Adair: I think he made that direct statement.

Mr. Gwathmey: The record will show what he made.

By Mr. Turnbull:

A. Would the fact that you were under contract with some of the shippers prevent the Railroad Commission [fol. 1055] from revising rates in your opinion?

Mr. Alston: I suggest, Mr. Chairman, first that is a question of law; and next because that is a question of contract. Neither the law nor the contract is here.

Exam. Hoy: Well, I do not think Mr. Perrin is qualified to answer the legal effect of the contract.

By Mr. Cotterill:

Q. Mr. Perrin, is the data on which you (Tes. p. 1056) made your notes readily available to compute the revenue effect to your line, if, as to all of the state traffic in other states moving at less rates than your interstate scale, a rate advance should be made to bring them up to that interstate scale, and enable a computation of the revenue advance to the Coast Line if you did have such uniformity of rates and assumed the continuance of the movement?

A. I would have to do that in the same way that I show what the loss would have been under the Cummer scale. In other words merely by a system of percentages in the rates.

You are correct in the recollection that with the exception of the State of Alabama and Virginia there are no general intrastate rates in the states that we serve as high as the interstate rates fixed by the Commission. I said something about North Carolina resisting an advance to that interstate level by reason of comparisons with certain lower rates in Virginia on another line. As far as our line in Virginia is concerned (Tes. p. 1057) we have certain kinds of logs but they are not the ordinary saw mill logs.

Q. Now, you did make a computation which you testified to earlier today as to what would be the revenue effect if the Cummer scale was to be applied to all of your interstate [fol. 1056] and all of your state traffic assuming the continuance of movement as in the past and that indicated a certain total decrease. Does it present a matter of any substantial difficulty to make a like calculation indicating what would be the total revenue increase to the Atlantic Coast Line Railroad system if your entire rate structure were put on the interstate rate level that the Commission in this case has so far indicated to be proper?

A. That is entirely practical. Nor does it present a matter of very great difficulty. It has its infirmities. Just as this approximation as I made here has the infirmity of being more or less a mathematical average.

Q. Considering the comparatively small per cent which your interstate log traffic as a whole bears to your state log traffic as a whole, and considering that except for Alabama,

substantially speaking, all of your state rate structures (Tes. p. 1058) are substantially less than the interstate rate structures the revenue effect of applying this interstate rate scale throughout your system would all be a substantial increase wouldn't it?

A. It would be some yes, but, it would not by any means mean the amount of reduction that the application of the Cummer scale would give us in the way of—I mean it would not mean in the amount of increase in the same proportion as the Cummer scale would produce reductions of revenue.

Q. Now, have you individually, apart from any attitude that counsel may feel in regard to the materiality of it, have you individually any reluctance, at your convenience today or in the morning to making and submitting a calculation such as we have just discussed.

[fol. 1057] Mr. Gwathmey: I think it can be figured from the matter that is already in the record.

Mr. Cotterill: We will have to have certain additional.

The Witness: It will take some little time to do it, but, it is practicable just as we do it in applying the Cummer scale to show the reductions.

Mr. Cotterill: In the absence of objection, your Honor, I should like that calculation to be made, and made available to the record if not today, then in the morning.

Mr. Alston: My objection was not to the form of consent. We are going to answer it fully and fairly in the (Tes. p. 1059) morning. We can do it.

Exam. Hoy: What fully and fairly?

Mr. Alston: As to this calculation that he wants made, and answer that in the morning fully and fairly by giving what he can give.

Mr. Gwathmey: Pardon me before you leave that. Do you intend that information to cover short length logs in Florida?

Mr. Cotterill: No, I think the information as to Florida is already in the record because he has got that computed both ways; there is no need to duplicate that.

By Mr. Cotterill:

Q. Now, one question on an entirely different angle of the matter. Have you abandoned or made application to abandon, or give notice of abandonment of your line into

Eastport where formerly one of your large lumber mill operations existed?

A. No, not that I know of. I think that there are certain uses being made of that line for other purposes although I am not entirely familiar with the situation there. Ordi- [fol. 1058] narily such a policy decision would not be within my jurisdiction. I would not like to try to spot the man in whose jurisdiction it would belong (Tes. p. 1060).

Redirect examination.

By Mr. Alston:

Q. Mr. Perrin, you were asked about the removal of certain of these mills into the woods. Please say whether or not you heard Mr. Fleishel, who is president of the Putnam Lumber Company testify—in regard to moving our tide-water plant to the woods, we do not want any properties on tide-water, we have got them under a very favorable lease, a good deal less than one per cent——

Exam. Hoy: I don't think it is necessary to read the witness' former testimony in a former hearing. Mr. Perrin stated that in reply to some of the gentlemen there that the Putnam Lumber Company had moved, and stated on the previous record that they were going to move.

Mr. Cotterill: And why?

Exam Hoy: And why.

By Mr. Alston:

Q. Now, is that not also true of the Wilson Cypress Company, that F. H. Wilson of the Wilson Cypress Company testified——

Exam. Hoy: As to what he testified?

Mr. Alston: Yes.

Exam Hoy: If it is there, the testimony will show it. I don't think it is necessary to reiterate it to this witness.

Mr. Adair: I will say in passing that is a matter of record. (Tes. p. 1061.)

The Witness: In regard to this matter of the present condition of the lumber industry, my duties as Freight Traffic [fol. 1059] Manager of the Atlantic Coast Line familiarize me with the condition of the industry at least to the extent that it is reflected in the movement of the tonnage of logs

and lumber over our lines. The condition at the present time amounts to something between 35 and 40 per cent of the normal movement. Based upon that data I would say that the lumber business generally is in a depressed condition at this time. There is not anything peculiar to the State of Florida. It is general condition existing generally throughout the system. That condition has been going from bad to worse for the last 18 months. Steadily declining, and is reflected in the present movement (Tes. p. 1062) of both logs and lumber over our lines and in the number of saw mills operating on the line. We have saw mills that for forty years have been prosperous and now are not operating.

Mr. Gutheim: Would you say what you mean by a normal movement when you say the present is 35 or 40 per cent.

A. Yes, instead of earning one million and a half dollars on logs, we should be earning between three and four million dollars on logs. I base that estimate on the movement that took place before the depression set in, for a period of years. That was the ordinary run of our earnings on logs, just the average run of our earnings from year to year.

Recross-examination:

As to whether the lumber industry has been in a severe depression for more than (Tes. p. 1063) five years last past, that depends on what you call severe. I don't think there has been a time in my business life that there has not been some complaint of depression in the lumber business. But [fol. 1060] what I am talking about really is a crisis in the lumber business. I do not mean to say that our revenues from log traffic were three or four million dollars in 1929. I don't know about 1928. I was giving you revenue three to four million dollars a year as our general run over a period of years, if necessary extending into fifteen years. As to when was the last year that we had a revenue on logs as high as that I could not tell you what the earnings on logs were in any year but I do know that the log movement during this (Tes. p. 1064) depression has fallen to be now more than one-third of what it was before the depression set in. I fix the date of the crisis of the depresison as about eighteen months ago. If would be a great deal of trouble for me

to give you our revenue from logs in 1926, 1927, 1928 and 1929.

Mr. Alston: Mr. Examiner, I presume we could pursue the same course as to the exhibits introduced by Mr. Lamb as with reference to the exhibits introduced by Mr. Perrin.

Exam. Hoy: Yes, sir.

[fol. 1061] GEORGE W. LAMB, called as a witness, being duly sworn testified as follows:

Direct examination.

By Mr. Alston:

A. George W. Lamb, General Auditor, Atlantic Coast Line Railroad Company, with headquarters at Wilmington, North Carolina. I have been connected with railroads, or their interests (Tes. p. 1065) since October, 1900, starting with the Louisville & Nashville Railroad Company, holding among others the positions of Statistician, Second Assistant Comptroller and Senior Assistant Comptroller, up to February, 1918. On March 1, 1918, I was appointed Staff Officer in Charge of Accounts for the Railroad Administration, with headquarters at Atlanta, Georgia, and served in that capacity until February 28, 1920. On March 1, 1920, I returned to the Louisville & Nashville Railroad at Louisville, Kentucky, as Senior Assistant Comptroller and held that position until March 1, 1921, at which time I was appointed General Auditor of the Association of Railway Executives for the purpose of checking the accounts of the American Railway Express Company, and later the Railway Express Agency, for all of the railroads of the country. I held that position until June 1, 1930, at which time I accepted my present position. I am familiar with the issues involved in this case. I have prepared exhibits which I desire to file in connection with this hearing. I will first file as part of my testimony, marked exhibit No. 78, a statement showing the property investment and operating income accounts of the Atlantic Coast Line Railroad (Tes. p. 1066) Company for the calendar years 1926 to 1930, inclusive.

[fol. 1062] It will be noted from line 2 that the increase 1930 over 1926 in investment in road and equipment is

$14,779,000.00, or 5.46 per cent. There was an increase in mileage of 225.89 as shown by line 9, total operating revenues decreased $34,066,560.00, or 35.09 per cent. Of this decrease 31.73 per cent was in the freight account and 50.42 in passenger. As shown by line 15 total operating expenses decreased $21,016,310.00 or 29.73 per cent. Shown by line 29 the net railway operating income decreased from $17,585,807.00 in 1926 to $7,241,304.00 in 1930, a decrease of $10,344,503.00 or 58.82 per cent. As noted by the last line, the return on investment for 1926 was 6.11; 1927, 3.37; 1928, 3.26; 1929, 4.20; and 1930, 2.37 per cent.

I next file as part of my testimony, marked Exhibit No. 79, a similar statement for Atlantic Coast Line Railroad operations within the State of Florida.

The property investment shown on line 2 of this exhibit is based on the tentative valuation as found by the Interstate Commerce Commission, Valuation Section, as of July 1, 1917, to which has been added the actual expenditures for additions and betterments subsequent to that date less retirements.

The tentative valuation of equipment as found by the Commission was brought up to 1926 through actual expenditures (Tes. p. 1067) for additions and betterments, less retirements, and for each year to 1930, and assigned to Florida on the respective equipment mileage percentages. It will be noted that the property investment in Florida in 1930 increased from 1926 as shown by line 2 $6,093,151.00 or 6.89 per cent. The mileage increase 180.92 miles or 9.62 per cent. As shown by line 9 total operating revenue de- [fol. 1063] creased $13,995,704.00 or 46.14 per cent. The decrease in freight revenue being 44.64 per cent, and the decrease in passenger revenue 64.64 per cent. Operating expenses decreased 41.69 per cent.

As shown by line 29, net railway operating income decreased from $5,151,326.78 in 1926 to $1,203,921.65 in 1930 or $3,947,405.13, a decrease of 76.63 per cent, as compared with 58.82 per cent for the entire system, as shown by my previous exhibit. As noted by line 33, the return on investment for 1926 was 5.21 per cent; for 1927 2.28; for 1928 1.85; 1929 2.43; and 1930 1.17. I have prepared statements that would indicate the proportion of total traffic represented by logs (1068). I have prepared and file herewith as part of my testimony marked exhibit No. 80, a statement

showing the logs handled for the system and for the State of Florida, as measured by the number of cars, number of tons and revenue for the system for the years 1926 to 1930, both inclusive. The revenue derived from handling logs is not available for the State of Florida and I have, therefore, only been able to show the number of cars and the number of tons for the State. It will be noted for the system that logs represent approximately 7 per cent of the total traffic, as measured either by cars or by tons, and for the three years 1928, 1929 and 1930, 1.6 per cent of the system revenue. In the State of Florida logs represent 7.3 per cent for the average of the five years of total traffic shown as measured by cars and tons. It will be noted that the range has been, as shown by column 10 from 9.6 per cent in 1927 to 3.6 per cent in 1930.

[fol. 1064] Columns 11 and 12 show the ratio of cars and tons handled in Florida to the system, from which it will be noted that in 1928 the number of cars of logs represented 52.35 per cent of the system and the tons 57.26 per cent. This percentage has decreased in 1929 and 1930, 1930 being 35.43 per cent as measured by cars and 40.76 per cent based on tons handled. Attention is directed to the foot note relative to the years 1926-1927, for which years the classification includes posts, poles and cordwood. In 1926 for example logs as expressed in tons represented 8 per (Tes. p. 1069) cent of the total traffic of the Atlantic Coast Line, whereas in 1930 it represented only 3.6 per cent. I show that in column 10. In column 5 for 1928. That 7 per cent is the ratio of logs as measured by tons to total traffic for the entire system. My 9.4 in column 10 is the ratio of logs to total traffic for Florida, as measured by ton or as measured by cars, of the total traffic in Florida I misunderstood your question a moment ago. It is the ratio of logs to the total traffic in Florida. In column 4, 5, and 6 are the ratios of the logs to the total system traffic. Going over to column 11 (Tes. p. 1070) where the 52.35 per cent, under the column ratio of Florida to system tons, that means that that is the ratio of Florida logs as measured by the cars to the system, as to cars of logs in the whole system: for example in 1928 we handled 51,801 cars of logs on the system and 27,119 cars in Florida. Under column 12 the corresponding figure 57.26 per cent means the same thing expressed in tons.

Mr. Norman: I do not know that I understand that but, if I understand it correctly it means of the Florida log traffic in 1929 and 1930 fell off considerably more than [fol. 1065] the general log traffic of *of* the system.

Exam. Hoy: No, wait a minute Mr. Norman. Column 4, 5 and 6 of the ratio of the log traffic on the system to the total traffic on the system.

Mr. Cotterill: On all commodities.

Exam. Hoy: On all commodities. Now, column 9 and 10 are the ratios of the log movement in Florida to the total movement of all commodities in Florida.

The Witness: That is correct.

Exam. Hoy: And column 11 and 12 are the ratio of the Florida logs to the system logs (Tes. p. 1071).

Mr. Norman: So that in 1929 and 1930 the Florida logs fell off a great deal more than the system logs, gives a much smaller percentage of the system than in previous years.

The Witness: The system logs is measured by tons in 1930, decreased to 4 per cent from 7 per cent in 1928, while as measured by tons in Florida 1930 was 40.76 per cent as decreased from 57.26 per cent.

By Mr. Norman:

Q. So that it is true that the Florida log traffic fell off in 1929 and 1930 more than the general log traffic of the Atlantic Coast Line Railroad?

A. Well, it is as expressed in percentage in the ratio to the system, that is true.

Mr. Norman: Mr. Perrin said that was not true.

By Mr. Turnbull:

Q. It is also true is it not in respect to the relative number of cars?

A. As shown by column 11.

Q. As shown by column 12?

A. The general decrease I would attribute largely to the [fol. 1066] bursting of the bubble in Florida when the building had ceased, and the general stagnation in business in the South as well as all other sections of the country. I have prepared a statement comparing the freight revenue, Account 101, and revenue tons between Florida and the Sys-

tem, excluding Florida, and now file as part of my testimony marked (Tes. p. 1072) exhibit No. 81 a statement showing for the entire system excluding Florida for the years 1926-1930, the total revenue subdivided between intrastate and interstate traffic, and similar information for the State of Florida. In the center of the exhibit will be noted the percentage of decrease as compared with the year 1926, and in the last column similar percentages for the State of Florida. Taking the year 1927 as compared with the year 1926 it will be noted that the decrease in interstate traffic, Florida, was 26.75 per cent as compared with 9.15 per cent for the system, excluding Florida. There was a decrease in intrastate revenue, Florida, of 24.55 per cent compared with a decrease of 2.65 per cent intrastate revenue for the system, excluding Florida. These percentages gradually increased, and in 1930 the decrease in intrastate revenue for Florida compared with 1926 was 52.88 per cent. A decrease in interstate revenue of 37.13 per cent as compared with the interstate revenue for the system, excluding Florida, of 25.57 per cent and 26.38 per cent for intrastate traffic.

[fol. 1067] At the bottom part of the statement there is shown the revenue tons handled interstate and intrastate. It will be noted that in 1930 the decrease in revenue tons intrastate, Florida, as shown in the last column, as compared with the revenue tons of 1926, was 56.66 per cent and the decrease in interstate revenue tons 40.99 per cent, as compared with the (Tes. p. 1073) system decrease in revenue tons of 24.85 per cent on intrastate and 31.34 per cent on interstate traffic. This exhibit shows that there is a general decrease over the entire system excluding Florida as well as in Florida, and a more pronounced decrease in Florida than on the system. As to how we determine our Florida interstate traffic, that is either interstate originated in the State of Florida and passing out into other states or vice versa, or there is no trans-state movement to speak of in Florida. Cuban traffic would be interstate if there is a movement. In your State of Florida your Cuban movement, so far as the railroad is concerned would be intrastate movement. So far as the Atlantic Coast Line statistics are concerned it is treated as intrastate movement entirely within the State of Florida. If it was moving interstate originating in Florida and moved

north through the other states it naturally would be counted as a ton in Florida as interstate and a ton on the (Tes. p. 1074) system. First let me clear this up. I wanted to be sure the Examiner understood this. This had reference to the total revenue and not to the log revenue; my entire exhibit No. 81. There is no duplication so far as the revenue is concerned. If it is an interstate movement there is credited to Florida its mileage proportion of the interstate movement, and the revenue on that particular shipment if it moves entirely within the State it is all [fol. 1068] credited to Florida as intrastate.

By Mr. Pettijohn:

Q. Mr. Lamb, insofar as the heading entire system excluding Florida, is concerned, that applies only to the revenue statement; it does not apply to the revenue general statement?

A. You mean by that, the duplication of tons?

Q. Is that in this statement?

A. A ton that was handled as interstate in Florida may also (Tes. p. 1075) be counted as a ton interstate on the system, excluding Florida, but an intrastate ton in Florida is counted in Florida only.

By Mr. Cotterill:

Q. Now, since we got into the interruption, so as to understand it as we go along. There is one thing you said, injected for the first time, that is confusing to my mind, and that is in respect to revenue. I had an impression from something you said that in the case of Cuban business originating in the State of Florida you would treat that as intrastate revenue?

A. Because we would treat it as a movement entirely within the State of Florida originating and terminating in Florida.

Q. Now, if you received some business from another carrier at a junction point in Florida and it terminated on your line in Florida, how does your revenue calculation here treat that, as state or interstate?

A. If it was an interstate movement received from another carrier delivered to us at some junction point in

Florida it would be treated as interstate movement. Regardless of our own haul being within the state, yes, the nature of the movement. The point of origin and destination of the movement controls the determination as to whether it is intrastate or interstate, and I determine that [fol. 1069] from an examination of our billing (Tes. p. 1076) in each case. As to your question, whether that applies as to all commodities, that may lead to something else. In determining this we did not consider it as between interstate and intrastate by commodities. You say as to all commodities you mean as a whole? And, I want to clearly understand your question.

Q. You had to examine the billing of all commodities to find the origin and destination; to determine whether it was state or interstate, and in connection therewith you made such examination of billling as would have included interstate shipments of logs, if there had been any, that billing would have been in the examination?

A. Of course, in preparing our statistics for the separation between interstate and intrastate, we necessarily have to handle every bill, but we do not in that operation take any division as to commodity revenue. That is the basis of our settlement with connections. I have made a study of the density of traffic in Southern Florida as compared with (Tes. p. 1077) northern part of Florida and now file as part of my testimony marked exhibit No. 82 a statement showing the density of traffic for the northern part of Florida compared with the southern part of Florida for the calendar year 1927. Note 1 describes northern Florida as being all points north of the Jacksonville-River Junction Line of the Seaboard and the River Junction-Pensacola Line of the Louisville & Nashville Railroad. Southern Florida being all points south of the aforesaid line. This statement was prepared and issued by the Interstate Commerce Commission in 1928, based on replies to the order of the Commission dated November 22, 1927, to Class [fol. 1070] I roads. Insofar as I am advised this is the only case where the traffic has been divided as between northern Florida and southern Florida, and could only be compiled through special studies made in answer to questionnaires prepared by the Commission. The statement is largely self-explanatory, but I call particular attention to line 9 under Revenue Passenger Miles, which shows the average

per mile of road operated in Southern Florida was 70.13 per cent of northern Florida. Under Revenue Ton Miles, as shown by line 13, southern Florida was 90.57 per cent of the average revenue tons per mile of road operated in northern Florida.

The purposes of this exhibit will be shown later on (Tes. p. 1078) in my testimony, when I undertake to show the relatively higher costs on the third division of the Atlantic Coast Line Railroad as compared with the system, the third division being relatively the same district as that embraced in southern Florida. I next file as part of my testimony marked exhibit No. 83 2 sheets, a statement showing the traffic density statistics, State of Florida compared with the system, excluding Florida, calendar years 1921-1930, inclusive, for Atlantic Coast Line Railroad. Take the year 1929 for illustrative purposes, it will be noted column 4 that the miles of road operated in Florida were 2,055.40 and those operated on the balance of the system, excluding Florida were 3,096.20, column 10 the mileage in Florida representing 66.44 per cent of the system mileage, excluding Florida. Yet, the tons one mile in the State of Florida represented only 33.4 per cent of the system excluding Florida. The ton miles per mile of road for the State of Florida were 400,002 as shown in column 6; for the system, excluding Florida, as shown in column 12, were 794.- [fol. 1071] 395. The tons one-mile per mile of road in Florida represented 50.4 per cent of those of the system, excluding Florida.

For 1930, with 66.6 per cent of the system mileage, column 13, excluding Florida, the tons one-mile, of revenue (Tes. p. 1079) freight in Florida, produced only 38 per cent of the system, excluding Florida, and the tons one-mile per mile of road in Florida for 1930 were 369,979, column 6 compared with 648,395 for the system, excluding Florida column 12; the tons one-mile per mile of road in Florida being only 57 per cent of those of the system, excluding Florida. These figures indicate the low density of traffic in Florida as compared with the system of the Coast Line outside of Florida. Sheet 2 of this exhibit shows similar information for the Seaboard Air Line Railway Company; and again taking the year 1929 as illustrative, the percentage of Florida operated mileage to the system was 40.86 per cent. But as shown in the next col-

umn the percentage of revenue ton miles in Florida to the system was only 26.55 per cent. As shown by the third from the last column for 1929 the percentage of Florida mileage operated to the system, excluding Florida, was 69.10; while the percentage of Florida ton miles to the system, excluding Florida was only 36.10 per cent and as shown in the last column the percentage of tons one-mile per mile of road, Florida to system, excluding Florida, was 52.24 per cent. I have attempted to develop whether or not the cost of operation in Florida was really greater than the cost on other parts of the Atlantic Coast Line. (Tes. p. 1080). And from this study it would appear that the cost on the third division, which operates exclusively [fol. 1072] in the State of Florida, is considerably higher per unit than the cost on the first and second divisions operated north of Jacksonville. I base this statement on an analysis made showing certain "out-of-pocket" expenses in Florida, for the third division, as compared with similar expenses on the first and second divisions. The accounts selected were as follows:

392.—Road Engiuemen.
394.—Road Locomotives—Fuel.
397.—Road Locomotives—Water.
398.—Road Locomotives—Lubrication.
399.—Road Locomotives—Supplies.
400.—Engine House Expenses—Road.
401.—Road Trainmen.
402.—Train Supplies and expenses.

This analysis was made for the twelve-month period July 1, 1928, to June 30, 1929, inclusive. The costs for these "out-of-pocket" expenses for the third division and for the first and second divisions, respectively, were as follows:

	Cost per freight-car-mile loaded and empty
Third Division	2.95176 cents
First and Second Divisions	1.717496 cents
	(Tes. p. 1081)

Ratio of Third Division to First and Second Divisions, 171.85 per cent.

Those were loaded and empty car miles. I have not the percentages of those loaded to empties in the respective

divisions because I was taking the total cost of loaded and empty cars as a total for these divisions.

[fol. 1073] Q. What I mean to say is Mr. Lamb, before you could use as a divisor the loaded and empty car mileage, you had to put the loaded and empty together, so that they were separate at one time in your notes?

A. Possibly I have those figures with me, if I have I will be very glad to furnish them to you, Mr. Cotterill. I think perhaps we have, though my assistants in putting those figures together may not have furnished me with the basic figures, but if I have not got them here if I am able to get them I will be glad to furnish them to you. Cost per thousand gross ton miles, Third Division 88.288 cents; First and Second Divisions 53.26312 cents; Ratio of Third Division to First and Second Divisions 155.62 per cent. These comparisons clearly demonstrate the difference in the cost of operation in the State of Florida, where the (Tes. p. 1082) density of traffic is low, as compared with the balance of the system having a much higher density of traffic. Exhibits previously filed by me indicate the considerable difference in the traffic density of the State of Florida as compared with the balance of the system excluding Florida. The above "out-of-pocket" costs were developed from an actual analysis of vouchers, payrolls, material and supply issues, etc., for each of the months, July 1, 1928, to June 30, 1929, both inclusive. I have made an attempt to determine the cost of handling logs in Florida. It is, in my opinion, impossible to determine with absolute accuracy the cost of handling any one commodity, but I have attempted to develop certain costs which, while not presented as being the actual cost, will at least afford a figure showing the average cost on the third division, which is operated exclusively in the State of Florida. I had the accounts of the third division analyzed, as just [fol. 1074] explained, to develop the "out-of-pocket costs" that is, those accounts which we can definitely assign to the freight service without question. From these figures I developed the cost per gross ton-mile, and per car mile. I then eliminated from the total freight operating expenses of the system all Yard-Accounts-Freight, and certain other accounts (Tes. p. 1083). Due to lack of time I have not been able to segregate certain accounts to that part attributable to this particular service and that part not

applicable. In these cases I have eliminated the entire account although a portion of the charges should be borne by this traffic. For example, station employees in the transportation block of expenses, Account 373, shows charges to Freight of $3,281,352.00. There is no question but what a portion of the charges to this account is properly attributable to the handling of logs. To this account are charged agents, clerks and attendants, telegraph and telephone operators, station agents, etc., who handle the billing of log shipments and perform other services; but this entire amount was eliminated. These are total system figures for the time being, and I am going to file a study now that will explain it. I will, at this time, file as part of my testimony marked exhibit No. 84, 2 sheets, a statement giving in detail the accounts and amounts eliminated from the freight operating expenses of the Atlantic Coast Line system. This statement also shows for the system the same "out-of-pocket" accounts used in developing on the third division the same (Tes. p. 1084) "out-of-pocket" expenses per gross ton mile and per car mile. The statement also shows the relation of these "out-of-pocket" expenses to what may be deemed the haulage expenses remaining in the accounts after the elimination of the various accounts listed on the statement. These accounts represent [fol. 1075] 35.027 per cent of the total haulage accounts. You will notice down below the middle heading "out-of-pocket" expenses on the second sheet. That is where I had drawn a line. The total of your accounts is $6,920,684. That is the total of those "out-of-pocket" accounts for the system. The total operating expenses are shown just under the words "grand total eliminated". Do you catch that, about the middle of the page? Total operating expenses, freight. Now, you will notice I have shown above that grand total eliminated $9,629,744, leaving total haulage expenses $26,679,069. Did you get that figure? The eliminated amount was subtracted from the total of operating expenses (Tes. p. 1085) freight. Leaving in $26,679,069.00, which may be termed substantial haulage expenses because I have eliminated as you will note from page 1 $4,550,039.00 for yard accounts from yard accounts in our freight operating expenses has been eliminated and then at the top of page 2 I show certain other accounts which have been eliminated aggregating $4,665,938.00 among which you will

note is account 373, Station Materials, and $3,281,352.20, regarding which I have just made some comments.

Q. Now that is perfectly clear up to the point, where you have been discussing the elimination from your system of operating expenses. But, where the point of confusion now lies is we come back to this "out-of-pocket" expenses; it is important to know whether the block of items immediately under that concern your system expenses or the third division only?

A. I testified in the first part of this testimony regarding this exhibit, that those were the system figures. The $6,920,684 under the heading "out-of-pocket" expenses [fol. 1076] are system figures charged to these freight accounts. Now, I have eliminated from the total operating expense, freight, as shown in the center reading $36,308,813.00 the item tabulated above of $9,629,744. Leaving $26,679,069.00. The $6,920,684.00 out-of-pocket (Tes. p. 1086) expenses are 25.9405 per cent of the $26,000,000 opposite the line total haulage expenses used. That comparison will later be used by me in subsequent exhibits. In other words that is the relation of out-of-pocket expenses to the system accounts, Freight, as represented by what I have termed here "haulage" expenses of twenty-six million dollars. That is after I have eliminated all yard expenses and these other items tabulated on page 2 of my exhibit, the remainder in the freight operating expenses were twenty-six million odd dollars and the out-of-pocket expense bear the relation of 25.9405 per cent to the twenty-six million odd dollars haulage expenses. I selected those particular items out of the total of all operating expenses for the purpose of describing them as out of pocket expenses.

Q. They are the ones included in the total, bound to be. You have got a duplication right in there?

A. Oh no. I want to get this clear. I want you to understand it because if you (Tes. p. 1087) don't understand this you won't understand the subsequent exhibit. Let me see if I can make it plain to you. Total operating expenses, freight $36,308,813 includes the items that I have got under out-of-pocket expenses which total $6,920,684. I selected that from a block of items which I call "out-of-pocket" expenses. I simply selected this out of the total and then I have made a computation of percentage which

they bear to that total, which I used in certain others, fo
[fol. 1077] later purposes. The idea is this, I want you t
clearly understand it Mr. Cotterill. I have here twenty
six million dollars of haulage expenses, and these account
are out-of-pocket expenses which are included in the per
centage relation of 25.940 per cent (Tes. p. 1088). Now, i
a later calculation I will have the cost per gross ton mil
as measured by the simply out-of-pocket expenses fro
the third division, and I will then apply this percentag
to bring the same equivalent accounts into that cost. Nov
possibly the last paragraph is now clearly understood a
to determine the proportion of general expenses. In orde
that there may be a clearer understanding of the grou
of figures at the bottom of the page you will note that th
tabulated accounts that are eliminated aggregated $9,215,
975. At the bottom of page I show total operating expenses
freight, $36,308,813. Immediately under that total genera
expenses $1,560,125. Then, total expenses less general ex
penses $34,748,687.00. The relation or the percentage o
general expenses to this total excluding general expense
is 4.4897 per cent. In order to also bring out and eliminat
a relative proportion of general expenses I have applie
that per cent $9,215,975 of the account eliminated and as
signed $413,769.00 as general expenses attributable to ac
counts eliminated.

Mr. Pettijohn: Before you adjourn, I would like to hav
him give, if you know, the expenses shown for the syste
(Tes. p. 1089) to correspond with the out-of-pocket ex
penses shown for the system. In other words I understoo
your testimony awhile ago to say that you deduced certai
average costs per ton mile and per car mile from th
eliminated expenses to the third district?

[fol. 1078] A. Yes, sir.

Q. Will you mind filing in the morning for us sometim
an itemized statement to conform to those statistics?

A. I will be glad to. I, of course, have those figures.

Mr. Alston: I understand you mean the out-of-pocke
expenses.

Mr. Pettijohn: To complete column 402.

The Witness: I understand it. (Tes. p. 1090)

June 11, 1931.

Further direct examination:

Mr. Alston: Mr. Examiner, on last night we found that there were some errors in the calculations in some of our exhibits and it becomes necessary to ask our brethren to whom we distributed the exhibits including the second sheet of 84 and the ones after that. Let us have those back. Mr. Lamb, please turn to the second sheet of exhibit No. 84 and state whether or not there is any correction you desire to make on that sheet, and if so state the correction.

A. On the second sheet of 84 in the center of the page under the title "haulage expenses used," $26,679,069.00 deduct from that figure $6,920,684.00 being the out-of-pocket expenses for the system tabulated just below. The remainder after that deduction should be $19,758,385. Down near the bottom of the statement where it says "ratio to haulage expenses used," the figures now appear as 25.94, change that to 35.027. Those are all of the changes. That is because I computed that (Tes. p. 1091) ratio not to the total haulage expenses but the total haulage expenses less the out-of-pocket expenses. I then used that factor 35.027 [fol. 1079] in the remainder of the sheets that you now have to turn to. That is my purpose, to use that percentage.

Q. Did you do so, or are you now going to change all of the figures shown in those other sheets that were returned to you so as to use the 35. ratio?

A. That was the necessity for making that change to apply these percentages. I next file as part of my testimony marked exhibit No. 85 a statement showing the method of assigning taxes and return on investment. This statement shows the total taxes paid by the Atlantic Coast Line Railroad for the year 1929. Under the percentage column near the middle of the sheet will be noted 3.00985 per cent. This is the relation of the corporate income taxes paid to the net revenue from railway operation, as shown (Tes. p. 1092) just on the left of those percentages; for example net revenue from railway operations were 18,940,000 odd dollars, and the income tax $570,075,77 the relation being approximately 3 per cent. The next percentage 15.3950 is the relation of Florida taxes to total operating expenses in the State of Florida; that is, the total operating expenses $13,739,933.00 and the taxes

$2,115,260.76; the relation of percentage being .15.3950. At the bottom of the exhibit is shown the 5-¾ per cent return on investment for the system on property investment as of December 31, 1929, which is drawn from my exhibit No. 78. The total operating expenses are from our annual report to the Interstate Commerce Commission. The amount assignable to freight is also drawn from line 247, page 309, column (c) and column (e) of the report to the Commission. Line 4 shows the percentage of the freight expenses the total operating expenses as 67.95 per cent. Line 5 shows the 5-¾ per cent return on investment, I [fol. 1080] mean $17,620,257.00, and line 6 shows the freight proportion based on the divisions of operating expenses as between the freight service and passenger service. Line 7 shows the ratio to the freight operating expenses of the freight proportion of 5-¾ per cent return on investment as 32.97536 per cent.

Q. Mr. Lamb will you please explain the theory on which this No. 86 is made, and you have these exhibits set up in two ways, to exemplify two methods. Will you please explain to (Tes. p. 1093) the Examiner the difference between the two methods and just what exhibits illustrate one method and what exhibits illustrate the other method.

A. I next file as part of my testimony, marked exhibit No. 86 a statement showing the estimated cost of handling logs in Florida based on out-of-pocket expenses actually assigned to the third division of the Atlantic Coast Line Railroad Company operating entirely within the State of Florida, raised to 100 per cent of the haulage expenses, freight, as indicated. This exhibit shows the average haul of the log traffic based on 18,602 cars handled from February 9, 1929 to January 31, 1931 to be 81.36 miles. That is the weighted average. It will be noted that in the two columns headed (a) and (b), line 9, shows out-of-pocket expenses per gross ton mile as .08828 plus. This is the actual out-of-pocket expense developed on the third division, and on column (a) line 10 has been raised to 100 per cent per haulage cost by dividing it by 35.027 per cent.

Exam. Hoy: The exhibits show 25.

Mr. Cotterill: Should be 35.

By Mr. Cotterill:

Q. It was 25 in your previous sheets,
[fol. 1081] A. It ought to be 35.027—by dividing it by 35.027 per cent.

By Mr. Pettijohn:

Q. Do you mean to say by dividing the .088 (.08828 plus) under column (b) on line 9 by 35 (35.027) (Tes. p. 1094) column (a) on line 10 that you will get 37?

A. No, that you get 25.2059, as shown in column (a) and line 10; the 35.027 per cent being the ratio of the out-of-pocket expenses to the total freight haulage expenses shown on my exhibit No. 84. Column (b) line 10 shows the figures on line 9 raised to 100 per cent as representing the total operating expenses, freight, excluding hired equipment. In other words the out-of-pocket accounts represented on line 9 for the system were found to represent 23.549 per cent of the total freight operating expenses. Attention is here called to the fact that the figures shown in column (a) are haulage costs and do not include any terminal hire of equipment or agency expenses whatever. The figures in column (b) include a relative proportion of all freight operating costs excepting hire equipment. By dividing the figures on line 9 by 23.549 and multiplying the result by 100 we produce the total cost per gross ton mile, column (b) line 10, .374912. The average revenue of $15.12 per car was obtained by dividing 18,602 cars into the total revenue of $281,225.75 under the so-called Cummer scale. Those figures were obtained from Mr. Perrin's exhibit, I do not recall the number. The average weight per car as billed was 56,754 pounds, as entered on line 3. However the tare weight per car used on this service is 33,000 pounds (Tes. p. 1095), as shown on line 4. Line 5 adds the average tare weight to cover the empty haul of the car on the return movement; adding lines 3, 4, and 5 gives us on line 6 the [fol. 1082] gross weight in pounds, 122,754, and dividing the total by 2,000 pounds we obtain on line 7 the gross tons of 61.377. Then, multiplying these figures by 81.36 miles shown on line 1 we obtain the gross ton miles of 4,994 entered opposite line 8. The figures on line 11, showing the operating costs, are obtained by multiplying the gross ton miles by the figures on line 10. Deducting the operating costs shown on line 11 column (a) $12.59 from the reve-

nue per car $15.12 shown opposite line 2, we obtained the net of $2.53, to which has been applied the percentage shown on line 12 to assign a proportion of the income taxes—8 cents in this case. Line 13 is obtained by multiplying the cost shown on line 11 by 15.3950 per cent to assign the Florida taxes, $1.93. The sum of lines 11, 12 and 13 are entered on line 14, which gives the total operating expenses and taxes for haulage expense as $14.60. Line 15 assigns a proportion of the 5¾ per cent return on investment by multiplying the cost on line 11, $12.59 by 30.4443, being the relation of 5¾ per cent return assignable to the total freight operating expenses as indicated at the bottom of exhibit 85 (Tes. p. 1096). The 32.97536. The entry on line 15, $4.15 added to line 14 give a total haulage cost, including return on investment line 16, of $18.75. The figures in column (b) were obtained in the same manner showing what the cost would be if all freight operating expenses were used in the calculation, namely, $27.77, but these figures do not include any hire of equipment. As previously stated it is in my opinion impossible to ascertain with absolute accuracy the cost of handling any one commodity. However, we have here results of two studies, the operating expenses included [fol. 1083] in column (a) being confined to haulage costs, no terminal or enginemen expense, or hire of equipment, being included therein; while there is included in column (b) a relative proportion of all expenses excepting hire of equipment. The costs shown in column (a) are unquestionably too low, while the costs shown in column (b) include some items of expenses which it might be claimed are not directly assignable to log traffic. Now, even if it were possible to obtain the actual cost of handling these logs the figures arrived at would more nearly approximate column (b) than column (a) (Tes. p. 1097). On the bottom of the exhibit note B, reference is made to percentage of 23.5492. This represents the relation of total freight operating expenses less the out-of-pocket expenses to the freight operating expenses of the system. Perhaps to make it clearer. The total operating expenses, freight, were $36,308,813.00. The out-of-pocket expenses shown on my exhibit 84 were $6,920,684.00. Deducting these figures leaves $29,388,129.00. Dividing this latter figure into the out-of-pocket expenses $6,920,684.00 gives you 23.5492. Item 1, is a weighted average of all the individual shipments shown on Mr.

Perrin's exhibit 61. The average revenue is produced in the same way by Mr. Perrin's exhibit 61. I think I explained a moment ago that the average revenue of $15.12 per car was obtained by dividing the 18,602 cars into $281,225.75. My average billing weight is also obtained from that same exhibit. The tare weight (Tes. p. 1098) I obtained from our car accountant, and the rest of those figures when you come down to 7 and 8 are merely arithmetical calculations from 3, 4, 5, and 6.

[fol. 1084] Q. And, from 8 or at 8 you stop so far as the per car results of actual business are concerned, and then you go on to cost calculations?

A. I produced in the center of exhibit No. 86 the basic data from which the computation made from lines 10 to 16 are derived.

Q. Now, where do you get this item 9, out-of-pocket expenses per gross ton mile, .0882888 cents?

A. That figure was derived from the study of out-of-pocket expenses from the third division.

Q. Where is that shown here?

A. I mentioned that in my testimony leading up to the filing of these exhibits yesterday.

Q. Yes, but are those figures shown in your exhibits, or if not are there any published documents from which we can obtain those same figures?

A. No; there are no published documents because it is necessary to analyze the accounts as I go of each of these methods covered in order to produce the figures. Yesterday Mr. Pettijohn asked me to furnish the third division figures (Tes. p. 1099) for these accounts. I would be glad to put them in the record at this time.

Q. Well, it strikes me that in order to check these results we have got to have that in entire detail?

A. You cannot do that unless you take every voucher to check the item, which you will have to do as I do it. I had it done under my direction—took every payroll and every voucher handled on the third division, which was analyzed and the expenses attributable to the third division developed from that source.

[fol. 1085] Q. But you can as a result of that study make a tabulation showing the total operating expenses for the system by classifications and the total operating expenses attributable to the third division for the same classifications can you not?

A. Just for the out-of-pocket expenses. In other words our total operating expenses are not distributed to divisions, they are assigned to the system as a whole concurrently. In order to get the expenses for the third division it was necessary for me to analyze all of the vouchers affecting the third division.

By Mr. Cotterill:

Q. And to make an allocation as between the third division and the other two?

A. Not allocation because practically all of the out-of-pocket expenses are direct. There are some few items which (Tes. p. 1100) of course are assigned necessarily.

Q. Common to all divisions?

A. Very few of them, though.

By Mr. Pettijohn:

Q. Mr. Lamb I believe what is wanted is simply the primary expenses and the gross ton miles on the third division which you used to determine the average gross ton mile costs?

A. I will be glad to give you that. The gross ton mile figures you want?

Q. We want the statistics from which the .088 was determined?

A. All right. The out-of-pocket expenses of the third division for the period July 1, 1928 to June 30, 1929, were as follows:

[fol. 1086] Account 392, Road Enginemen	$497,364.58
Account 394, Road Locomotive—Fuel	606,920.94
Account 397, Road Locomotive—Water	28,406.12
Account 398, Road Locomotive—Lubricants	15,379.52
Account 399, Road Locomotive—Supplies	9,575.70
Account 400, Engine-house Expenses, Road	126,854.35
Account 401, Road Trainmen	637,337.05
Account 402, Train Supplies & Expenses	127,772.40
Total	2,0[illegible]10.66

The total loaded and empty car miles were 69,775,673. The gross ton miles in thousands would then be 2,332,81[illegible]. The gross ton miles (Tes. p. 1101) were furnished by our car accountant, Mr. Dewey.

Mr. Cotterill: I do not se how we can progress very far in the cost analysis when so much of the information is drawn from so much undisclosed, unrecorded sources, and we are asked to sit here and make pencil notes of a lot of figures which are basic to the whole study.

By Mr. Pettijohn:

Q. Well, might I ask you to define what the third division is; that is its junction points in connection with the second district?

A. The third division is from Jacksonville and south, from High Springs and south, and from Fincher to Thomasville, Georgia 7 miles in Georgia, that is, from Thomasville south 7 miles in Georgia.

Q. Now, will you in order to give us opportunity to study this question also furnish us the formula which you followed in assigning water, lubricants, enginehouse supplies, enginehouse expenses, and train supplies and expenses to districts or, did you simply take the places at which those [fol. 1087] supplies were incurred and assign them direct to the study?

A. I suspect the best way to explain it is to take each account separately. I will be very glad to explain each account as we go through here. In order to develop the out-of-pocket cost on the third division—I will show you that (Tes. p. 1102). The third division includes all of Florida, south of Jacksonville, and from High Springs to the south, and then Fincher to Thomasville, all south of there. It does not include Florida north of High Springs. In order to develop the actual out-of-pocket costs on the third division, I had an analysis made of vouchers, payrolls, materials and supplies, etc., for each of the months July 1, 1928, to June 30, 1929. The figures were drawn from the actual vouchers and payrolls of the third division. For example, Account 392—Train Enginemen. The amounts chargeable were drawn from the payrolls, which were definitely assigned to freight, passenger and mixed, by the superintendent in charge making the assignment at the point of origin who handles those particular accounts and makes the ordinary distribution on our payroll.

And where can we get that distribution to see what method he used?

By Mr. Pettijohn, interrupting:

Q. You mean by that, do you (Tes. p. 1103) not Mr. Lamb that the superintendent's office assigns these expenses of trainmen and enginemen to districts according to the territory in which the crews operate?

A. To the actual run of the crews. It is actual allocation; it is not any arbitrary apportionment. The only distribution would be in connection with mixed trains. The amounts chargeable were drawn from the payrolls which were definitely assigned to freight, passenger and mixed. [fol. 1088]. For the month of September—I happen to have that figure here—1928, $7,149.38 was charged to mixed. This was distributed to passenger and freight on the basis of the percentage of car miles in mixed trains, passenger and freight, which assigned 76.93 per cent to freight. This figure was added to the direct freight expenses to produce the amount chargeable to freight. Account 394—Fuel for Train Locomotives. Vouchers were examined and from the distribution thereon each voucher was set up showing the charge to freight, passenger, common or mixed. Payrolls were examined and the amount directly distributed thereon to freight, passenger, common and mixed was set down. Shop expenses were distributed on the accepted basis as prescribed by the classification of accounts, being apportioned to the various accounts affected on the relative proportion which the total amount of charges to "shop expenses bears to the total of the directly distributed labor."

By Mr. Pettijohn:

Q. On that, Mr. Lamb, does that mean that (Tes. p. 1104) the total shop expenses for instance at St. Augustine would be the shop expenses thrown into the third division expenses?

A. Your classification of accounts provide for the assignment or distribution of shop expenses which is made on the basis that the shop expenses bear to the total of the directly distributed labor.

Mr. Cotterill: But, Mr. Lamb, you are speaking of the assignment as between freight, passenger and mixed. Mr. Pettijohn's question is, did you charge the whole of the shop expense at St. Augustine to the operation of the third division.

By Mr. Pettijohn:

Q. Mr. Lamb, are you not still discussing fuel for locomotives?

A. Yes. I am only discussing it in so far as shop ex- [fol. 1089] penses are concerned, that portion of the work done by the shops is properly chargeable to fuel for locomotives.

Q. And, your fuel for locomotives is a suspense account, from which you make your distribution to primary expenses on the basis of consumption? (Question also read by the reporter.)

Mr. Alston: Your Honor, I think we had better let the examination take its orderly course. The interruptions are coming pretty frequently.

Exam. Hoy: It is necessary to explain the exhibits. It (Tes. p. 1105) is not necessarily in the nature of cross-examination. I think it is proper here as we go along so that everybody will understand the exhibits.

A. The actual issues to the third division were definitely made, and as I stated the shop expenses were distributed to that third division.

Q. In order to shorten it, Mr. Lamb, is it not correct to say that all of the expenses from every source, including the purchase of fuel, is first charged to the fuel account and from the fuel account to determine the average cost per ton of the fuel and that the issue of fuel to the respective classes of service are then charged, and your material supply accounts credited with the number of tons at the average price according to the class of service in which the fuel was used.

A. I think that is substantially correct, Mr. Pettijohn. The purchasing department definitely shows the amount of issues to freight, passenger, common and mixed, and the amount charged to mixed service is distributed on the basis of car mile in mixed trains, which is the accepted basis.

Q. And, the basis of the issues are the engineer's tickets as to different coal chutes?

[fol. 1090] A. Certainly. Fuel account was analyzed and the amounts charged to freight, passenger, common and mixed ascertained, to which is added the store expenses

distributed on basis of (Tes. p. 1106) issues to the respective accounts. The amount chargeable to mixed was distributed on the percentage of car miles in mixed trains and the amount charged to common was distributed to passenger and freight on direct assignment of all other charges. I might say there that the amount charged to common is practically nil.

Q. In order that there may be no further dispute in connection with that Mr. Lamb, take Thomasville, Georgia, the same cost per ton on coal issued to engines operating in the third division is applied to engines operating in the second division, for such coal as they receive at Thomasville?

A. I think you are correct on that, because we have to use on certain parts of the system the average cost at that point.

By Mr. Alston:

Q. Now Mr. Lamb, on an engine operating in the third division receiving coal at Thomasville, how do you charge——

A. It is charged out at the average price at that point, at Thomasville. Account 397—Water for Train Locomotives, is all charged to common and is distributed to passenger and (Tes. p. 1107) freight on the basis of the distribution to passenger and freight of Account 394—Fuel for Train Locomotives. Account 398—Lubricants for Train Locomotives, was practically all directly assigned to freight and passenger from the vouchers and materials and supplies. The amounts chargeable to mixed trains were apportioned on the basis of car miles in mixed trains. The amount charged common was apportioned on the basis of the direct assignment to passenger and freight. Account 399—Other [fol. 1091] Supplies for Train Locomotives. Vouchers and payrolls were examined and the distribution to passenger, freight, common and mixed listed, and a proportion of shop expenses added. As previously explained, the direct issues of materials and supplies assigned certain amounts to freight and passenger and small amounts to common and mixed. To each of these accounts a proportion of store expenses was added and the amounts chargeable to mixed service apportioned as between passenger and freight on the basis of car miles in mixed trains and the amount charged to common was apportioned on the basis of the direct assignment to passenger and freight. Account 400—

Engine-house expenses—Road. Vouchers were analyzed and the amounts set down separately for those chargeable to freight, passenger, common and mixed. Payrolls were examined and the amounts charged thereon to the respective services were set down. The figures as distributed direct from the payrolls were originally distributed as (Tes. p. 1108) between freight, passenger and mixed on the basis of engines handled in and out for the respective services. A proportion of shop expenses was added as prescribed by the classification of operating expenses. Material and supplies issues as directly charged to freight, passenger and common were set down and to each of these classes of service was added a proportion of store expenses on the basis of issues. Bills collectible as representing services rendered other companies was credited to common and the net amount of the common expenses assigned to freight and passenger on the basis of direct assignments to these respective services.

Account 401—Trainmen-Road. Charges to this account were drawn direct from the payrolls where absolute dis- [fol. 1092] tribution is made to freight, passenger and mixed. The amount charged to mixed was assigned to freight and passenger on the basis of car miles handled in mixed trains, which is the generally accepted basis for assigning mixed expenses. Account 402—Train Supplies and Expenses. Vouchers and pay-rolls were examined and charges set out to freight, passenger, common and mixed. Payrolls were also examined and the amounts charged to freight, passenger and mixed accumulated and a proportion of shop expenses was added. Issues for materials and supplies direct to the freight and passenger services and common were accumulated and store expenses added. Bills collectible as representing supplies furnished (Tes. p. 1109) other roads were credited direct to the respective accounts. The expenses chargeable to mixed service were distributed on the basis of car miles in mixed trains, and common expenses on direct assignment. This procedure was followed for each of the months of September 1, 1928, to June 30, 1929, both inclusive, and the totals chargeable to each account accumulated.

By M. Pettijohn:

Q. With respect to your putting supplies assessed will you please explain how you make your separation, freight

and passenger. How did you make your assessment or assignment train supplies and expenses to operations on the third district?

A. I definitely determined from the purchasing agent the amount supplied to the third division.

Q. In other words if it was an issue or purchase that was made and sent to a point on the third division for application, the train supplies would be respectively assigned?

A. If used on the third division.

[fol. 1093] Q. Let us take the matter of ice. You ice a car in Florida for transportation northbound, if the ice purchase was made in Florida, then the entire expense of that ice is assigned to the third division?

A. Frankly I am not definitely sure about how the item of ice is handled there.

Q. Well, how about oil for the boxes, journals? (Tes. p. 1110.)

A. Well, oil naturally is that if issued on the third division it is applied on the third division for use wherever the car or train may run; just as applied on other divisons if coming into Florida.

Q. Then, the answer to train supplies and expenses is that the allocation has been made where the supplies have been furnished and where the expense has been incurred without regard to the benefits to be received from this expense?

A. Train supplies and expenses usually follow the movement of the train, and if a train is confined to the third division which is entirely in Florida, it naturally follows that those expenses are used up in the State of Florida.

Q. Can you give us a separation of the main supplies and expenses which apply to a train as distinguished from that which applies to a car?

A. No. I get the expenses chargeable to Account 402, ordinary train supplies and expenses, whatever goes into that account naturally is thrown in there without regard to the individual car or locomotive. I stated that I had made these calculations on two bases. The exhibit which I identified as Exhibit No. 86 deals with the average mileage, to-[fol. 1094] wit, 81.36 on a gross ton mileage basis. I have dealt with the same mileage on a car mileage basis. (Tes. p. 1111.) I will identify the exhibit as 87, as part of my testimony which is similar to exhibit 86, excepting that 87

is based on the cost per loaded and empty car mile while exhibit 86 is on the gross ton miles. The out-of-pocket expenses per loaded and empty car mile for the third division was 2.95176 cents. I used the same expenses. I gave the empty and loaded car miles this morning in the record. I used 69 miles or whatever it was. Using the 35.027 per cent in column (a) we get the cost per loaded and empty car mile of 8.4271 cents. The line 4 shows the total car mile as 16,272; multiplying this mileage by the cost of 8.4271 gives us as the operating expense haulage $13.74. The revenue per car was $15.12 which leaves a net of $1.38 as between the revenues and expenses. (Tes. p. 1112.) Applying the 3 per cent to this figure assigns 4 cents for income taxes; applying the 15.39 per cent to the $13.74 operating expenses assigns for Florida taxes 2.12 cents, making the total as shown by line 10 for operating expenses and taxes $15.90, compared with the $15.12 revenue under the so-called Cummer scale. Line 11 shows 5¾ per cent return on investment $4.53, making the total cost $20.43. In column (b) using the total operating expenses, excluding hire of equipment, and by dividing the 2.951 cents shown on line 5 the out-of-pocket expenses per loaded and empty car mile by 23.5492, the relation to the total operating expenses, freight, we produce a cost on line 6 of 12.5344 cents; multiplying this cost by 162.72 miles gives $20.43 as the operating expenses. There is no net as the revenue is only $15.12, there-
[fol. 1095] fore no income taxes are assigned, but multiplying the $20.43 by 15.395 per cent we assign $3.14 for taxes, as shown by line 9. The sum of the taxes and expenses as shown by line 10 is $23.57. 5¾ per cent return on investment assigns $6.74, making the total cost including return on investment of $30.31. Return on investment is computed upon the system and not upon the Florida investment.

Q. There is one thing in one of your exhibits back here, you show in 85, and you state there that was page 312, schedule 350, of the Annual Report, and further on in your testimony (Tes. p. 1113) you stated that these were taxes paid. You mean that that is the accrued taxes do you not?

A. Well, the taxes paid in Florida are adjusted to the accrual of the six million two hundred forty thousand shown on line 50 is the grand total of accrual of which there is paid in Florida the $2,115,260.76. I mean accrued for Florida and my recollection is that practically all of

that was paid before the close of the year. That is all property taxes. Now, I have not in exhibit 85 included in the Forida taxes any of the miscellaneous items shown from line 9 to 16. That represents taxes paid on fixtures and furniture and outside agencies, strictly speaking a part of which should be assigned to Florida because it is system operation and Florida gets the benefit the same as any other part of the system, and I have not included any of that in my figures. As to whether I have made any investigation of these Florida taxes that have accrued and determined whether or not there was not a compromise on the Florida accrual I am not advised as to what possibly accrued before I came with the Coast Line; I am not [fol. 1096] familiar with that.

By Mr. Pettijohn:

Q. My understanding is that the Coast Line and Seaboard compromised their tax accruals with the State of Florida (Tes. p. 1114).

A. I am not advised on that; I don't know.

Q. Will you look that up if we have an adjourned hearing and be prepared to state for the year 1929.

A. For the year 1929. In exhibit 85, in which I dealt with taxes, allocating of taxes, I have adopted on exhibit 85 the same basis used by Mr. Pettijohn in revising the exhibits filed by Mr. Lowell White in the previous hearing. Exhibits will be prepared for other mileages illustrating the cost under the Cummer scale and these exhibits will be made on the same basis as the two exhibits 86 and 87. The taxes will be allocated on the basis of 85 (Tes. p. 1115). In the sheets that were recalled this morning it is true that calculations were made for various mileages on the gross ton mile method; then I went back over those same various mileages and presented another theory based upon the loaded and empty car miles. It is my purpose to introduce later another set of exhibits dealing with the loaded car and empty car mileage theory of proportion. I presented one exhibit, the last exhibit filed was on the car mile basis. There will be some other exhibits presented on the basis of exhibit 86, and some other exhibits presented on the basis of 87, and the only difference will be the mileage and the revenue (Tes. p. 1116) and of course that affects the revenue and the actual figures but the basis will be the same.

[fol. 1097] By Mr. Alston:

Q. Mr. Lamb from your survey of the application of the Cummer Scale of rates, and from your evperience as an accountant as you have detailed, please say whether or not in your opinion the Cummer scale of rates pays the cost—affords a revenue which is equal to the cost of doing the business covered thereby?

A. No, as shown by the exhibits filed in practically every case the cost, including a reasonable return on investment, exceeds the revenue derived, and in some instances the operating expenses exceed the revenue, without including any taxes or return on investment.

J. W. PERRIN, recalled as a witness and being previously sworn, testified further as follows:

Direct examination:

I was asked yesterday by Mr. Cotterill to produce figures showing the effect upon the total revenues of the Atlantic Coast Line system for the (Tes. p. 1117) interstate basis which the Commission prescribed for application between Florida and Georgia, if it should be applied over the system as a whole both state and interstate. I have made that compilation. Preliminary to stating the results of the calculation I made, in accordance with Mr. Cotterills's request, I want to make a correction in the figures that I put into the record yesterday as to the losses sustained if the Cummer scale should be applied uniformly throughout the system. The figures presented yesterday were based upon the assumption that the present scale of rates in South Carolina was in effect throughout the period. However, the present rates in South Carolina did not become effec-[fol. 1098] tive until July 21, 1930; and if for the period of approximately 19 months these figures should be revised to reflect the application of the interstate standard scale in South Carolina, which was actually in effect during that period it would add approximately $10,000 to the amount of losses that would be sustained under the Cummer scale. And, the actual total would be $675,381.21. That figure should be substituted (Tes. p. 1118) for the figure of six hundred some odd thousand that I gave yesterday. Now, as to Mr. Cotterill's request which was on

the same principle, to apply the interstate scale, and indicate what effect on the revenues on the system would result. The result of course would show no change in Virginia, in Florid in Alabama, and interstate it would increase the revenues in North Carolina $65,427.24; it would increase the revenues in South Carolina $7,145.14, and it would increase the revenues in Georgia, $14,567.52, a total increase of $87,229.90. Stating it in percentages the amount of increase if the interstate scale should apply over the system would be 5.9 per cent while under the Cummer scale the amount of reduction would be equivalent to 45.5 per cent. The exhibit No. 61 of course was prepared for the purpose of showing the effect upon the revenues that would result from the application of the Cummer scale. It had no reference (Tes. p. 1119) at all to the interstate feature, it was not prepared with any thought of the interstate rates. Throughout the whole preparation we never gave a thought to whether there was any log movement from Florida to Georgia; it did not enter into my mind until the question came up yesterday, that we might have included a compilation of the movement from Florida to Georgia. There was a force of clerks engaged in the [fol. 1099] preparation of those statistics in exhibit 61 from March 2nd until April 15th of this year. The whole purpose of it was to show what tonnage had moved in Florida intrastate during the period subsequent to February 9, 1929, to show what effect from a revenue standpoint would be of the application upon that tonnage of the so-called Cummer scale on the one hand or the interstate basis on the other.

Mr. Gwathmey: Now Mr. Examiner, we were requested on yesterday to compile certain information and at this time I would like to make a statement in regard to our position. So far as the movement of logs from Florida into Georgia during the period since February 9, 1929 is concerned, we are prepared to state for the record that based upon such investigations as we have been able to make there has been no such movement. Of course, there may have been an occasional car. I will ask counsel for the intervenors to say whether or not (Tes. p. 1120) in view of that statement they desire to press their request that we check all way-bills for the purpose of getting the information.

Mr. Adair: Your Honor, I think that statement is entirely satisfactory to us. We desire to put no more work upon our adversary that they are really able to do.

Mr. Norman: That is satisfactory to us.

Mr. Gwathmey: We were requested also, Mr. Examiner, to file for the three year period, 1927 and 1928, a statement which will show for that period information similar to the data contained in Mr. Perrin's exhibit No. 61. I would like to ask counsel for the intervenors whether in view of the data which has once been submitted in the case they now desire to press that request.

[fol. 1100] Mr. Norman: I don't know to what you have reference.

Mr. Gwathmey: I am referring particularly to exhibit No. 80.

Then Mr. Examiner, I think it only proper that counsel should state the purposes of the request.

Mr. Alston: What they expect to prove.

Mr. Norman: I want to point out on this exhibit No. 80 that they very carefully refrained from giving the information I want. They give under system revenue some log traffic, but when they come to the columns under Florida, that column is omitted. (Tes. p. 1121)

Mr. Gwathmey: You mean the revenue?

Mr. Norman: The revenue. They have only given us the revenue from log traffic since February 9, 1929; what we want is the revenue for the previous years so that the effect of the increase in the rates on gross revenues may appear. Now, they have given us no much information. I don't think exhibit 80 adds anything to that particular question.

Mr. Gwathmey: I understand that you desire now to press your request.

Mr. Norman: Yes.

Mr. Adair: Mr. Gwathmey, may I say a word there. We would also like to have that information with respect to the year 1926, which is the year in which this controversy was commenced.

Mr. Gwathmey: Let us get the request clear. Do I understand now that it covers three years, 1926, 1927 and 1928?

The Witness: Yes, sir.

[fol. 1101] Mr. Alston: I think, Mr. Examiner, that our friends ought to be asked to state what they expect to prove.

Exam. Hoy: They probably will if you give them a little more time.

Mr. Norman: We expect that to show that instead of the increase in the rates removing the burden from interstate commerce it has cost one on interstate commerce, and the Supreme Court in its decision says—— (Tes. p. 1122)

Mr. Alston: Don't argue that.

Exam. Hoy: Let us not argue it, Mr. Norman. Just state in response to Mr. Alston's question the purpose for which you want the information.

Mr. Norman: I have stated that.

Exam. Hoy: Without arguing the question.

Mr. Alston: The statement is too general "put a burden"—— in what way Mr. Norman does it put a burden?

Exam. Hoy: We will not get into an argument on this question.

Mr. Alston: No argument at all but, I would like for him to state in his statement what kind of a burden that is, that he wants to show was put on interstate commerce in this situation.

Mr. Norman: We want to show that the alteration of the interstate rates produced or is likely to produce additional income. This evidence we think will show that it did not produce additional income but on the contrary it caused a loss of income.

Exam. Hoy: Mr. Gwathmey, the request has been made, or as Mr. Norman did, the other gentleman there gave it, request for this information. You asked for a statement [fol. 1102] as to why they wanted it. Now, I think we shall hear from you.

Mr. Gwathmey: If the Examiner please, as Mr. Perrin stated the compilation of his exhibit No. 61 required the time of a force of clerks for a period of over six weeks. The (Tes. p. 1123) compilation of the additional data which has been requested by the intervenors which covers a three year period would obviously necessitate still more work, and a still longer time in which to compile it. We have shown in exhibit No. 80 the tonnage in logs intrastate in Florida by cars, the number of tons for the entire period 1926 to 1930, inclusive. That exhibit on its face shows the

extent to which there has been a decline in the tonnage, particularly during the years 1929 and 1930, with the very marked decline in 1930 and I respectfully submit that the information which has been submitted by the defendant is sufficient for the purposes of the case, that the amount of time and labor which would be necessitated in complying with this request by the intervenors is so great as not to justify a requirement that the defendant should go to that expense. In addition, having in mind the statement of counsel for the intervenors as to the purposes of this information, I call your Honor's attention to the fact that there are present now and have been present throughout this hearing representatives of the larger lumber mills in this territory, including particularly the representatives of the Brooks-Scanlon Company and Putnam Company, both of whom as I understand have moved their mill from Eastport and Milldale here adjacent to Jacksonville to other points in the State. Those gentlemen know certainly what their tonnage was prior to this change in the rates and [fol. 1103] they know what it is now. They know how much business (Tes. p. 1124) that formerly moved to Jacksonville and does not move now. I have no doubt they expect to offer it at this hearing, and with all of that information I submit that the additional data requested by the intervenor is unnecessary. We are prepared to go further, Mr. Examiner, in referring to exhibit No. 80. We will admit that the gross revenue in 1926 under the application of the Cummer scale, 1,214,361 tons of lumber shown on that exhibit in column (a) would exceed the gross revenue in 1930 under the application of the interstate basis on the 272,150 tons shown for the latter year.

Mr. Norman: Now, Mr. Examiner, if the defendant won't furnish this information which we think the Interstate Commerce Commission is entitled to have in determining the very serious question, and information which only the defendant has, I would like to ask, without waiving any part of the request as originally made, if the defendants will furnish the gross revenue from log traffic for the years 1926, 1927 and 1928, without going into the detail with which they have shown the facts as for 1929 and 1930.

Mr. Gwathmey: You are speaking as to intrastate?

Mr. Norman: Intrastate log traffic.

Mr. Gwathmey: I think Mr. Lamb explained in filing his exhibit No. 80 that that separation had not been made in the accounts of the company. I think they are wrong about that, (Tes. p. 1125) I would like an opportunity to confer with Mr. Lamb.

Mr. Adair: Your Honor, speaking for the unfortunates that I represent I should like to insist upon the gross reve-
[fol. 1104] nue from the log traffic in Florida for 1926, 1927 and 1928, notwithstanding the details which have been given here with respect to the number of cars and number of tons. I want to point out to your Honor that a lot of this movement was discontinued during this period of the time state rates was long haul train load movements that run up the general revenue from the logs in Florida far out of proportion to the number of actual cars hauled, so as that it does not necessarily follow that the reduction in number of tons and number of cars shows at all clearly what the total reduction in revenue is.

Exam. Hoy: I think we had better find out first from Mr. Gwathmey after consulting with Mr. Lamb whether they can not furnish it, and if they will furnish what Mr. Norman and you have just asked for, then we will continue from there.

Mr. Alston: Mr. Examiner, Mr. Lamb states that the revenue (Tes. p. 1126) on this log business is not segregated by states and that it would take a very considerable time to get the evidence and that that can not be furnished at this hearing or for sometime thereafter.

I would like to say this, I do not think that this question of revenue is relevant.

Exam. Hoy: Well, I don't think we need to go into that. The question here before you is the request made for certain additional information.

Mr. Alston: We haven't got, and can not get it with any degree of reasonable effort.

Exam. Hoy: Am I to understand then that you are willing to furnish it at some later time or that you are unwilling to furnish it? I don't know just how to interpret your answer myself.

[fol. 1105] Mr. Alston: I am undertaking to say we look upon the evidence as unimportant and that the purposes—and we believe that the purposes of our opponents are served by exhibit No. 80. We prefer very much not to be

put to the expense of getting this evidence, as dollars and cents revenue for the State of Florida for the period mentioned, and do not say we will not do it of course, we hope the Commission will not require us to do it for the reasons I have stated. We think that to quite a degree the information is within the power of the shippers who are represented here. (Tes. p. 1127).

Mr. Norman: First, now as to information furnished on exhibit 80.

Exam. Hoy: Mr. Norman I don't think it is necessary to debate it back and forth any more. As I understand Mr. Alston's reply—you want it, and other intervenors want it, and Mr. Alston does not show any disposition to furnish it. I think after the hearing is over if you still think you should have that information, why then you will take that up with the Commission. I do not think there is any need of debating it any more here.

Mr. Norman: I would like to ask the defendant to explain the discrepancy in the figures on exhibit 80 and exhibit 61. On exhibit 80 they show the years 1929 and 1930——

Exam. Hoy: Well, just should we not wait and get one of the witnesses—there was two different witnesses. One introduced 61 and one introduced 80. (Tes. p. 1128)

Cross-examination.

By Mr. Norman:

Q. It appears on exhibit 61 filed by you that there moved in the State of Florida for the period from February 9, 1929, to January 31, 1931, 18,602 cars. Now, it appears [fol. 1106] from exhibit 80 filed by Mr. Lamb that for the calendar years 1929 and 1930 there moved 22,583 cars or about 4,000 more cars than is shown on your exhibit. The period is slightly different but the one includes only 8 days more than the other. What is the explanation of that difference?

A. This covers 23 months and I imagine his covers the full 24 months.

Q. Yours covers 23 months and 22 days?

A. Well it does, up to January 31st.

Q. There are only 8 days difference in the amount of time covered and 4,000 difference in the number of cars, or about 22 per cent more cars on one side than the other?

A. My exhibit No. 61 as it states shows the movement of long length logs. I have the statistics of the movement of the short length logs for the same period and the total movement of short length logs in that period was approximately 4,000 cars. The short length logs were evidently included in Mr. (Tes. p. 1129) Lamb's exhibit. I imagine that is true. As to whether I have the revenue on those short length logs, I don't think so inasmuch as we did not—there was no revenue question involved when we assembled the volume of movement. I don't think we even referred to it (Tes. p. 1130).

F. B. Langley, called as a witness, being duly sworn, testified as follows:

Direct examination:

My official connection with the Atlantic Coast Line Railroad is Superintendent of Transportation, of the third division. I have been with the Atlantic Coast Line office since 1907 and during that time I have been located in Florida since 1910 and in North Carolina three years. (Tes. [fol. 1107] p. 1131). These cars which haul logs return empty. I mean hauls in Florida. That is almost without exception. I would say 98 per cent. That is true of the individual cars as well as train loading of cars. As to my familiarity with the timber situation on the Atlantic Coast Line and as to whether or not there are very large tracts of timber yet uncut in Florida I am not in position to say where this timber is located except in two or three tracts. We have large tracts of timber in the western side, which we consider the Perry and Cross City territory and also in the Everglades territory, which is known as the "Big cypress". That is in the southern part of the state. As to what counties are they I think considerable timber is down in Dade County,—not Dade County, Collier County, and on the other side, (Tes. p. 1132) Taylor and Dixie. There are other tracts of timber but I am not entirely familiar with the location.

Cross-examination:

As to what part of our Florida trackage lies outside of the third division, we have a line from High Springs up

to the State line which is up north of Live Oak, and then the line from Jacksonville to through Hilliard to the Georgia state line. I am not familiar with just the exact mileage, but it does not amount to just a great deal. Those lines are not in the third division. But all the rest of the trackage in Florida is in the third division. Now there are about 7 miles outside of Thomasville that is not on this, that is in third division but there is nothing in there. There is only one station in Georgia, and that is Metcalf, and that has practically no business. Hines and Palatka [fol. 1108] Florida are in my division. (Tes. p. 1133). And the trackage in between those points is in my division. At Wilson we operate a log train movement there for the Wilson Cypress Company every other day in solid trainloads. As to what other service we perform in connection with that besides hitching a caboose onto one end and an engine onto the other and taking it to Palatka, that is all the service we perform at Hines, we make delivery of empty cars to the Wilson Cypress Lumber Company at Hines and they deliver the same to us at the same point made up. They are carried to Palatka and at that point the cars of course are handled by switch engines and weighed at Palatka and delivered to the Wilson Cypress Company's plant in solid trains. Of course they have to be cut apart to be weighed. I am sure that that is not based on estimated weights with occasional checks. (Tes. p. 1134). The cars are weighed in Palatka, all of them, each day, and that string of cars that comes in loaded is delivered back to us at Palatka and we take them back down to Hines. Our switch engine takes care of the work at Palatka. As to whether we maintain a special switch engine for that purpose, I doubt if we could cut it off if that business was discontinued. Wilson Cypress Company equips those cars with the special log equipment, and pay for that equipment. It is special logging equipment, that means stanchions. They pay for repairs—any car that is damaged while on their logging railroad, that is all. They pay a part of the inspection costs, 50 per cent of the inspection I believe. Hines, I am not positive but I believe that is the figure. (Tes. p. 1135). I am familiar with this movement. As to the actual out of pocket cost of transporting those log trains from Hines to Palatka and return, I have not those figures. In the crew there is the

[fol. 1109] engineer, fireman, conductor, flagman and one trainman. Five in all. It takes about eight hours to make the trip each way. That means from the time the crew is called until they are relieved at the other end. It is usually night day movement with the empty train and day and night with the loaded train. We try to handle the loaded train in the day time if we possibly can on account of the danger involved in handling it. (Tes. p. 1136).

Mr. Adair: Mr. Langley is it possible for you to get up within a short time the cost of your wages for your train crew, and the amount of fuel that is used by you on this trip for a period of a month; those figures are in your office are they not?

A. No, sir, not the figures of the fuel and engine supplies they are not. That is not in my office. The wages we could get that up possibly within a couple of days. The wages only. We do not keep the other figures. That information with respect to fuel is available. I could get it for you within a reasonable length of time.

Q. Also the train expenses, if any, in addition, or other expenses in connection with the operation of that train. Out-of-pocket expenses in connection with the operation of the train. (Tes. p. 1137).

A. As to whether this movement is an economical movement or expensive movement from the standpoint of the railroad, well, a solid train movement is less expensive than just a few cars handled in local freight. It is regular every other day and empties go back in solid trains. As to whether I recall a conversation that I had with Mr. C. R. MacPherson, President of the Wilson Cypress Company on or about May 7, 1929 with respect to this movement, I don't remember what date. I had a conversation with him [fol. 1110] sometime the first part of the year, I don't remember just when it was. I don't recall as far back as November 1929. I don't recall whether I stated then at or about that time to Mr. McPherson that my division that that particular division obtained a larger net revenue from logs than citrus fruit, vegetables, mellons (Tes. p. 1138) etc., and whether it was the next largest tonnage. In fact I am sure that no such remarks was made because that is not the situation.

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Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1933

No. 342

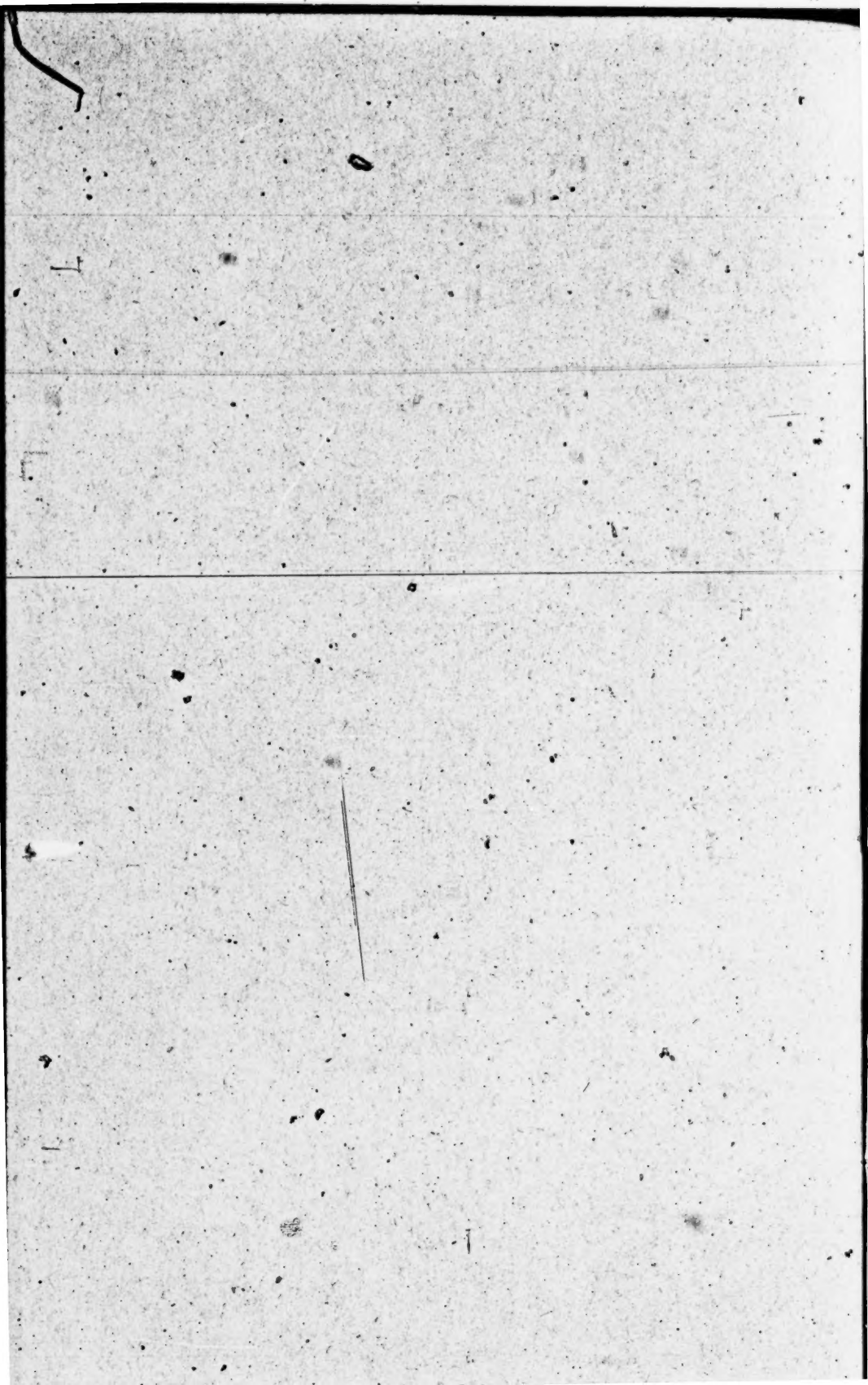
STATE OF FLORIDA, EUGENE S. MATTHEWS, MAMIE EATON-GREENE, AND W. B. DOUGLASS, ETC., ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, GEORGIA PUBLIC SERVICE COMMISSION, AND ALANTIC COAST LINE RAILROAD COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA

FILED AUGUST 14, 1933



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By Mr. Adair:

Q. Do you recall whether or not you said substantially to Mr. MacPherson that while the freight on the citrus fruit, vegetables, mellons and so forth would appear to be more compensatory than the old freight rate on logs in reality you were just about breaking even on the citrus fruit and the like, due to the claims which you were forced to pay shippers and that the log movement was more profitable and more economical to handle from an operation standpoint.

A. I possibly said there were less claims on logs than there were on citrus fruit.

Exam. Hoy: I don't see by this testimony what you expect to proye by the superintendent of transportation as to what is the most profitable business on the road. It seems to me that you are going far afield on cross examination on this man's testimony too.

Mr. Adair: I am, your Honor, but I don't think——.

Exam. Hoy: I suggest if you are going to ask any more (Tes. p. 1139) question- like that, that you call him as your witness and just ask him all you want.

Mr. Adair: Your Honor I do not desire to pursue that any more but I do care to prove by another witness that such a statement has been made, and I was asking him and [fol. 1111] giving him an opportunity to explain it.

Exam. Hoy: I don't think it is material anyway; as to what is the most profitable business on a railroad is proved by the statements of the superintendent of transportation. That is the way it strikes me; and I don't think we ought to go into this any further.

Redirect examination:

As to how many cars are in the train from Hines to Palatka, it runs from 40 to 45 cars loaded. We render no other terminal service on these logs shipments than at Palatka. As to whether I recall terminal services on any other shipments of logs at any other places than Palatka, practically all terminals where the log movement passes through. (Tes. p. 1140). I shall state those terminals that are in my mind right now. Of course the movement at the present time is very few. We only have at this time a

movement of course from Hines to Palatka, that is the solid train movement. We have a movement from Astor and Astor Park to Loughman and Jacksonville. Those logs would pass through Sanford going to Loughman where we have terminal facilities and the cars are weighed at that point and of course the cars coming to Jacksonville we would have Sanford and Jacksonville terminals for handling that shipment. We also have a movement from Tarrytown to Loughman. That can move Trilby and Lakeland, where we have terminals or through Sanford where we have terminal facilities at Sanford. Those cars are weighed at those terminals. We have another movement about six cars a week from Clara, Micanopy and Gainesville to Perry. The cars moving from Micanopy and Gainesville, I will say Micanopy first, move through High [fol. 1112] Springs where we have terminal facilities and those moving from Gainesville we have switch engines at Gainesville and also at High Springs. The movement from Clara to Perry would not move through any terminal. They are (Tes. p. 1141) the only logs that are moving at this time. At the present time the character of the movement of logs is what I regard as very abnormal, the lowest that I have seen since I have been in Florida. I attribute that to depression in business I should think, and two of the largest mills of course we had moved to the timber, which are the Brooks-Scanlon mill and the Putnam Lumber Company.

Q. Does that depression or lack of movement in logs at the present time extend over the entire State of Florida?

Mr. Gwathmey: Do you want to object to this question?

Mr. Adair: I do not think he is qualified as to what the depression has done for the lumber business.

Exam. Hoy: He says in his opinion that the loss of movement of logs in Florida over the Coast Line, he is talking about is due to a pretty general business depression, and the fact that two of the largest mills moved to the timber. That was answered. Now, the question to answer of Mr. Gwathmey's is whether the decreased in the movement of logs is general over the entire State of Florida. That is as I understand it (Tes. p. 1142).

Mr. Gwathmey: I would like to have the question read.

Exam. Hoy: Read the question, Mr. Reporter.

(Question read by the reporter.)

[fol. 1113] Mr. Gwathmey: I withdraw the word "depression" and say lack of movement, if that appeals to the gentlemen better.

Exam. Hoy: Decrease or lack of movement of logs to that extent throughout the State of Florida, or local to some sections.

A. Extends over the entire state, so far as the Coast Line is concerned. When I say the condition applies to the Atlantic Coast Line I mean that I am not familiar with the situation on other roads in Florida. I am not prepared to say whether or not there has been (Tes. p. 1143) a falling off in the movement of logs on other lines in Florida than the Atlantic Coast Line.

Cross-examination:

I have been a resident of Florida since 1910. As to when the "boom" in Florida ended and the severe depression that followed it began, the depression began early in 1926, as to the Florida situation. As to the general situation over the country, I am not familiar with anything except Florida. My jurisdiction embraces the branch line Jacksonville to Eastport. As to whether, upon the closing down of the mill at Eastport my company did or did not promptly thereafter give notice that no longer was that branch line available for the use of the public, I am not in position to say because at that time I was not superintendent of transportation. I came here in April 1930. I was at that time superintendent at Ocala. I am not in position to say just what notice was extended. (Tes. p. 1145) I do not know whether there was a notice extended. I am not familiar with that. As to whether I know what if any use was made of that branch line for any purpose whether for public or not, subsequently at any period of time after the closing of the mill, I was not here and was not familiar with the handling of that line during the time that the mill was here. My fa- [fol. 1114] miliarity with it has been actual since 1930. We have used the line for the handling of government rock; that is non-carrier transportation; we are handling some boulders for use in the construction of break-water for the government. That is the rock I speak of. That line is open at the present time, for public use I suppose. We are handling revenue business over it at the present time, government business, that is revenue (Tes. p. 1146). Rock work

for the government is all at the present time. We have not been maintaining that branch line at a point of normal maintenance with a view of its use by the public. It had to be repaired and put in condition when we started using it. We had permitted it to become undermaintained until this government rock began to move. Repairs had to be made on account of the size of the cars and weight. As to whether up to that time we had not undertaken to maintain that branch, I think that my answer there—to the previous questions—would answer your question. I spoke first of the making of particular repairs for this rock owing to the peculiarities of the rock movement; except for that type of repairs I would say that we have not been maintaining that branch normally. However, I am not familiar and have nothing to do with the maintenance part of the line. That comes under the head of the Engineering Department. As to whether we are maintaining any ordinary roadway facilities on that branch for the handling of freight, (Tes. p. 1147) there has never been any facilities there except the track. We have provided none for any other traffic. The line was built I understand for the handling of lumber only; there are no other facilities there. So far as [fol. 1115] I know none exist now except this particular rock handled for the government. I am not myself in any way familiar with the approximate capital cost of that branch line which in that was has now been about abandoned. When I spoke of the prior construction and use of that branch for lumber, of course I meant logs and lumber and mill supplies (Tes. p. 1148).

[fol. 1116] Exam. Hoy: We will now hear from the intervenors. Mr. Lamb will resume the stand when his new exhibits are ready.

ARTHUR G. CUMMER, recalled as a witness, having been previously sworn, testified as follows:

I am the same Arthur G. Cummer who formerly testified in this case. We commenced our saw mill operations at Milldale here near Jacksonville in 1897, and continued until November 1918. We had cut out all of our pine timber suitable for sawmill purposes, and on November 7, 1918, we leased the saw mill, pla-ing mill, yard, docks and

so forth to the Putnam Lumber Company, retaining and operating only our box and crate factory. We had a lease with the Putnam Lumber Company that we figured netted $60,000 a year for lease of our plant. (Tes. p. 1149?) The lease with the Putnam continued until the fall of 1926.

Q. Now, please tell me whether or not you and Mr. Fleishel on behalf of the Putnam Lumber Company had any negotiations with the Denkmann Lumber Company and its officers with respect to the leasing of that plant to the Denkmann interests and the sale of the Putnam timber to the Denkmann interests.

A. We had nothing to do with the sale of the Putnam timber but, in 1926—in the spring of 1926, Mr. Fleishel of the Putnam Lumber Company asked if we would enter into negotiations with some yellow pine manufacturers of Louisiana who were then going over his timber with the view of purchasing, and who wished to locate a manufacturing plant in Jacksonville. We went into these negotiations and after several months agreed upon a contract with the Denkmann Lumber Company whereby we were to receive $300,000.00 in cash for our saw mill, yard, planing mill, docks and box factory, and extended payments in the [fol. 1117] form of a lease for the real estate on which the plant stood. This lease extended over a period of 24 years and provided payments on a sliding scale ranging from $50,000.00 to $35,000.00 annually. The total payments under the lease was $936,000.00 and it represented not only a rent on the land but a payment on the improvements. The Denkmann Lumber Company were to pay all taxes on the property; therefore (Tes. 1150) the return to us under this contract would have been $1,236,000.00, representing the sale price of our plants, and rent of the real estate.

The contract and various supplemental contracts were all prepared and ready for signature. In April, 1926, during the negotiations with the Denkmann Lumber Company, the Georgia Public Service Commission filed its complaint against the Atlantic Coast Line Railroad before the Interstate Commerce Commission. Naturally this resulted in doubt on the part of the Denkmann Lumber Company, who, however, were anxious to go on with the deal not only for our plants but for the Putnam Lumber Company's timber holdings. After several unsatisfactory interviews with the officials of the Atlantic Coast Line Railroad in which

Denkmann Lumber Company, Putnam Lumber Company and Cummer Lumber Company took part, the Denkmann Lumber Company called the deal off, as they were not willing to go on with any increase in the existing log rates.

As to what became of that trade, I was not at the conference. Mr. Fleishel can better answer that than I can. It was the log rates absolutely. As to during the pendency of this proceeding—now, what happened to our rearrangements with the Putnam people, (Tes. p. 1151) the Putnam Lumber Company's lease had expired, that is it expired [fol. 1118] but they renewed it for a two year period. It expired on December 1, 1926, and they notified us that they would not go ahead with the extension of the lease and by mutual agreement we gave them until November, 1927 to vacate the property and get their lumber off and all that. They did that. As to other operations they built their mills down in the woods. They built their mill down in the woods while they were still operating our mill in 1926 and 1927. As to what happened to our plants at Milldale, it was of no value thereafter from an operating standpoint, and there was nothing left for us to do but to "junk" the physical property, which we did immediately on the cancellation of the Putnam Lumber Company lease. The salvage value of the entire plant was $54,357.43 and the value of the real estate has been determined by Federal authorities to be $115,800.00, or a total of $170,157.43. We now have nothing left at Milldale but the bare land. The decision of the Interstate Commerce Commission in the Log Rate Case caused us to lose not only the sale of our manufacturing (Tes. p. 1152) plants and the lease of our mill site, but threw a great number of men out of employment, and totally wrecked the thriving little community of Milldale where our plants were located. Many of our employees owning their homes, have suffered a severe loss through the shutting down of this manufacturing plant.

Mr. Alston: If your Honor please, we object to the statement that has just been made by the witness because they are conclusions, because they are irrelevant, because they are not supported by any statement of facts.

Mr. Gwathmey: Further, Mr. Examiner, upon the grounds that losses may or may not have been incurred by [fol. 1119] these gentlemen as a result of the Commission's decision and have no bearing on this case excepting only

as they go into the question of the tonnage of logs which they may or may not have delivered to the railroad to handle.

Mr. Norman: Mr. Examiner, the position certainly in these questions was taken into consideration. The Supreme Court has said on those questions of benefit or injury to the public, to the carrier, to the consumer, that a reasonable man would take into consideration. Certainly it is competent to show whether a given action causes more harm than good.

Exam. Hoy: The objections will be overruled, you may continue.

A. (continued:) It is quite impossible to estimate the loss (Tes. p. 1153) to the city of Jacksonville by the removal of the Brooks-Scanlon and Putnam Lumber Company saw mills, and so forth, and I seriously doubt if the community will ever be able to build up new industries sufficient to offset the payrolls and other expenditures made in Jacksonville by these lumber companies.

Mr. Alston: Those latter statements are irrelevant.

Mr. Adair: If your Honor please, the city of Jacksonville as a municipality is in this case, as I recall it.

Exam. Hoy: I think it is going a little far but, it is his opinion of course, that all these things are happening or will happen.

Mr. Adair: Has happened.

Exam. Hoy: You may continue, Mr. Cummer.

The Witness: That is all I have to say.

About this box factory that we were operating out there during the pendency of the Putnam Lumber Company—at the time the Putnam Lumber Company cancelled their lease we were employing 193 men in our box and crate factory. [fol. 1120] That was in addition to the men employed by the Putnam Lumber Company in operation of the mill at Milldale (Tes. p. 1154). I testified at the former hearing as to what we were then carrying our Milldale plant upon our books at. It was somewhere around $1,250,000 as I recall it; it is in the testimony, however. As to the capacity of our saw mill at Milldale we cut about 36 million (feet) a year; I don't know how much the Putnam cut out of it. When we were operating we cut about that much. I presume they cut that much, possibly more. That is in the day shift, you understand, the single day shift. I testified

at the former hearing I believe that the Cummer Cypress Company of which I am an officer, has a plant at Lacoochee, Florida. As to when that was constructed and something about its operation, in 1923 we built a modern lumber and box plant at Lacoochee, Florida, choosing this location in order to manufacture a rather large tract of cypress and pine timber adjacent; and three smaller groups located near Otter Creek, Homosassa, and on the Withlacoochee river just north of (Tes. p. 1155) Lacoochee. As to what has become of that timber and where we were working at the time that this order of the Interstate Commerce Commission became effective with respect to intrastate rates on February 8, 1929, we were operating at Lacoochee and some of our timber came from our holdings adjacent to the saw mill, and which we handled over our own logging road, the balance came from Otter Creek and Homosassa. When the high rate went into effect in 1929 we had a contract, at least we thought it was a contract with the Coast Line to handle these logs in train load lots to our mill at Lacoochee and we had to continue to operate the tract at [fol. 1121] Otter Creek and Homosassa. As to how many feet we had left in those two tracts when the high rate went into effect, it would be pretty hard to say. I don't know about Otter Creek. We handled most of the Otter Creek before the Interstate Commerce Commission made their decision, before the order became effective, but Homosassa I do know that we did not cut out our estimates there because the high freight prevented us from shipping a great deal of logs that we would have shipped under the old rate. Of course logs are just the same as any (Tes. p. 1156) commodity. I have some timber that will stand $100 a thousand freight and I have some that will only stand 2 or 3 cents and the thing has to be an average in order to ultilize the timber. When the higher rate came we had to leave some stuff in the woods that could not pay the freight. As to our Withlacoochee timber, we had a tract of about 75,000,000 feet of timber on the Ostaloochee river adjacent to our mill which we expected to log over the Atlantic Coast Line Railroad but after our experience in Homosassa the fact that we would have to leave a great deal of timber in the woods, we built our own logging road and are handling it in another manner. We are not transporting that over the Coast Line at all and that was about 75,000,000 feet. That logging road does not go all the way into our timber.

It runs within a few miles and then we handled over the Seaboard the balance of the way. We did that because of this advance log rate; we figured we could build our own logging road and make these other arrangements, and get all of our timber that we could not on this other higher log rate (Tes. p. 1157). We could not afford to cut the timber clean and haul it on the new rate. I have here a memorandum of the amount that our Cummer Cypress Company has paid to the Atlantic Coast Line Railroad Company in recent years for the transportation of logs. I [fol. 1122] will state it by periods and sources. From January 20, 1926, through December, 1926, our log freights were $46,506.15. From January, 1927, through December, 1927, our log freights were $58,011.75. From January, 1928, to May 5, 1928, $15,743.50, and that is a total of $120,-261.40. Those logs were all from Otter Creek to Lacoochee. I will give some of the others. We did not start logging operations at Otter Creek until January 20, 1926. Our shipments through that year of 1926 were $46,506.15; then for the entire year of 1927 there (Tes. p. 1158) were $58,-011.75, and from January, 1928, to May 5, 1928, there were $15,743.50, a total of $120,261.40 all coming from Otter Creek to Lacoochee.

Then, in April, 1929, we shipped from Homosassa to Lacoochee, Florida, from April, 1929, through December, 1929, $75,409.30; and in January and February, 1930, $2,200.59. This is a total of $77,609.89. And then, if you gentlemen will refer to exhibit 61 you will find that that is approximately within a few dollars of that amount that Mr. Perrin stated we had moved on that rate, within a few dollars. We shipped from Homosassa to Otter Creek, Florida, from January, 1929, through December, 1929, $11,-151.29; and in January and February, 1930, $2,355.80, a total of $13,507.09. We shipped those logs from Homosassa to Otter Creek because it was a lower freight rate. Logs that we could not ship to Lacoochee, we had a little plant at Otter Creek and we shipped them to Otter Creek in order to utilize more of the timber. The freight from Otter Creek to Homosassa is less.

We discontinued shipping logs over the Atlantic (Tes. p. 1159) Coast Line Railroad Company in February, 1930. [fol. 1123] We are shipping nothing now. There are a few cars but they are nothing—we are not making any ship-

ments ourselves; we are handling a few cars that come in from mills within 10 or 15 miles—or some timber that is from 10 or 15 miles that sell us their logs but we are not operating any of our timber over the Coast Line. The longest haul, I think is 18 miles. We are still continuing to operate our mill at Lacoochee. We are now hauling the Withlacoochee timber by our own logging road plus a short haul on the Seaboard. We intended to cut and log that and transport that in trainloads over the Atlantic Coast Line Railroad had it not been for this increase in rates. That was the intention when we located the mill at Lacoochee, because it was within reach. Otherwise we would probably have located it (Tes. p. 1160) some other place.

Cross-examination.

By Mr. Price:

We have competitors in this territory in the logging business. We are in the cypress lumber business. Yes, we have competitors not only in this territory but all over the United States, and in Florida. What do you mean, mills that cut lumber in Florida?

Q. Yes. Your class of business?

A. Yes. As to whether they are located on the Coast Line Railroad, I think the Wilson Cypress Company is located on two roads. We are not located on the Coast Line Railroad alone. As to whether we are handling any logs over the Seaboard or the Florida East Coast, I just testified that we are handling logs over the Seaboard now. As to whether the rates the same now as what is known as the Cummer scale, I don't know about that (Tes. p. 1161). I don't know whether the Seaboard and the Florida East [fol. 1124] Coast rates are higher or lower than the Cummer scale. As to whether the Denkmann Lumber Company contract expired in 1926, the contract was on the basis that they could extend every two years, and it happened the two year period running out the year this complaint on the part of the Georgia Public Service Commission went into effect, and they cancelled then—cancelled immediately. They did not extend it in other words did not extend their contract or their lease another two years. That was because the complaint had been filed. After the hearing we were notified that the lease would not be extended. As to

when the Interstate Commerce Commission ordered the new rates into effect, I think it was, I know it was along in 1929, approximately three years after this time that they had refused to extend the lease (Tes. p. 1162). I understand from that that they would not be willing to contract for timber where the rates were in litigation. They would not be willing to go ahead with their trade—you are talking about the Denkmann Lumber Company. They would not buy either the Putnam Lumber Company timber or our saw mill plant as long as this rate was put in the air and there was a chance to advance the rate. I don't think that I or anyone would go out and contract for timber if the rate was in litigation. As to whether there is any reason why I or the Putnam Lumber Company could not operate and pay the log rates if they were the same our competitors were paying, and our rates were all the same in amount, our mill at Lacoochee is located a considerable distance away from the eastern markets as compared with Perry, and up in there. They have a lower freight rate to the markets than we have. You were speaking as to our logging costs, but they all enter into the cost of the product, Mr. Price (Tes. p. 1163); it does not make any differ- [fol. 1125] ence whether logging costs or what cost. Lumber costs so much money; if we have to pay a higher rate to get it to the market we can not compete. As to whether one of our primary costs is our logging costs; the new freight rate is one of our primary costs; yes. If the new rate was uniform throughout the State of Florida or throughout the Southeast that would operate against us, certainly, if a mill is located so that they do not have to ship in, if they have some timber adjacent to the mill that they can operate. The Wilson Lumber Company had timber on the river and we had timber at our plant near Lacoochee that we were not paying anything like this high freight rate on.

Q. That does not exactly answer the question, Colonel. I am asking now as to a uniform rate on logs.

Exam. Hoy: Do you mean uniform scale of rates?

Mr. Price: Yes, uniform scale of rates.

Mr. Cotterill: I think the question would still be ambiguous to the witness. Mr. Price perhaps intends to—meant to tell the witness whether he was speaking of a (Tes. p.

1164) like rate for the same haul or a difference in rates for a difference in hauls. I am sure the witness would not understand the question without knowing that.

By Mr. Price:

Q. If your rate, Mr. Cummer, is the same as your competitor's rate for an equal distance, and that rate applies to all lumber manufacture for that distance, and throughout the territory, is there any reason why you could not operate on it?

A. That is a hypothetical question because there is no condition existing like that; some of us pay a higher rate and some a lower rate, depending on the mileage.

[fol. 1126] Q. I am speaking now as to the same mileage?

Mr. Cotterill: What mileage, Mr. Price?

Mr. Price: Any given mileage.

Mr. Cotterill: You mean each man shipped 5 miles?

Mr. Price: Yes.

A. I think so many items enter into that; quality of timber, cost of logging, all those things enter into it Mr. Price. Now I am talking about cypress lumber. Cypress lumber of a very high quality, yes, you could compete but perhaps if the quality was a lower quality you could not compete. As to whether I could pay as high a rate as our competitor, yes, all things being equal, but so many conditions enter into it that you can not make that statement (Tes. p. 1165).

Cross-examination.

By Mr. Alston:

As to the contract for the leasing of the property at Milldale to the Putnam Lumber Company, we had our property under lease to the Putnam Lumber Company, yes; that was made on November 7, 1918. It expired on December 1, 1926. As to whether there was any privilege of earlier renunciation, yes; it was extended after I think, six years in two year periods, that is to say the end of each—it was a contract for six years if I am not mistaken, then after that the Putnam Lumber Company had the privilege of extending it for two year periods. That meant (Tes. p. 1166) more than one two-year period. As to how long was the last extension, it was very indefinite; they could extend

it two years. They could have gone on indefinitely, beyond 1926. It was first made in November, 1918 on six years or eight years—I have not a copy of the contract. I would [fol. 1127] not be sure whether it was a contract for six years or—I know it had an extension period of two years any period. It has extension rights in periods of two years and the duration of those periods is indefinite. As to when the Putnam Lumber Company indicated that they were not going to make any renewals beyond 1926, I think it was right after the Valdosta hearing.

Q. Then whenever they announced to you that they were going to move to the woods?

A. Well, they said they were not going to extend their contract after that 1926; I don't know that they told me when they were going to move to the woods. As to when they began preparing to move to the woods (Tes. p. 1167), I really do not know the date but I know they gave up our property in September, 1927; and this Interstate Commerce Commission order went into effect February 9, 1929.

Q. Now, did I understand that you discontinued the shipment of logs in February, 1930, over the Atlantic Coast Line?

A. From our own logging operation, we may be getting a few logs from outlying points, nearby points, 10 or 11 miles from Lacoochee over the Atlantic Coast Line now. As to whether we are now getting them over the Atlantic Coast Line I don't know. We may possibly be buying some few logs over the Atlantic Coast Line in less than train load lots even today for a movement of 18 or 20 miles.

Q. Other than that you are not getting logs over the Atlantic Coast Line. Are those logs from your own lands or logs that you have purchased?

A. Logs we purchase, not from our own lands, they are contract logs. I do not remember the attitude of Mr. Fleishel of the Putnam Lumber Company in reference to [fol. 1128] moving into the woods (Tes. p. 1168). As to whether I know that it was his opinion that the mills should be in the woods, well, I know the Denkmann Lumber Company were very anxious to make a contract with us to stay in Jacksonville. I don't know Mr. Fleishel's attitude. I know that he was very anxious to get this contract with the Denkmann Lumber Company and they were going to locate in Jacksonville. Our companies are the Cummer

Lumber Company and the Cummer Cypress Company. Their properties are not contiguous. We have no property in the Cummer Lumber Company now, our plants have all been dismantled, but we have got timber. The Cummer Cypress Company has its holdings. There is a statement in the record as to the Cummer Cypress Company's holdings at the time the evidence (Tes. p. 1169) was given, sometime about 1926 or 1927. As to whether those holdings are substantially the same now or have we increased them, we have increased the stuff adjacent to the mill perhaps a little, but we have not bought any other timber to add to that operation. As to how much land and how much timber we own, we had approximately at the time of that statement I think between about 400,000,000 feet of timber at the time we made these statements. We have less now I suppose; we have been cutting for three or four years. We have been cutting all that we bought. Our company has no timber anywhere else in any other part of the State. The Putnam Lumber Company owned a very large tract of timber, but I am not positive about that. I can testify now that they do own a very large amount of (Tes. p. 1170) timber, the same kind of timber that they owned before and the same locations I presume. Mr. Fleishel will be able to testify to that however. We have not had any transactions with the Wilson Cypress Company; we have with the Wilson Lumber Company. We have sold them some hardwoods, not cypress. As to whether the Wilson Cypress Company still have large hold-
[fol. 1129] ings, Mr. MacPherson is here; he knows about their holdings. Generally I know it too. I don't know whether the Wilson Lumber Company have large holdings. I do not know anything about their holdings at all, but I think some of them are here to testify to that; I don't know. Generally I could not testify myself (Tes. p. 1171). I am familiar with the standing timber situation in this state other than in these localities occupied in the northwestern part of the peninsula of the state in a general way. There are large tracts of timber still standing. The gentlemen you have mentioned have considerable quantity of timber standing. As to whether there are still large tracts other than those, I think your man testified this morning that there was some timber in Lee County that we know of. I would not say there is a great deal of timber over the state of Florida, no, sir. I know the large mills in

the state in a general way. As to whether I could state those mills and their location as near as practicable, well I know more about the cypress mills than I do the yellow pine mills because I am in the cypress busines now. I will give what knowledge I have. There is the Burden-Swartz Lumber Company at Perry; the (Tes. p. 1172) Brooks-Scanlon Corporation; Putnam Lumber Company; Wilson Lumber Company; Wilson Cypress Company; Everglades Cypress Company; J. Ray Arnold Lumber Company—all of those are manufacturing cypress lumber with ourselves. The Osceola Cypress Company. The Everglade is at Loughman, the Arnold mill at Groveland; the Osceola is on the East Coast; I have forgotten the name of their town. They are large manufacturers and I presume they have large timber. I do not know the mills at Sears, at Sherman yes, Sherman Lumber Company; I don't think they [fol. 1130] are cutting any cypress however. I think they are cutting yellow pine (Tes. p. 1173). I do not know anything about the extent of their holdings. I know of a lumber plant at Holopaw, in that neighborhood, in a general way. The Griffin Lumber Company at Holopaw. They are in the yellow pine business, however. I really don't know whether there are two or three companies in that locality. As to whether I know whether or not they have large tracts, well, they have fairly large mills; I presume they have timber behind it to warrant the investment. There are a number of saw mills cutting principally yellow pine, however. We have not been in the yellow pine business for 15 years and I am not very familiar with the yellow pine operators. Those mills are owned by persons other than the people I have mentioned. As to whether they have plants in the northern part of the state, I think the Arnold—J. Ray Arnold Lumber Company—had plants in the northern part of the State between here and Lake City; between here and Watertown on the Seaboard (Tes. 1174). As to whether the Atlantic Coast Line tracks that tract too at one end, possibly on the old Jacksonville and Southwestern division; it may run close to that timber, although their mill is located on the Seaboard. Really I do not know the yellow pine manufacturers in Florida. No, I did not speak of the depression. Yes, there is a depression in business in general and there is a depression in the lumber business. It is right sharp in both general business and in the lumber business. Our lumber

business has not been depressed quite as long as two years. We had a very satisfactory shipment the first six months of last year, 1930. That demand was not general in Florida but it was the Eastern demand (Tes. p. 1175). I mean the northeastern part of the country above Washing- [fol. 1131] ton.

Q. And the Coast from Baltimore to Portland, Maine?

A. Well, we don't ship so much on coastwise cities; we ship interior into New Jersey and territories like that, Pennsylvania and Western Pennsylvania. We do not meet the Georgia people as competitors in those markets. I don't think there are any cypress operators in Georgia. The Florida depression of course came on a little earlier, as the evidence is, in 1926. The capacity of our output of lumber now as compared with several years back is the same. We had been running for the past three or four months on three days a week. We are not running now full capacity. The capacity of our mill is the same but we have been operating for the past several months, operating three days a week, therefore we are cutting half of our capacity; (Tes. p. 1176) the full capacity for three days. We have a demand for our present output, yes.

By Exam. Hoy:

Q. You say you received a few contract shipments, have since February, 1930, I mean shipments of logs, or may have?

A. We may have. If you will notice this exhibit 61 gotten up by Mr. Perrin, the shipments to Lacoochee included a few cars from nearby stations to Lacoochee. I presume some of that business is still continuing. We don't pay the rates on that business at all; we buy the logs delivered. We do not do the logging or anything. Someone makes the price delivered at our plant. Since February, 1930, we are using our logging road. We expect to continue to. (Tes. p. 1177).

Q. No matter what the rates are?

A. Well, yes sir; because we have already put in that [fol. 1132] investment and we could not scrap that now. We have scrapped enough stuff in this now, and we have scrapped our plant here near Jacksonville. We are not running out there. As to whether we expect to build any other lumber mill there, I should say not; no matter what the rates are.

Redirect examination.

By Mr. Adair:

What caused us to build that logging road was that we could not afford to pay this increased rate on the Coast Line Railroad. That was the rate prescribed by the Interstate Commerce Commission. The rate of course at the time we had to decide this operation of course it was last year, that the rates prescribed by the Interstate Commerce Commission was in effect, and we went to the Coast Line and found that was the (Tes. p. 1178) rate and it was necessary for us to make other arrangements. I testified that during the last three or four months we have been running for half capacity; that the first six months of 1930 was pretty good business; we had very satisfactory business; in 1929 I don't know sir; we shipped our entire output. You see, with cypress we have to keep it in stock for a couple of years, from a year or two years, keep it in our piles, and I don't know as we shipped our output in the year 1929 but that may have been because our lumber was not seasoned, something like that. That was a fair business year in the lumber business. The bad depression in the lumber business did not come until the last six months of 1930; that is our experience; I don't know whether anyone else felt the same way about it or not. The plant I spoke about at Sears or Sherman is down at the far end of the state; that is my impression; that the Sherman Lumber Company were formerly in the yellow pine business in West Florida and [fol. 1133] moved their operations to South Florida. (Tes. 1179).

Q. Down around near Fort Myers?

A. As I say, I don't know anything about the yellow pine operators. I was in the class once and I guess I am below it now.

As to our ability to ship logs on a parity of rates with our competitors, and as to whether either we or our competitors could ship it, depends upon the level of the rates, I should think. As to how the level of the rates affects our ability to ship to a distance, well of course the cost of our product depends upon what distance we can ship it in competition with others and the higher the cost the less distance we can

afford to meet competition. We have competition you know with the Pacific Coast lumber that comes around through the Panama Canal at six or seven dollars a thousand feet. In the last several years that has really fixed the price, that Pacific coast lumber.

Q. So even had you gone in the Eastern markets the Pacific coast has fixed it?

A. I mean practically all markets. They had it down here in Florida you know. During this boom we were competing with (Tes. p. 1180) the Pacific Coast lumber in Florida, the kinds of lumber from the Pacific Coast are fir, redwood and other lumber and our cypress competes with redwood. As to whether it competes with fir, well there are certain grades of our cypress that compete with every wood; the low grades compete with any wood, the yellow pine and Georgia pine certainly do. I don't see why either Georgia pine or cypress has any monop-ly on the lumber business, I wish we had.

Q. (Exam. Hoy:) I understand how it fixes the price, because I have had personal experience myself where if I want [fol. 1134] to go out and buy Georgia yellow pine I pay 7 cents per foot, however, if I want to buy North Coast fir I pay 4½ cents per foot in Washington. I just want to get down to whether the North Coast does fix the price?

A. Certainly.

Q. And I bought some cypress and it was even higher than the Georgia pine?

A. That is true too, but that is a different grade; I suppose you pay more for one pair of shoes than you do for another don't you. (Tes. p. 1181)

Q. Well, I was figuring on the same grade, both common, what they call common. I suppose some of it was more common that the others I think.

Q. A. Well, it is purely a matter of values I think, Mr. Examiner. You can pay any price; you can buy mahogany for more than you pay for yellow pine if you want to pay the price.

Q. Well, I would like to have you explain a little more fully if you would just how the North Coast lumber fixes the price in the Eastern markets on your lumber down here if you care to?

A. Yes, I would be glad to explain it if you like. Redwood lumber for tanks or anything of that kind you can buy

for less money than you can buy cypress for the same purpose, they are supposed to be equally suitable. Well, if you are buying framing you would not get into cypress at all probably. We do not manufacture framing; we don't manufacture building framing; you might buy North Carolina pine for that purpose, or you might buy yellow pine or you might buy cypress or you might buy fir. If you bought fir you would pay less than for any other wood. In other words the lowest priced lumber in these markets is West coast lumber, certainly. (Tes. p. 1182) If the Southern producer of lumber of any kind wants to compete in [fol. 1135] those markets he must make a price that will enable him to compete with the lower price. As to whether he has got to make the same price as this North Coast lumber, well, I don't know. He has if he sells the lumber of course. You may have been easy; you may have paid more for the stuff than the other fellow would pay but certainly we cannot sell it to the yards for any more than he can buy fir for.

By Exam. Hoy:

Q. I have been easy, but I got cypress—I got prices from three lumber companies before I bought.

A. I understand but he may have thought you had a better idea of the value of yellow pine than he did himself.

Q. My experience was that three of them invariably asked 7 cents a foot for yellow pine and 4½ cents a foot for fir lumber of the same grade, No. 1 grade.

4. Well, they do not pay the yellow pine fellows any more than they can buy the other wood for.

Q. That is what I would like to get cleared up in my mind and for the record. I took it from Mr. Norman's statement, however, the cheapest price lumber will set the price at whatever the Georgia pine or your cypress will have to be (Tes. p. 1183) sold in the Eastern markets but, does it necessarily mean that they have got to get down to that lowest price in order to sell your lumber?

A. Yes. We are trying to figure today on two million feet of cypress to be used in crating by we will say the Pittsburgh Plate Glass Company. They won't pay anymore for that two million feet of cypress than they can buy any other wood for. Why should they? They are going to crate up glass for shipment and why should they pay any more for it? Why should they pay any more for

[fol. 1136] any purpose where they are buying in large quantities?

By Mr. Price:

Q. Do they use pine for that purpose, Mr. Cummer?

A. They do not like pine so well because of the large heavy knots in the pine. The way they handle it, they put it over a machine and cut it to certain lengths which they require, and large heavy knots in the roofers may fall out and they want a little better wood; they use chestnut or any other sound wood that can be handled without too much waste and does not have too many knots in it.

As to how far we can haul logs on the rate fixed by the Interstate Commerce Commission and enter into this competition on the market, (Tes. p. 1184) we do not feel we could haul any distance. We are buying a few logs as I say coming from 18 to 20 miles from our mill but that timber does not belong to us; it belongs to some people who perhaps have a small logging operation or maybe just bring it in by trucks or teams and delivering it to our mill. We certainly could not, nor could any one else, who drew logs in my rail and have paid that scale compete with those mills that are located in the woods operating their own logging road and having to pay no such transportation costs.

Mr. Gwathmey: May I ask Mr. Norman whether you are speaking now with reference to drawing logs into Milldale or Eastport or did it refer to Mr. Cummer's present operations at Lacoochee?

Mr. Norman: I did not refer to any particular place. I referred to the general competitive situation as to whether anyone could pay these rates as prescribed by the Interstate Commerce Commission and compete with those whose mills were located in their timber and had to pay no such [fol. 1137] rates (Tes. p. 1185) wherever they were located.

Exam. Hoy: Well I think Mr. Cummer can speak for himself, I don't see how he can testify that nobody can do it.

Mr. Norman: That was the point of the record before, the burden of showing at that time.

Recross-examination.

By Mr. Alston:

Q: Mr. Cummer would it not depend on how far your mills were from your timber and how far they had to be hauled?

A. Well I demonstrated it pretty thoroughly that we could not haul 30 miles. I mean by that that we could not pay the Coast line for a 30 mile haul on this timber and get it into our mill as compared with what it would cost us to operate the other way, i. e, operating our own logs, our own logging road. I don't think that is a very different proposition from the one I just mentioned. Of course any mill would have to get his logs in the woods. The length of this tram road that (Tes. p. 1186) we operate is 14 or 15 miles. It costs us less than it would to pay the Cummer scale, cheaper to operate our tram road than it would be to pay the old rate.

George W. Lamb, recalled as a witness, having been previously duly sworn, testified as follows:

Direct examination.

By Mr. Alston:

We want to file these other exhibits first. We left off with exhibit No. 87 which dealt with the average mileage 8,136 on the car mile basis. (Tes. p. 1187.)

Exhibit No. 88 which I now file is based on the cost per gross ton mile haul of 160 miles from Perry to Eastport. 169 the revenue under the so-called Cummer scale is $22.10 shown by line 11, the cost of operation excluding taxes [fol. 1138] was $26.78 and by line 16, column (a) $39.73 for the total cost including taxes and return on investment for haulage expenses; column (b) shows the total cost of $59.08. Exhibit 89 which I now file is also based on the cost per gross ton miles covering the movement from Carbur to Eastport 152 miles, the total cost is shown by line 16 being $35.73, the revenue under the so-called Cummer scale $20.30; in column (b) the cost is shown as $53.14: Exhibit 90 covers distance of 130 miles based on the cost

per gross ton mile; 91 is 119 miles. (Tes. p. 1188.) 92 is 99 miles; 93 is 68 miles; 94 is 52 miles; 95 is based on the cost per loading and empty car mile for a distance of 169 miles; 96 for 152 miles. This, and subsequent exhibits will also be based on the loaded and empty car mile basis; 97 for 119 miles; 98 for 99 miles; 99 for 52 miles.

Mr. Alston: We offer the exhibits 78 through 99 both inclusive.

Mr. Norman: We object, if your Honor please, to the receipt of these exhibits on the ground that they constitute evidence as reasonableness of the Florida rates or else evidence as to whether the Florida rates are compensatory, and the Supreme Court has ruled in this case that neither of those questions is for this Commission.

Exam. Hoy: Objection will be overruled and the exhibits admitted.

(The statements were received in evidence and marked "Respondent's Exhibits 78 to 99 inclusive," Witness Lamb.)

Mr. Cotterill: Exceptions. (Tes. p. 1189.)

(After discussion of a request for continued hearing to permit time for study of the exhibits, the Examiner said:)

Exam. Hoy: Let the record show that Mr. Lamb's cross-examination is deferred to a subsequent hearing in Washington in July.

[fol. 1139] M. L. Fleishel, recalled as a witness, having been previously sworn, testified as follows:

Direct examination.

By Mr. Adair:

I am the same M. L. Fleishel that testified at the former hearing in this case. I am president of the Putnam Lumber Company. We have a manufacturing plant at Shamrock, Florida and one at Bonds Mill, Fla. Shamrock is in Dixie County and Bond's Mill (Tes. p. 1193) is in Volusia County. We have stands of timber in both of those counties, approximately a billion feet of timber we have left that is located principally adjacent to those plants and principally adjacent to the Shamrock plant.

By Mr. Gwathmey:

Q. Did you say two billion feet?

A. Yes, sir. We finished constructing the pine mill at Shamrock in the fall of '27; built it during the year 1927, and the cypress mill the next year. We have a cypress mill likewise at Shamrock. The other mill was finished in '28. The mill at Bond's Mill is a single band mill. When we are running full we used to cut around 800,000 feet a month. (Tes. p. 1194). That was cypress largely. The record shows that we formerly operated a pine mill at Milldale and the cypress mill at Ortega, both near South Jacksonville in this county (meaning Duval). The Putnam Lumber Company owned that cypress mill which we operated at Ortega. The pine mill at Milldale was owned by the Cummer Lumber Company. The arrangement that we had with the Cummer Lumber in respect to the occupancy of that mill was a lease made in the fall of 1918 subject to a renewal in sets of two years at our option. It was indefinite as to how long those two year periods were [fol. 1140] to continue. It was our option to renew it every two years. The first was January 1918, for two years, 1919 and 1920. The lease was signed in 1918 in the fall of 1918 and it was operative from and after the 1st day of January, 1919 for the first two year period and then in successive two (Tes. p. 1195) year periods, and then with our option. The consideration paid to the Cummer Lumber Company for that lease was $60,000 a year. We continued to operate at Milldale through the year 1926 wholly and partly in '27. In the year 1926 we had negotiations with the Denkmann Lumber Company with respect to the sale to them of our pine and cypress timber in Florida. That sale was to include everything except our book accounts, all of our logging equipment, everything; and that was not to include the lease, but tied into those negotiations were concurrent negotiations with the Cummer people for continuation of the use of that property on a somewhat different basis. As to how far these negotiations got, they were practically completed. We spent about six months on them; and all of the contracts were drawn, the language was agreed upon and the physical property had already—the values had been fully agreed upon. The consideration approximately to be paid by the Denkmann Lumber Company to the Cummer (Putnam)

Lumber (Tes. p. 1196) Company for its physical properties was around $12,000,000. It was not definitely determined because we had to actually inventory the lumber, although the basis for the inventory was fixed by the contract for the lumber and timber. The cruise of the timber had been agreed upon. There was nothing left to be determined there except the physical inventory of the lumber and merchandise. Those negotiations were in writing—the [fol. 1141] contract had been drawn, but the contract was not signed. It would have been in another week or ten days. As to whether there was an option agreement between us, or anything of that sort preliminary, I don't recall that there was a written option. Counsel over here was handling it at the time and I really do not recall whether there was. There was a temporary option sub- (Tes. p. 1197) ject to a cruise of the timber which was made and later agreed upon. There was no consideration, however, for the option. We knew those people very intimately and had some stockholders on both sides. The Denkman Lumber Company proposed to manufacture this timber into lumber at Milldale and Ortega in this county. They proposed to transport the logs from the site of the timber to those respective mill sites largely over the Coast Line Railroad hauls. The time (mill) was located on the Coast Line. When they became convinced that the old Cummer scale of log rates was going to be upset they called it off. As to whether there was any other cause for their doing so than this pending litigation with respect to the log rates, they said there was none other.

Mr. Alston: I think that that is not relevant. I doubt very much if any of this is relevant, and certainly what somebody (Tes. p. 1198) else said about it as to their actions.

The Witness (continuing): As to what was our cut, our average during the years 1926, 1925, along there at the plant at Milldale, it was substantially around 35,000,000 a year. Our cut at the Ortega mill was around 30,000,000. We bought the old Bond Lumber Company mill and converted it from a circular mill to a band in 1926 I believe, whenever we found out—whenever we saw this log rate was going to advance. That was done before the Denkmann trade blew up. We had done that before. We

[fol. 1142] bought that timber expecting to haul it to Jacksonville through Ortega. In fact we did haul some 8 or 10 million feet of it to Ortega, and when we decided that we were going to have to move to the woods why we immediately began to cast around. We knew we could not take those logs out of there, so we bought that mill, and converted it into a band mill in order to cut that timber which was down there. Our reason for buying the Bond mill was in order to cut that timber down there that we figured we (Tes. p. 1199) could no longer haul here over any new rates that might be installed.

At the former hearing I testified in substance that we were going to move to the woods irrespective of the outcome of the then pending litigation in this proceeding because we figured the rate was too high and we could not afford to do it. The log rates were too high, the then existing Cummer scale log rate was too high. I have a memorandum of the freights paid to the Atlantic Coast Line Railroad for the transportation (Tes. p. 1200) of logs to our Jacksonville plants during the years 1923 to 1927 inclusive. The amounts paid for the respective years commencing with 1923 and running down through 1927 were: 1923 $243,257.43; 1924 $242,636.24; 1925 $221,908.86; 1926 $200,014.50; 1927 for about half the year $107,324.38. The figure we were carrying our Ortega plant at at the time we moved to the woods, we had to upset and undepreciated value of $252,871.95. When we moved to the woods we moved the mill to the woods, that was all that was movable; Got very little salvage out of it. I should estimate the amount of salvage that we got out of it at say 25 or 30 thousand dollars.

Q. Mr. Fleishel at the former hearing you testified that you were familiar with the various holdings of mer- [fol. 1143] chantable tracts of timber in *in* northern Florida and that you were then quite sure that there were no merchantable tracts to be acquired by shippers—by lumber manufacturers in Florida or (Tes. p. 1201) elsewhere. Can you say now whether there has been any change in the situation in Florida since you last testified upon the subject?

A. Only that two small tracts of timber out west of here on the Seaboard that were discussed at quite some length at the other hearing. One is known as that Eppinger &

Russell tract and another small tract near McClenny on here that has since had small mills put on them, one o which is now in litigation, and shut down and the othe is just about cut out. It was only a small operation, di not have a railroad, hauled the logs by trucks. Those mill were located on the main line of the Seaboard west of her on the railroad. They were located in the timber. I don' know of any tract of timber of merchantable size that is available now for shipment into Georgia, if any Georgia shipper should want to buy it; I don't think there is any at all except in very small isolated patches. The principal species of timber in the lumber business in Florida (Tes. p. 1202) is first pine, then next cypress, and third to a limited extent hardwood. Hardwood probably constituted 5 to 10 per cent of the total business. Hardwood logs are logged I should say in two ways. The larger pine mills and cypress mills sell a small portion of their hardwood logs, the selected logs to the hardwood mills of which I think there are probably three. And then the hardwood mills themselves go out themselves and buy little patches of timber and contract with some logging contractor to get them out and ship them to him. But, in doing that they don't take over 40 per cent of the hardwood stand, [fol. 1144] the other 60 per cent they cannot afford to transport and saw into lumber. They take nothing but the cream of the forest and the balance is left there. That is true in respect to the State as a whole (Tes. p. 1203).

Q. Is the bulk of this hardwood business, Mr. Fleishel, such as it is developed, as an incident to the pine and cypress logging or is the bulk of it developed the other way?

A. Well, I should say the bulk of it—I am not entirely clear as to just how much is being done in a small way. Years ago when the Florida operations consisted almost wholly of the manufacture of pine they paid no attention to the hardwood; it has only been within the last five or six years that hardwood lumber was manufactured in Florida by any mill except in the most incidental sort of way. I know of only three or four mills in Florida out on the Seaboard west of Tallahassee, I don't think there is over three or at the outside four mills who are recognized as hardwood mills. I am pretty well familiar with the pine and cypress mills in Florida and sawmills generally in Florida and eastern Florida (Tes. p. 1204). There is a

[fol. 1145] large mill down at Sherman or Sears. Part of it is in operation now. It cuts that small heavy timber down in the lower peninsula of Florida. The pine timber in the southern portion of Florida is vastly different from the pine timber in the northern portion of Florida. The difference partakes of, well, it is very much smaller, very much thinner on the ground and far more expensive logging, and very much heavier. It is near Fort Myers in the extreme southwestern part of the State. It owns no timber now (Tes. p. 1205). As to the timber that it did own there was a big law suit about it and the original sellers of the timber took it back from them through the courts. That mill was located in the woods. I know something about the mill at Holopaw. That is down on the East coast about 12 or 15 miles below Kissimmee in the southern part of the States. That mill is located in the timber. It would have been cut out in 60 days except for the fact that they took a small portion of the timber there owned by another operating company; that will last them the balance of the year. Sears and Sherman are not the same place. Sherman and Sears are both large mills, one of them, Sherman, has about two years to go and the other has none (Tes. p. 1206). The Sherman mill is in the timber in the extreme southwestern part of the state. Sears is right close to Fort Myers and Sherman right on the banks of Lake Okeechobee near the town of Okeechobee, about 10 miles.

I have examiner Witness Perrin's exhibit No. 61. I think they speak for themselves. According to this record there were 18,602 cars moved over this two year period of which of course a very large percentage of them went to Palatka [fol. 1146] from Hines. That is the Wilson Cypress Company trainload movement (Tes. p. 1207). In addition to that there was another large movement from Hines to Cross City, which involved some 500 cars I think of pine logs owned by the Wilson Cypress Company and sold to our company. As to how it happened that those logs were sold to us, the Wilson Cypress Company don't saw any pine; we have both pine and cypress mills and they don't saw pine and they sold us the logs, only a 10 mile haul anyway. That developed entirely as an incident to their cypress operation. The next largest movement besides the Cummer was possibly a movement of cypress

logs from Carbur to Cross City, which would possibly be logs on a short haul. As to how we account for that, well; we purchase them and they are brought over the Brooks-Scanlon logging road, they were logged out over the Brooks-Scanlon road near Carbur, and then moved down to us on a 28 mile haul. As to how that happened, we bought those logs from a contractor who hauled that timber out on their railroad; and at that time Brooks-Scanlon were not sawing any cypress; so that it was incident to their operations. They are sawing cypress now but they were not then. As to any others that I know about (Tes. p. 1208), well, that constitutes the major portion of the big movements outside of the Brooks-Scanlon, and from the Brooks-Scanlon were logs that moved from Carbur and Perry the first few days after this statement was made, after the Interstate Commerce Commission's intrastate rate became effective. That accounts for a substantial portion of this year's movement. In speaking of the hang-over movement I mean the movement shown here from Perry and Carbur to Eastport. As to the Cummer movement I mean the various movements from other camps [fol. 1147] into Lacoochee. As to the movement here into Perry. That constitutes the biggest movement of all. That is largely from Wilson Cypress Company station at Hines, our movement from Cross City to Perry, Cummer's shipments to Perry from his shipping station (Tes. p. 1209) I don't know just what they were down there, and Brooks-Scanlon movement to Perry, all of which were hardwood logs incident to pine and cypress operations and representing logs that were sold to the Wilson Lumber Company at Perry. Those were developed as incidental to pine and cypress logging, that our four companies were doing on our own account. I saying that was the biggest movement of all I had reference to those logs other than those three large movements that I had previously referred to.

Q. I see. Now Mr. Fleishel you say you are selling some of your hardwood or some hardwood logs to the Wilson Lumber Company, as I understand which developed as incidental to your logging operations of your pine and cypress. Tell me what if any difference if any there has been in the logging operations of the hardwood timber during the time that the highest rate was in effect

intrastate except that rate has—since the old Cummer scale has been restored?

A. Well, you mean the character of logs they are taking now under this rate and those they were taking under the high rate (Tes. p. 1210), they reduced the size of the logs they will now take under the lower rate and, they are taking 3 additional species of timber now that they would not take on the higher rate. We have a contract with the Wilson Lumber Company by which they take all of our hardwood logs of a certain size and specification. That contract after this old rate was put into effect—since this old rate was put back, has been amended to the extent that [fol. 1148] they take logs of a smaller size, and in addition take three species of hardwood that they would not take heretofore when they had a higher rate to pay on the logs. As to what happened to these additional logs during the period of the high rate, we left them in the woods. The percentage of hardwood run of the various varieties that was left in the woods during the period of the high rate was about 50, about half of them. They were taking only the cream of the hardwood under the old rate, under the high rate (Tes. p. 1211). They are not now taking the factory run of the hardwood varieties. I would not say that. Not the run of the woods but they are taking them smaller, and two different species. They do not take the entire 50 per cent that was formerly left in the woods. As to what proportion of that 50 per cent they would take, I should say that we are now probably delivering them somewhere around 15 or 20 per cent more volumne than they would take under the old higher rate. The 15 or 20 per cent more volumne was represented by those logs that were formerly left in the woods. Once the land is cut over it is not practicable to go back and pick up anything that is left. That 15 or 20 per cent additional volumne was just (Tes. p. 1212) left there—that 15 or 20 per cent additional volumne that the Wilson Lumber Company is now taking. It will be there for posterity I think.

It is shown on exhibit 61 that the destination York received some 500 cars of logs on there during this two year period. That mill was the Longleaf Pine Company. It has been abandoned or torn down. The owner built another mill down near Indian Town. The mill at Indian Town is in the timber. Indian Town is down on the Seaboard right near Lake Okeechobee, near the junction of the

[fol. 1149] branch of the Florida East Coast and the Seaboard Florida cross-state line. All I know as to the history of this 4 or 5 hundred cars of logs that went to this mill (Tes. p. 1213) at York is that they claimed it was a little piece of timber they had bought and had to cut up before they moved the mill. I could not say just when they bought it.

Q. Mr. Fleishel, as I recall the gist of your testimony upon the former occasion you testified that in substance that any substantial increase in this Cummer scale was going to in effect destroy the log traffic in Florida. Please examine that exhibit No. 61 showing approximately two years' operations of the Atlantic Coast Line Railroad, of its intrastate logging movements and tell me what you have to say with respect to that, and to your former prophesy upon this subject?

A. Well I think this exhibit right here proves it 100 per cent because this does not—outside of these few cases of Brooks-Scanlon, Cummer and Putnam there is practically no other logs that are in this statement in three or four months in this mill that they moved in the whole state of Florida, if you eliminate those logs.

By Mr. Alston:

Q. Wait a minute. You mentioned what mills, the Wilson Cypress?

A. Wilson Cypress, Brooks-Scanlon, Cummer, and Putnam Lumber Company (Tes. p. 1214). In 1926 we paid the Atlantic Coast Line Railroad for logs transported some two hundred thousand dollars; that would be about 10,000 cars for 1926.

Q. I believe the record here shows that exclusive of these train loads movement during the two year period succeed-
[fol. 1150] ing the introduction of the high rate there was somewhere around 8,000 cars in excess of the train load movements. Then therefore, it would appear that Putnam Lumber Company in 1926 furnished more logging traffic than all these other people omitting Wilson Cypress Company and Cummer and Brooks-Scanlon furnished during the two year period?

A. During the two year period, that is correct, and, in 1926 Brooks-Scanlon was likewise operating.

Q. Mr. Fleishel how long have you been in the lumber business—in the lumber manufacturing business? (Tes. p. 1215.)

—. I have been engaged in the lumber manufacturing business about 35 years, and in it in Jacksonville, in Florida, 18, connected during all that period with the logging of timber and the manufacture of lumber. As to whether logs are a commodity that you can go and buy generally in the market, or whether they are something that must in effect be contracted for when the thing is on the fly, I might answer you that by telling you what the custom is. For anyone that does not own their own supply of logs the custom is to buy a small piece of timber somewhere and arrange with some logging contractor who has special equipment necessary to get out those logs to put them on cars or haul them on trucks for so much per thousand feet. It would be a guess as to what percentage of the lumber business is conducted by people who own and log their own timber as distinguished from those who contract to go and have someone go and fell it and transport it to them (Tes. p. 1216). I should say that 85 per cent of the volume of timber that is sawed in Florida is done so by people who own their own timber. There is substantially none of what you might call "floating logs" to be bought [fol. 1151] in the market in Florida. It certainly is not practical as to pine for a man to operate a saw mill upon any substantial basis of any moderate expense without a constant and conveniently flowing quantity of logs. It has long been a custom with the hardwood mills over in the Mississippi Valley and more or less up in Georgia to locate a mill at a strategic point and buy logs on the market, but of course those are usually small mills and operate intermittently. As to whether there is any market in Florida where such logs can be bought, well some few logs come to Jacksonville in that way but only where arrangements are made to buy them before they are cut, and finance the purchase of the timber or some special arrangement of that kind. As to what kind of a year (Tes. p. 1217) 1929 was in the lumber business, it was the best year we ever had. As to whether it was a very good year in the lumber business and industry generally, we made more money in 1929 than we ever did in any year. It was a pretty good year in the lumber industry generally in Florida and the southeast.

The skid struck the lumber business I should say in the spring of 1930. It has been pretty bad ever since. The Wilson Lumber Company built its mill at Perry I think in '27. They made a contract with us and these other companies, Cummer, and Brooks-Scanlon to haul hardwood logs before they built their mill (Tes. p. 1218). Those contracts were made prior to change in freight rates which became effective in February 1929.

Q. Were those contracts in any way modified after the increased freight rates became effective as to the character and size of timber that the Wilson Lumber Company would take?

[fol. 1152] Exam. Hoy: He has testified that they were.

By Mr. Norman:

Q. He testified that they were modified when the lower rate came back into effect.

The Witness: What is your question now?

Q. Were those contracts in any way modified in view of the increased rate on logs?

Mr. Alston: We object to that as leading.

Q. Well, were they modified at or about the time that the increased rates on logs became effective?

Mr. Alston: When were they modified? That is still leading.

Exam. Hoy: You may answer the question, Mr. Witness.

A. No.

Q. The only modification that was made was after the lower rates came back into effect?

A. That is right.

Q. In your own operations or rather in the light of your operations and your experience, would you say that a mill could successfully operate drawing logs by rail by common (Tes. p. 1219) carrier and paying the interstate commerce scale, the scale prescribed by the Interstate Commerce Commission for application in Florida if it had to draw those logs any great distance?

A. I should say not as to pine and cypress.

Q. Now, how far do you suppose they could? For what distance do you suppose they could pay that scale and compete with mills that are located in their own timber?

A. Well, that is a pretty broad question. It would depend of course upon the character of the timber, the price for which you could buy, and how far you would have to [fol. 1153] haul it to get it to the railroad. Under ordinary conditions they would not be able to operate successfully if they had to haul the logs for as much as say 50 miles under the I. C. C. scale. I should think you could haul them cheaper by truck in this country. They are hauling logs into Jacksonville now by truck for 40, 50 and 60 miles (Tes. p. 1220).

Cross-examination:

These patches of timber that I mentioned awhile ago are largely cypress I should say. These logs that are coming to Jacksonville and those contracts that I mentioned are practically all cypress and hardwood. I would not say no pine because there is only one little mill here that even pretends to saw pine and they have been shut down for quite awhile; and I should say the movement into Jacksonville now is fully 90 or 95 per cent of cypress and hardwood. Yes, sir, I have had a very wide acquaintance with the timber throughout the State of Florida. I think I have a fairly good idea of it. I testified that the mill at Sherman was operating part time, not at Sears. I testified that at Sears they had (Tes. p. 1221) lost their timber. The timber is still there, of course, and it is a large quantity. It is supposed to be about 250,000,000 feet. There is timber surrounding the Sherman mill; about a two year's supply, in feet possibly 60 or 75 million. There is practically no timber at the mills in the neighborhood of Holopaw. As to the timber in the mid part of the state there are; only in lumber circles it is computed that there are only three tracts of timber left in Florida that is not now owned by operating mill companies.

[fol. 1154] Q. But now I am not excluding the timber that is owned by (Tes. p. 1222) operating mill companies in my inquiry about it. I want to know the extent of timber throughout the State, whether it be owner or not owned by operating mills.

A. I see. Well in lumber circles it is generally conceded that there are only three tracts of timber left in Florida

that do not now have saw milling operations working on them. One of them is in Lee county composed of a bunch of cypress; there is a wide difference of opinion about the extent of that, anywhere from 2 to 5 million feet. The next one is known as the Michigan Trust tract that runs from a point east of Orlando and along a line down which is 92,000 acres supposed to cut about 150,000,000 feet. The next one is this tract of timber that you speak of over near Sears. I have spoken only of large tracts that are sufficient to support large mills. I mean to exclude anything that would support a mill of (Tes. p. 1223) common size that would be justified in operating a railroad of their own in connection with their logging. In other words if I can make it a little clearer to you there are no tracts in my opinion that have over 10 or 15 million feet in them anywhere else in that State that are not now being operated by active mills. I will tell you something about the timber in the state which is owned by the operating mills aside from our own, Putnam Lumber Company, or Cummer, Brooks-Scanlon and the Wilson Lumber Company; you mean for me to pick them out and tell you in a general way what life they have behind them—what extent of timber they have. Well, you know the average saw mill man always has a good deal more than he does have and tells about. It is [fol. 1155] generally—taking up the mills on the southwest coast down there the mill at Slater will saw out this year. That is the Dowling Camp Lumber Company. The Ellsberry Camp mill will saw off in the next 60 days, that is at Wynoma. The McGowan-Foshee about two or three years. The Roux Crate Company within the last 30 days have completed their operation at Keysville; and by the way that is another tract of timber that I overlooked when I was reciting the other to you awhile ago. The (Tes. p. 1224) Roux Crate Company have recently contracted with the Babcock Interests to cut their timber on a large acreage in back of Fort Myers and Punta Gorda. Very poor, very thin on the ground, according to the buyer's statement he admits it will run only about 700 feet to the acre. Timber of that nature can not compete on this market at all. That is to be cut at Lake Garfield hauled over under truck trackage arrangement with the Seaboard Air Line. The mill at Patterson, McGinnis at Gulf Hammock have a mixed stand of largely cypress and hardwood, but some pine of

the swamp variety. That is on the Coast Line at Gulf Hammock, probably 4 or 5 years. That is about the story on the west coast. Now on the east coast T. T. Scott at Kenansville has about a balance of about three years—about three months. Mr. Foley prompts me because he sold them that timber, he knows what he has got left. J. M. Griffin Lumber Company at Holopaw, 90 days. Foshee Lumber Company at Melbourne just quit forever. I would say, Mr. Alston, with the exception of the extreme western part of the State, west of Tallahassee, that that is (Tes. [fol. 1156] p. 1225) 95 per cent of it in large tracts or anything approaching a tract that a man could afford to build a saw mill. As to what sized tract will justify building a saw mill on; you understand they can move these little portable mills around where they can cut probably 100,000 feet of lumber. But, to build a saw mill and operate a railroad into the woods why anything less than 20 or 25 million feet of timber, to go back and get it, you can not do it. That is the type I am referring to in a general way. The situation in Florida with respect to the small mill is vastly different from what it is or even has been in Georgia. Because we have got roads down in this State; we have a different class of timber, it is long leaf instead of short leaf and this country has been rid of the small tracts of timber that have been cut into railroad cross ties. It takes a minimum of 13 inch logs to make a cross tie, which means that they have cleaned up practically everything and we never will have the small mill menace down here that they have up in Georgia today; until recent years they never (Tes. p. 1226) take that south Georgia short leaf sap timber into railroad cross ties because it had to be treated. The railroads now have gotten to a point where they, practically outside of these Florida railroads, who buy ties on their own main line do not buy heart ties any longer, they could not get them in volume enough so they now buy the sap tie and treat it, and that practice over a period of years here plus the naval stores operations have eliminated entirely these small tracts of timber that prevail in Georgia and the Carolinas and Alabama, so that we do not have the little mill problem down here that they have up in that country.

[fol. 1157] Q. Now, you testified as I understand it that there are only very small isolated tracts that were available. I

think you have described the kind of tracts that you are talking about?

A. Yes, unless you have got the impression that there were a large number of smaller tracts available, smaller than the size I referred to about the small mills. The best year in our lumber business was 1929. At Shamrock we had established one kind of mill in 1927 and another in 1928. The Bond mill in Volusia county (Tes. p. 1227) was finished I think in 1927. That is my recollection.

Q. Now, when you have moved to the Shamrock plant and the Bond mill, then had your best year in 1929, did you look upon that as a fulfillment of your judgment that the mill ought to be located in the woods or in the timber, rather than on the tide-waters?

A. Not all together no. We had a good lumber market that year, good price and plenty of business, and that lasted throughout the year. We had our best year in the lumber business after the Interstate Commerce Commission's rate went into effect, and after we had moved out to the timber.

Q. Now, you were satisfied as I understood you—you were satisfied as I understood you that the undepreciated plant at Ortega had such an amount—what amount do you use in depreciating of plants such as the one at Ortega?

A. We depreciated that plant at $1.25 or such a thousand of what the mill cut. As to how much did (Tes. p. 1228) the mill cut, I could not tell you but I would imagine—you see we started operating there in '23. I would say 150,000,000 feet, somewhere between 125 and 150 million, I would say, [fol. 1158] just a guess. At $1.25 per thousand that would be $187,500, that is mathematically correct. As to whether I have taken off the $187,000 from the $252,000, I guess either you misunderstood me or I stated it wrong. That was the then set up book value after we had taken the depreciation up to that time at that rate. Maybe the language is wrong. I might say this, for every thousand feet of lumber sawed on that mill we depreciated it at the rate of $1.25 per thousand, and the figure given you here was the depreciated value when we discontinued operations there. As to whether the Eppinger Russell tract wasn't purchased about the early part of 1927 (Tes. p. 1229), it was by one man but not by the people that operated it. Mr. Montague bought that piece of timber. I think it is re-

ferred to in the other hearing as the Montague tract. It is the same piece of timber that they are referring to under those two names. As to the McClenney tract, there was in that about 20,000,000 feet. I think the Eppinger-Russell or Montague tract had about 120 (million). It has been referred to by somebody as 190,000,000 but it never did have it. It is in court right now because it did not cut out on basis of 100. Our 1927 demand for lumber was better in pine proportionately I would say that it was in cypress. That was not on contracts made during that period. We never sell pine lumber except about as we make it (Tes. p. 1230), not because we would not be willing but because the other fellow won't buy. I spoke of the hardwood lumber now moving in the smaller sizes. It had previously moved in the larger sizes. The connection between that and the rates in this. The connection is this. That every [fol. 1159] saw mill man deals as a basic cost the value of his logs at his saw mill. Now, he can afford to pay a certain price for logs that are of a certain size, or he can afford to pay a higher price for logs that are of a larger size. If he has those logs delivered to his mill at a $20.00 cost, he can afford to take a certain size log, but if he can get that same log delivered there for $17.00, he can afford to take a smaller log because his cost is less, therefore he can compete in the market far better than he could than if he had that $3.00 extra cost involved in his freight charge, stumping charge or whatever it was. That is just another way of saying that the freight cost enters into the cost of the lumber (Tes. p. 1231). That is true, also of the freight cost of the log to the Georgia man entering into his cost. We sell our billed stuff, that is our specially cut sizes, largely on the eastern seaboard transported in our own boats, beginning at Philadelphia north up through the Sound and as far East as Portland, Maine. We move it up in boats. We load the boats at Jacksonville. We manufacture lumber at our mill at Shamrock and Bond's Mill; in our Bond's mill that is a cypress operation, that is not handled that way. Our plant at Shamrock; and they are practically on the other side of the peninsula.

Q. And you then ship them by rail and water? (Tes. p. 1232.)

A. That portion of the product goes almost wholly by water out of Jacksonville. We have our own docks here.

We ship it by rail from the mill into Jacksonville, load it on schooners, vessels, and steamers here and ship it east. About 35 per cent of our stock goes export to largely the West Indies in our own vessels, by steamer and through Tampa, the balance of it is sold largely in Florida. If we came in competition with the Georgia people in the northeast part of the country we don't hear of it. I don't [fol. 1160] know it. No. I might say that one reason for that is that we don't market our side-boards in that territory as they no longer have any timber in Georgia of the special billed variety that we put into that eastern seaboard territory.

Q. Well, if they had, they could not market it under this difference in rate?

A. Well that is not a proper market for that.

By Exam. Hoy:

Q. That is practical?

A. It is not proper market for it anyway. If they had any of that stuff, they could sell it to their railroads in that particular territory where they would not have to pay any freight on it. As I testified before, the (Tes. p. 1233) rate on the incoming logs is just as much a factor in reaching the market as the rate on the outgoing lumber. Absolutely. As to whether the price of manufactured lumber is very low at the present time, I have seen it lower. I saw it very much lower in 1913 and 1914. I would not say that prices today, generally speaking of the prices of manufactured lumber are lower than I have known them to be at any time since 1913. I have seen them as low as they are at the present time, I think it was in 1923. It is substantially true that the prices of manufactured lumber generally speaking are on a lower level at the present time than they have been at any time since 1923. As to the demand for lumber at the present time (Tes. p. 1235) it is on a basis of about 40 per cent of what we call the last three year normal period, the past three previous years, yes. That is true all over the United States with respect to soft wood lumber and hardwood lumber. That period would include the year 1929 which was about the best year we had known.

[fol. 1161] Q. So that if you go back prior to the last three years, how long has it been since you knew that the demand for lumber to be less than it is at the present time?

A. It has been quite a period. I could not say. It is just about as bad now as it can be, to have any left at all. As to what portion of the time our mills are running, we are running on about 40 per cent of normal capacity at all places.

Redirect examination.

By Mr. Adair:

We cut down our (Tes. p. 1236) normal operations of our mills about February a year ago. Not to the extent that we are operating now. We dropped about 50 per cent. We cut off our night run about a year ago. In the last 90 days we have reduced about another 15 per cent. Until a year ago we were running our pine mills night and day.

Q. Mr. Fleishel, in the course of Mr. Alston's examination something was said about merchantable tracts of timber in Florida, and you indicated to him 20 to 25 million feet ought to be in the body in order to warrant the establishment of a saw mill operation with the customary logging facilities such as a logging railroad and so on. Did I understand you to say that there were a substantially large number of tracts smaller than that that are available for sale to third parties?

A. No, on the contrary I said I thought there were practically none (Tes. 1237). I gave as one reason for that the manufacture of ties and the destruction of timber by turpentining, which methods have not been through in these other territories.

[fol. 1162] Q. Now, as I recall it, Mr. Fleishel you testified with respect to this exhibit 61 of the Witness Perrin with respect to the movement to Palatka from Hines and to Eastport from—the Brooks-Scanlon movement to Eastport and with respect to the Cummer movement to Lacoochee. It is a fact is it not that the Cummer movement to Lacoochee has ceased to exist over the Atlantic Coast Line Railway?

A. Yes, sir; absolutely. The movement to Eastport has ceased to exist; and the large movement to our mill at Cross City has ceased, the Coast Line haul. We are not using the Atlantic Coast Line Railway at all for the transportation of any substantial quantity of logs now. None at all. I now have no financial interest in this case of any kind. I spoke of the 250 odd thousand dollar figure (Tes. p. 1238)

of our Ortega mill; that was the depreciated value as it stood on our books after the various write-offs had been made. That is what we thought the actual value of it was. That is what it would have been worth if we could have afforded to haul another 250,000,000 feet of logs and saw them there. I do not think it was less than that. No, cost us a good deal more than that to build some other one to take its place exactly like it.

By Mr. Norman:

Q. You were asked if you did not have your best year after the I. C. C. scale became effective; were you paying that scale?

A. [redacted], sir. Some of our competitors were paying it. As to whether that had anything to do perhaps with our having one of our best years, if I have got to compete with the other fellow I like to have a little lower cost than he does. As to whether Georgia mills could come down here and purchase one of these 35,000,000 tracts to which ref- [fol. 1163] erence was made, I don't think I testified as to that (Tes. p. 1239). I think I testified that there were no such 25,000,000 tracts in my opinion. From my experience in the lumber business in Florida, timber business, I have never had any inquiry of any mills in Georgia wanting to buy logs from us. We have sold some logs to the Wilson Lumber Company, not Wilson Cypress Company. I sold hardwood logs to the Wilson Lumber Company and bought pine logs from the Wilson Cypress Company. I have not heard of any Georgia mill making inquiry for purchase of logs in Florida. I don't think there are any available at any ways near the northern part of the State.

Cross-examination.

By Mr. Alston:

Q. By that you mean owned by the larger owners. The timber is on the ground.

A. No, I would not say that, Mr. Alston. Broadly speaking I don't think there is any timber in the northern part of Florida within a reasonable distance of the Georgia line (Tes. p. 1240). I do not mean the Brooks-Scanlon or our company. I am not talking about the larger companies. There is ample timber but it is owned by these large mills.

I mean in addition to that that there are no more tracts of timber that are not owned by these large milling companies that is available. I think I have identified the small tracts but I do not know whether you have sensed my explanation properly. I shall be glad to tell you. What I undertook to say was that in my opinion there was no timber of any consequence either in tracts of 25,000,000, 10,000,000, 20,000,000 or 5,000,000 or 3,000,000, left in the [fol. 1164] northern part of the State anyways near the Georgia line. Such timber of that nature that was up there has been largely cut out.

By Exam. Hoy:

Q. Excepting of course the tracts owned by the large lumber companies?

A. Yes, and there is not a large number of them (Tes. p. 1241). As to these patches that I spoke of, on the river banks years ago when the people logged out this country, they did not undertake to log the hardwood or cypress at all. Nor, did they take the few large scattering pine logs that were in the low wet places and that were expensive to log. With the construction of these hard roads all over this country more or less of those little patches that I referred to Mr. Price have come out on the market and in my opinion they are about 90 per cent cleaned up now. The only reason they have been coming out the last four or five years is because they have continued to push these hard roads close to them where they could haul that stuff out by trucks. Does that answer it?

By Mr. Adair:

Q. Mr. Fleishel, even if the timber owned by the large companies in and around what you may term the Putnam, Brooks-Scanlon district were available for sale, would it be feasible for a Georgia manufacturer to transport that timber from Florida to Georgia upon the scale prescribed by the Interstate Commerce Commission for interstate commerce?

A. No, nor on the old Cummer scale either (Tes. p. 1242). Because, you are taking it directly away from your market into a cheaper market.

Q. And even under the old scale you think—even under the Cummer scale you think there would not be a feasible operation?

[fol. 1165] A. I do not.

By Exam. Hoy:

Q. Just what do you mean by that?

A. Mr. Alston does not understand. I will tell you what I mean by that. When you undertake to ship lumber back up into Georgia; we run on to those fellows who have a lower rate to the Georgia consuming territory, which is a very poor market of course. Lumber is worth more in south Florida a thousand, tide-water here for export than it is in south Georgia. So that if we move those logs into south Georgia on what I would concede to be an arbitrary rate, he would own them at a higher cost than would a man sitting down here in Florida on a shorter rate to tide-water where he could move his lumber out by water. Over a period of the last ten years our rate on lumber from this territory to the eastern seaboard territory, even back on a considerable rail haul from tide-water, has been increased 63 per cent. During that same period you have the rate on lumber from the Pacific Coast to the Atlantic seaboard which has been reduced well over 50 per cent. So that is our competitive condition up here today. As to what makes the market in (Tes. p. 1243) the East largely the fir fellows on the Pacific Coast. In fact, except for some few discriminating buyers who want some strictly high grade long leaf yellow pine, and that situation prevails just the same as it is done with an automobile. Some fellow wants a Cadillac car and he is not interested in a Ford at a lower price, and there are certain people up there who want good long-leaf yellow pine and they will pay $25.00 or $30.00 a thousand more for it than they will fir; but, when it comes to framing, grades of lumber and that type of lumber, that is being produced out of the uncut portion of south Georgia [fol. 1166] they have got to compete with that Pacific Coast stuff on a price basis alone, and only on our good long-leaf timber in the plank, can we compete with them in any respect, not on sideboards as the products of the small knotty top logs. (Tes. p. 1244.)

[fol. 1167] June 12, 1931.

J. S. FOLEY, recalled as a witness, having been previously sworn, testified as follows:

Direct examination:

I am the same J. S. Foley who testified at the former hearing in this case. I am president of the Brooks-Scanlon Corporation. When I testified before Mr. M. J. Scanlon was president. He died last October and I took his place. Our manufacturing plant is now located at Foley, Florida, about 5½ miles southwest of Perry, Taylor County. (Tes. p. 1245) We started construction of that plant there in February 1929. I testified at the former hearing that we had quite a large plant and town site at Eastport near the city of Jacksonville. I will now tell what our investment was in that plant and mill site at Eastport in February, 1929. When we started to move our investment it was $2,340,000 in equipment and plant site at Eastport. As to what has become of that plant and town site, we dismantled the mills, saw mill and planing mill and moved the machinery and buildings to the new site at Foley; moved some of the houses of the town site. There remains some houses and the gantry shed, gantry crane and docks. As to what caused us to move our plant from Eastport to the timber, the advance in the log rates. The new interstate rate. Our records show it cost us about $3,200,000 odd dollars to make that move. The actual cash outlay cost of moving the plant was 1497 thousand dollars. We lost our Eastport real [fol. 1168] estate. I am leaving off the dollars and cents as I have it. Do you want it in detail—one and one quarter years' interest on (Tes. p. 1246) our timber debt, investment $450,000.00; taxes paid on the property while we were idle, moving, $144,000.00; overhead while we had no production or shipments $181,000.00; loss on the Eastport real estate, unable to move it, $347,000.00; loss of renting $625,000.00 makes a total of $3,244,000.00. We shut down somewheres around the 15th or 16th of February, 1929. We started operating in a small way in the early part of December, 1929 but we had no stock to market that was dry so that we were well into 1930 before we were in the market to sell our lumber. Prior to that time the Brooks-Scanlon Corporation, its predecessor the Carpenter-O'Brien Company had been moving logs by the Atlantic Coast Line Rail-

road from the site of its timber exclusively. That was its sole supply under its contract. That timber was located in several counties, Taylor, Dixie, Lafayette, Wakulla and Jefferson counties. Had a little in Alachua. It lies substantially continuous (Tes. p. 1247) we would call "well-blocked". We have other tracts of timber that we are marketing other than in that vicinity. We have timber in South Florida. We are not operating it. We have sold it. It was not feasible to market that south Florida timber at a north Florida mill. As to whether the distance as shown by the former testimony from our shipping points in that western peninsula timber, Lafayette and the surrounding counties is about 166 miles, I guess that is substantially right; we shipped from Carbur and Perry. I think Carbur is considered 160 miles, approximately that. The capacity of our mill at Eastport that we cut was 100,000,000 ft. annually, the last four years that we were there. As to the [fol. 1169] number of cars and amount of freight we paid the Atlantic Coast Line Railroad Company for the transportation (Tes. p. 1248) of logs from 1915 down and through the year 1929,

Year	Cars	Freight
1915	4,891	$62,920.00
1916	9,906	147,805.92
1917	9,352	140,555.56
1918	8,341	140,555.56
1919	7,900	131,423.04
1920	8,810	168,253.87
1921	7,580	173,801.53
1922	12,013	254,900.50
1923	12,613	254,481.24
1924	15,088	315,470.73
1925	16,917	331,549.71
1926	15,652	334,048.47
1927	15,889	330,608.29
1928	17,053	353,136.00
1929	2,140	50,954.66

The total cars 163,245; the total money is $3,182,952.26.

Q. Mr. Foley, well, how do you account for the small figures in 1929?

A. Well, we stopped operating at Eastport shortly after the 9th of February, 1929. As to whether as a matter of

fact, we stopped shipping logs just as soon as we could complete shipment of those we had cut in (Tes. p. 1249) the woods when the order became effective, we tried to stop before the new rate. We had a few trains after the new [fol. 1170] rate was effective.

Q. You testified on your former hearing Mr. Foley that you could not continue to operate at Eastport if the so-called Cummer scale was substantially increased and in the event it was increased that you would dismantle your mill and town site and move to the woods with your mill. Did you find that it was necessary for you to do that?

A. Yes, sir. There were residing in Eastport at the time we abandoned operations there, we always figured there was pretty close to 5,000 people. As to what remains of that town now, the docks, gantry shed, water tower and a few of the houses. We own the land on which the mill and town site was. The population of Eastport now, I think there are about 12 houses rented perhaps 25 or 30 people. (Tes. p. 1250.)

My prophecy as to what would happen to Eastport has been fulfilled. I think it is about the way we figured it out. The amount that this thing has cost has exceeded our engineer's estimate the best we could get at it, exceeded something over $240,000. Our new mill is located in the timber so that it is pretty well centralized in our holdings. We do not use the Atlantic Coast Line now for the transportation of logs from our timber to our mill. We serve our mill with our own logging road and some move over the L. O. P. & G. We have a trackage arrangement with the L. O. P. & G., the Live Oak, Perry & Gulf. Exhibit No. 61 filed by Mr. Perrin shows 224 cars of logs having been shipped to Eastport (Tes. 1251) since February 9, 1929 to January 1, 1930. That was a clean up of logs that we had that moved after the new Interstate Commerce Com- [fol. 1171] mission rate came in. They moved immediately following that, we cleaned up just as soon as we could. There is no other industry going on now at Eastport that would permit the shipment of logs there; there has not been since we moved. Nothing remains there but the bare land and the remaining improvements to which I have testified. As to how much timber we have left in our tracts in the western part of the peninsula at the time we moved—that we closed down our Eastport mill—we planned the

output to take care of a billion feet. That is about what we had left. We started a capacity of 80,000,000 a year and expect to run 12 years. The capacity of our Eastport mill (Tes. p. 1252) was 100,000,000. Our Eastport mill was somewhat larger capacity than the new mill constructed in the woods. We had enlarged that mill at Eastport within the 5 year period preceding the time that we moved. We enlarged the plant in the latter part of 1923 and the early part of 1924. We expected to complete all of our cutting there as everything was of a very permanent nature, steel and concrete, modern town site, and the mill had been kept up until the time that we abandoned it. It was modern in all respects.

Cross-examination.

By Mr. Price:

As to what it costs per car to handle our own logs by tram, (Tes. p. 1253) for delivering to the mill I don't believe I could answer that Mr. Price because we figure everything up to the mill on a unit of a 1,000 feet and I have not got that detail with me. My recollection is that it is less than 50 cents a thousand, and we run between 5,500 and 6,000 feet to a car. We handled our logs into Eastport for a distance of approximately 160 miles, and our rate was $18.50 a car on 50,000 pound car, I think that the last rate as I recall it, I am not certain, I think it [fol. 1172] was $17 for 50,000 pounds, excess in proportion, but I am not positive of that. The average of late years ran to the total weight on the car something over $20 per car if the cars are more than 50,000 pounds. About 40 per cent of our lumber comes here into port and goes by water to eastern seaboard points and some goes export. The balance goes into Georgia, North and South Carolina, Virginia and all of the inland eastern seaboard points (Tes. p. 1254). We ship the lumber into Jacksonville and load on to our own boats with the exception of a few small parcel lots that go by the Clyde Line, that is not on the through billing however. The rate we pay into Jacksonville from our mill on lumber, I think, is 9.7 cents per 100. As to how the rate is stated, I think all of the rates are published so much for 24,000 pounds, but we understand it more readily in cents per 100 pounds. The rate is pub-

lished as a rate per car of a certain weight, with the excess in proportion (Tes. p. 1255). When I spoke of 9.7 cents it is so fixed in my mind that 9.7, I think it is $24, but I don't know. I would have to look up the tariffs. It is quoted however on a minimum weight for so much. That applies on 40 per cent of our business, intrastate on lumber and the other 60 per cent is covered by through billing from the mill when it moves from origin to destination all-rail.

By Mr. Alston:

Q. Mr. Foley, you stated that your mills were moved to Foley, Fla. What county is that in?

A. Taylor County. We moved some of our help or employes who were at Eastport over to this place. We did not move the larger part of them. I would say we lost a good part of them. As to what percentage we moved there (Tes. p. 1256) I would say we got about 40 per cent [fol. 1173] of the original employes, would be my guess. As to whether, under the change in method of doing business, we no longer had need for a good many of these at Eastport, our method of doing business was almost similar except the loading of the boats at our docks at Eastport. Identically the same process. We have not increased our holdings of standing timber in north Florida since the last hearing. The holdings are substantially the same except as we have cut them. As to an estimate of our stumpage or number of feet that we now own, as of today, we have cut substantially 100,000,000 from our holdings when we moved our plant to Taylor County. I testified that our holdings were very near a billion feet of standing timber (Tes. p. 1257). As of today that is not true because we have cut and removed over 100,000,000. There has been some increase in the size of the growing timber, but the increase is offset by the damage from fire and dead timber so that we do not consider in Florida timber that there is any increase except in the very small young growth. The timber in south Florida that we had was in Orange and Osceola counties, down on the east coast, near Kenansville, around the Okeechobee branch of the East Coast Railway. I imagine that is 200 some odd miles from Jacksonville. The quantity of that timber was about 95 or 100,000,000 there (Tes. p. 1258). We sold it all first to T. T. Scott at

Kenansville; and he afterwards made a trade with the Foshee Manufacturing Co. at Melbourne, and they took the north township which joins some of their timber, which gave them I should judge at least one third of the timber. As to who got the balance, that was among those two buyers. As to whether that timber is still standing, no; Scott has been cutting on it quite some time and will be through this year.

[fol. 1174] Q. In your previous testimony there was a statement made of shipments of cars, and so forth, from 1915 through 1926, corresponding to the statement which you have given here except that you there stated the number of feet and you stated the average freight per car and the average freight per thousand feet, and the average feet per car? I wish to show you that list there and will you please say whether or not the average of the per car through the years—through the other years which you have mentioned in today's testimony corresponds with the averages there set out—I am referring to your exhibit No. 42?

A. Well, I was supposed to have a copy of it. This is it. Yes, sir; that corresponds (Tes. p. 1259).

Q. In other words the shippings up to 1929 to the date when you stopped corresponded with the shipments up through 1926 as to the average of the per car?

A. Well, there is a slight difference, Mr. Alston. The average of it for 1927 was in feet 5,809; 1928, 5,569; 1929 was 5,696; which is higher than the general average from 1913 to 1926, inclusive, which was 5,467.

Q. Now, in your statement you had an item of cost of moving $1,497,000.00 as I understood it? What was that?

A. Well, that is the actual cash outlay. $1,497,000.00 leaving the odd dollars off, the actual amount of money it cost us to move exclusive of the other items that were enumerated.

Q. Well, can you give us the general headings of that. You gave only one lump sum—that is a very large amount of money to be just one lump sum? Just the general headings under which you itemize it?

[fol. 1175] A. Well, that is the plant, the machinery, the money for dismantling (Tes. p. 1260), the freight, the unloading, the re-erecting, and the replacements of broken parts. And the value of the machinery that we moved from Eastport. We still have the real estate of course at Eastport.

Q. And, I asked you a few minutes ago about the increase of stumpage by the passing of the years and you have got one and one-quarter year's interest $450,000.00 on that stumpage. Do you not think that that is to some extent offset by the growth of the timber, Mr. Foley?

A. No, sir; I do not. The damage from fire and lightning and other destructive forces offset any growth we get.

Q. Mr. Foley, can you now give us some statement as to the volume of timber standing in Florida, fairly close to the Atlantic Coast Line Railroad Company. As to the extent of it?

A. No, sir; I would not undertake that. I would just have to give you my opinion, I don't know. To give an opinion as to the total quantity I will have to do some calculating there. While it is just a pure guess, including ourselves, Putnam and some of your south Florida timber which we do not think can be manufactured unless there is a very favorable (Tes. p. 1261) lumber market, is about two and one-half billion feet. That includes only the timber owned by the people whom I have mentioned. Timber, it is some Babcock and Coast Line timber. These people do not own all of the timber in Florida. My answer two and one-half billion is what I know is on the Coast Line.

By Exam. Hoy:

Q. Your subsequent answer meant that is not all of the timber in Florida adjacent to the Coast Line?

A. No, he asked the question all owned in Florida and I said no.

[fol. 1176] By Mr. Alston:

Q. Now then I ask you do the companies mentioned by you own all the timber in Florida adjacent to the Coast Line?

A. Yes, sir; the two and one-half billion feet that I mentioned. All of that two and one-half billion that is adjacent to the Coast Line, yes. I could not say if that is all of the timber in Florida adjacent (Tes. p. 262) to the Coast Line. We moved our plant and are now logging over our own rails. We have got 120 miles of logging railroad exclusive of the Live Oak, Perry & Gulf. It is in three loca-

tions; three separate locations with one main and two branches, two purely logging. That ramifies our timber holdings which I have described. We will have to make further extensions as time goes on on those lines. I concur in the opinions which have been expressed in this record heretofore and this hearing to the effect that it was wise to have the mills located in the timber, economically wise. Our experience from our move would have demonstrated that to (Tes. p. 1263) us if we did not have to absorb the loss that we sustained at Eastport. If the mill was originally built in the timber, the owners of the property would have been infinitely better off. They are now better off, and in the future, that the mill is in the timber. I put the Eastport value at $2,340,000. That is the original cost, no depreciation. That plant had been in existence, started to run in 1915 I imagine so, built in 1914. We did not build it, we purchased later. We bought the controlling stock from Carpenter-O'Brian, changed the corporate name. They built it (Tes. p. 1264). They started in 1915 to operate, and operated until the early part of 1929—for 15 years. As to what depreciation we take on our plants in our tax books, our basis of depreciation is a salvage of 5 [fol. 1177] per cent over the original cost and the rest is prorated either by years of the operation or by thousand feet, so that you can check it back either way. We set up the salvage at 5 per cent and the balance is depreciated either by the thousand or the year at whatever your investment is. No percentage, it is based on the feet that you cut. That is, when your timber is gone your investment is only worth 5 per cent, and you will do well to get that out of it. Depreciation is based on annual cut, and the amount is based on your total timber that you own when you build your plant. At the Eastport plant my recollection of the depreciation in per thousand feet was somewhere around $1.40 per thousand (Tes. p. 1265).

As to what circumstances that particularly influenced our company in originally locating its mill at Eastport instead of in the woods, Mr. Gwathmey, I could not answer that from my opinion because we did not build the mill; the mill was built when we bought it, but I assume it was the log rate and at that time I think there were water competitive rates which gave a distinct advantage to a tide-water mill which was later balanced or equalized so

that is my opinion as to why they built there. It is quite possible at that time that the advantage of the location on tide-water was one of the things that entered into the location of the plant. Our company was shipping there to Eastport something like 100,000,000 feet per year. As to what approximately was the proportion of that total moved out of Eastport by water, either for export or in coastwise movement, our annual movement ran between 35 and 37 per cent out of Eastport of our production by water (Tes. p. 1266). The balance moved out by rail. [fol. 1178] Foley is about five and a half miles from Perry. The same stockholders of our company own the Live Oak, Perry & Gulf. They purchased it from the Atlantic Coast Line. The other point of location between the Live Oak, Perry & Gulf and the Coast Line besides Perry is Live Oak. Shipments from our mill at Foley ordinarily all originate on the Live Oak, Perry & Gulf, and I would say the bulk of it moved, turned over to the Coast Line and they move it largely through Live Oak. I think that is the connecting point (Tes. p. 1267). As to the approximate proportion of our output of the mill at Foley that now moves to Jacksonville for export or movement beyond by water, we are moving from there about 40 per cent to Jacksonville of our cut. That 40 per cent moves from Live Oak to Jacksonville over the Atlantic Coast Line Railroad, that type. The balance of our output we ship into Florida, different points, Georgia, North and South Carolina, Virginia, Eastern Tennessee, all up through the New England states.

Q. And, that outbound movement is over the Coast Line principally is it not?

A. No, not all together. Of course, the buyer's instructions as to routing is followed, it does not all go Coast Line.

Q. It is all billed out originally over the Coast Line is it not?

A. No, sir; we are not on the Coast Line rails.

Q. Is it not a fact Mr. Foley that relatively a small proportion of your total output of the mill at Foley goes over the lines other than the Coast Line?

A. Well, depends upon what you call a small amount (Tes. p. 1268).

Q. Suppose you indicate for us, will you?

A. Well, I don't think that is hardly a fair question but I will answer it.

Q. I beg your pardon, sir?

[fol. 1179] A. I don't think it is hardly a fair question.

Q. I would not have you for a moment answer a question which you do not think is entirely fair. I was merely trying to get at some——

A. (Interrupting:) It is about 24 or 5 per cent.

Q. Please understand I am not requiring you to answer the question, and if it should not go on the record I shall be glad to withdraw it. Mr. Foley, could you give an estimate of the freight revenues that accrued to the Coast Line on the outbound movement of your manufactured lumber as compared with revenues which formerly accrued to the Coast Line on the inbound movement of logs to [fol. 1180] your mill at Eastport?

A. Not without making some calculations, I know the outbound lumber is considerably less. I know that the revenue accruing to the Coast Line on the outbound movement of lumber is less than the revenue formerly accruing under the log rate. I mean by that the gross revenue of course (Tes. p. 1269).

Q. How do you figure that: Are you undertaking to include in that your movement from Foley to Jacksonville, and the movement out of Foley either via the Coast Line in connection with other railroads?

A. Well, I just made a mental calculation, I would not want to say that I am right about it unless I checked it up. I have always felt that the revenue from the lumber was much less than the revenue from the logs in total money.

Q. But, you have never really made any calculations to determine that, have you?

A. No, sir.

As to whether we find any competition from the Georgia mills when we sell in the northeastern part of the country, north of Washington, up in Portland, Maine, and along the coast, no sir, the competition we feel of the Georgia mills is in Georgia alone, and that is the worst competition we have to meet.

Redirect examination:

We sell some logs to the Wilson Lumber Company at Foley (Tes. p. 1270). We have a contract for the sale of

all hardwood timber. As to how long that mill has been located at Perry, I think they were operating in 1928, I am pretty sure. In cutting our pine and cypress we cut some hardwood that may be growing in the pine and cypress. [fol. 1181] The hardwood that we own is badly scattered over a large area of ground, and in our contract we sold them sizes, diameter that they required at and as we come to it. It would be commercially not feasible and unprofitable just to go in there and cut that hardwood alone. It would be impossible. We operated a logging road on our timber properties when our mill was located at Eastport. We had a logging road connecting with the Coast Line. There is nothing new about the operation of that logging road. That road was not built because of the change in the site of the mill (Tes. p. 1271). It is the same identical logging road only we extended it to our mill at Foley, that is all the difference, instead of to the Coast Line. As to what other road our road, the Live Oak, Perry & Gulf connects with; at Perry we connect with the South Georgia and the Coast Line. At Live Oak we connect with the Seaboard and Coast Line. The South Georgia is not part of any system, I don't think so; the Oglesbys I know are officers of it and I imagine own it; I don't know. We have no financial interest in the result of this litigation as to the rates for the future, none whatever. We are not shipping any logs over the Coast Line now; of course, I cannot say what might happen in the future. I have no expectation that we will. I think I stated that the probable life of our operation out there was about 10 years (Tes. p. 1272).

By Mr. Adair:

Q. You said something about this timber down in Kenansville that was being manufactured into lumber, this timber that your company at one time owned. Is that mill in which that timber is being manufactured into lumber situated in or near the woods?

[fol. 1182] A. That at Kenansville is pretty nearly on the edge of the timber, and it is pretty nearly the same condition at Melbourne.

Q. Now, have you testified with respect to there being approximately as you estimate two and a half billion feet of the remaining timber on or adjacent to the Coast Line

Railroad Company—does that include all of the tracts of which you can now think which are adjacent to the Coast Line Railroad?

A. Yes, that is the only calculation I can make it from. There may be more, but I don't know. I merely answer the question as to my information the best I know how. That comprises wholly if not entirely the Brooks-Scanlon, Putnam and Gulf Hammock, and some timber in South Florida, about which Mr. Floishel testified yesterday (Tes. p. 1273). Known as the Babcock and Coast Line timber. As to how much is in the so-called Coast line tract, I don't like to say because I don't think there is anything like—it is a substantial amount, yes. It is down in the Lee county district in the far southern portion of the State. We had to lay that logging road anyhow. The logging road was there when we built and when we started, no difference. When we got through with the Carbur district we started the logs up on our own railroad to the mills to get them to the Coast Line.

Q. Mr. Alston asked you some question with respect to the loss in value of this Eastport plant when you salvaged it and moved a part of the machinery to your new location in the woods. Mr. Foley, please tell me whether or not in arriving (Tes. p. 1274) at the loss which you say you have here sustained, you included the loss at the Eastport plant and loss at the town site, your actual loss, or whether it was something other than your actual loss that [fol. 1183] you have included in those figures?

A. Well, the loss of earnings for 1929——

Q. I am talking about physical property now.

Mr. Alston: He gave the factors.

Mr. Adair: I know he did, I think you also confused the figures. I am trying to get that straight.

Q. In the first figure, the $1,497,000.00—did you actually lose that amount of money in the wrecking of that plant and the construction of a new plant?

A. Yes, sir.

Q. Is that your loss after taking off the depreciation which you were entitled to take off on your investment at Eastport during the period of time that the plant was in existence at Eastport?

A. No, this is the loss from the original cost.

That mill was maintained at Eastport up until the time we moved. That is what it cost us to wreck the old mill and construct a new mill, and includes some value of the machinery that we set up in the new plant (Tes. p. 1275). There is no duplication in those figures. We consider that we are actually out-of-pocket to that extent, actual cash outlay. As to whether we encounter any competition with the Georgia mills in the eastern markets, we have not heard of them in competition up there but we do in Georgia.

Q. In Georgia, well, as a matter of fact in the Georgia market haven't they a very great advantage from the standpoint of rates on lumber?

A. Well, the worst competition we have to meet is the truck delivery to the yard by the small mill, which takes [fol. 1184] the general building lumber such as sheathing and common framing and we just cannot sell any of that because they deliver by truck from the little mill to the retail yard at prices (Tes. p. 1276) ranging from $8.00 to $11.00, and we cannot log, cut it for that, let alone the stumpage and the cost of the lumber, even with the present conditions with our mill located in the timber.

Q. Mr. Foley, you said that the natural place under the present operating conditions for the mill is in the timber and that you thought that the mill was better off there—a mill was better off in the timber now than located at tidewater with a haul of its logs by carrier. Will you tell me please whether or not you would have moved this mill to the woods and taken this large loss except for this attempted change in the so-called Cummer scale rates?

A. We would not. As to whether we would consider that our loss in the moving was out of proportion to the benefits to be obtained by moving to the woods, for instance 1929 was a very satisfactory year in the lumber business; we lost the whole year. We would consider that the loss was greater than any possible gain we had to come from moving.

By Mr. Norman:

Q. Mr. Alston asked you, or rather in (Tes. p. 1277) response to questions by Mr. Alston you have stated that you estimated the timber along the Atlantic Coast Line in Florida at two and a half billion feet. What part is any of that timber would move under logging rates such as prescribed

by the Interstate Commerce Commission in its previous order?

A. Oh, I cannot answer that because the bulk of it is owned by people who are now operating that I calculated on. They would not move any of it, because there would [fol. 1185] not be any necessity to move it. So that as far as this two and a half billion feet of timber is concerned from the standpoint of log traffic it does not mean anything to the Atlantic Coast Line Railroad, not in log traffic as I undertsand it.

Recross-examination:

I heard Mr. Fleishel's testimony on yesterday as to the present condition of the lumber industry from the standpoint of prices as well as demand. My experience and observations are substantially the same as his and I would concur in what he said, practically so (Tes. p. 1278).

Redirect examination:

The original investment in the mill plant at Eastport in round numbers was $1,359,000. The total investment in the plant at the time that we dismantled was $2,340,000. I think it was worth the money, if we could saw the lumber there outside of that it is not worth anything, it is a liability. I considered it was worth that as a going mill with the substantial amount of timber that we had back of it, with the Cummer scale in effect. The mill was not worth anything if there was not any timber back of it (Tes. p. 1279).

[fol. 1186] C. R. MacPherson, called as a witness, being duly sworn, testified as follows:

Direct examination:

My name is C. R. MacPherson, president and general manager of the Wilson Cypress Lumber Company residing at Palatka, Fla. On my father's death in December, 1926, I was made president of the Wilson Cypress Company; prior to that time I was vice-president of it. Mr. F. H. Wilson, who testified at the former hearing is now dead. He died in August, 1929. The manufacturing plant of the Wilson Cypress Company is located at Palatka. The plant

stands on our books, after deducting depreciation, basic cost at about $800,000. We manufacture cypress lumber there, (Tes. p. 1280) and no other kind. We employ approximately 275 men. As to where our timber is located we have about 50,000,000 feet left over in the western peninsula and we have about 300,000,000 feet on the St. Johns river tributary to Palatka. Palatka is on the St. Johns River. The 300,000,000 feet will be rafted, towed to the mill on the St. Johns river, with just our own railroad running back from the river into the various tracts, with no common carrier transportation. We are now conducting logging operations in Dixie county, Lafayette county, that is in the western peninsula, the 50,000,000 I referred to before. We are not conducting logging operations elsewhere than there (Tes. p. 1281). We have been logging that tract in the western peninsula since 1924. As to how we have been transporting our logs from the timber to our mill at Palatka, we have our own railroad in the timber and we connect with the Atlantic Coast Line at Hines, Florida and haul 119 miles to Palatka. That movement from Hines has been since 1926, and from 1924 to 1926 we hauled from [fol. 1187] Old Town, which was a distance of 99 miles to Palatka. We are continuing the haul from Hines at the present time.

Q. Mr. MacPherson if you have a memorandum before you of the number of cars, the amount of freight paid from 1926 to 1930, inclusive, please read from that memorandum the total number of cars by years and the amount of freights paid by years to the Atlantic Coast Line Railroad Company for the transportation of logs from your western peninsula tract of timber to your mill at Palatka?

A. In 1926 we had 4,233 cars with $71,742.75 paid in freight. In 1927 we had 4,754 cars with $93,219.37 freight. In 1928 we had 5,531 cars with $109,138.07 freight. In 1929 we had 2,140 cars with $83,098.99 freight. In 1930 we had 5,142 cars with $205,096.20 freight. A total of 21,800 cars and a total of $562,295.38 freight (Tes. p. 1282). During the first five months of this year we have shipped 1,916 cars and paid $50,366.17 in freight. That is through May 31st. Now, I have not the figures here for the movement from Old Town in those two years preceding but, there is a movement there which will increase the total figures. Old Town is a few miles south of Hines on the Atlantic Coast Line

Railroad, I should judge just from recollection probably six to eight thousand cars moved from Old Town, during that period—two years, 1924, 1925 and part of 1926.

By Mr. Adair:

Q. Mr. MacPherson, Mr. Wilson in January 1927 at a former hearing in this case testified that it would not be possible for you to continue to operate your plant at Palatka and continue to move logs from your timber in Dixie, Lafayette and Taylor counties to Palatka under any materially increased freight rates. I would be glad if you [fol. 1188] would here state what the circumstances of your operations have been since the order of the Interstate Commerce Commission increasing the state rate became effective on February 8, 1929? What you did and the conclusions you reached?

A. Well at about that time or at that time we had about 90,000,000 feet left over there 90 to 100 million feet. The situation was quite different at the time Mr. Wilson testified because we had been cutting and hauling under the old (Tes. p. 1283) Cummer scale; in the meantime considerable time elapsed and at the same time our mill burned at Palatka. It burned January, 1929, the 23rd I think it was; the whole plant was not destroyed; the saw mill and the power plant only, the boiler room was not destroyed, the planing mill was not destroyed, the machine shop, none of the lumber, none of our docks, none of our yards, none of our outside equipment like tugs, and lighters and that sort. Well, as I say we had 90,000,000 feet of timber left in the western peninsula, we had 300,000,000 feet on the river, we had a good portion of our plant intact on the river and we could not—were not in a position to go to the woods and rebuild in the woods like these other gentlemen have done, because the bulk of our mill was tributary of the bulk of our timber, and we would have had to build two mills instead of moving one, and we did not feel that we had sufficient timber, with 90,000,000 feet to build a modern saw mill plant such as we would have had to have had to kiln dry and dress our lumber particularly to compete in the markets with the other mills. Another factor entering into it was that our (Tes. p. 1284) timber in West Florida is not owned in fee but, is owned through timber leases. If that had not been the case we might have put a small mill over there where we could

[fol. 1189] cut only rough lumber. And in that connection I would say that about 60 to 65 per cent of our lumber shipments are dressed lumber, which means that the lumber has to be kiln dried and go through a planing mill, which means that much more capital investment to handle it. Most cypress timber that is sold is not sold until after a year after it is manufactured. Consequently it is necessary to carry very large stocks by anyone that conducts large cypress operations, because of our timber leases we could not put in a small mill to cut merely rough lumber, because of the length of our leases and the small amount of our rough shipments so that it was merely a question of trying to find some way to get that timber to Palatka cheaper; and I saw Mr. McDavis, and he would not do anything for us, and I went up and saw Mr. Oliver, and Mr. Capps and Mr. Foley. Mr. Oliver of the Southern Railroad and Mr. Capps of the Seaboard, and we made trackage arrangements, the net cost of which would have been about midway between the Cummer scale (Tes. p. 1285) and the interstate rate. That traffic would have moved from Mayo, Florida, on the Live Oak, Perry & Gulf to Live Oak, where the Seaboard would take them, and they would go to Lake City and then the Georgia Southern would take them into Palatka. I think the distance as I recall it was in excess of 150 miles. It was about 30 miles longer than the Atlantic Coast Line part of the haul from Hines to Palatka. The trackage agreement, they agreed to it and I think they still agree to it. I get letters from them once in a while wanting to know if we want to enter into such an agreement. The figures have been agreed upon so for as the railroad was concerned. We did not enter into the agreement because of the condition of the Live Oak, Perry & Gulf Railroad at that time. I understand it has been improved since. They could not get heavy locomotives over there and we would have had to relay the trains (rails?) up to Live Oak. (Tes. p. 1286) We [fol. 1190] were afraid because of the condition of the road that the loads might shift on a poor road and cars be thrown out at Live Oak for inspection, and the net result might be that not getting *to* the cars to the mill we would have to shut down for part time on account of the condition of the railroad. I understand, Mr. Foley tells me that those conditions have been improved, and done considerable work on the road, it is in better shape. As to what other factor

entered into the conclusion that we finally reached, we thought we had a pretty good case, this case, all we knew that there was not any movement to Georgia and thought somebody some day would find out that there was not. We thought eventually that we would win this case, and took a chance on winning it, the suits in the court and get the Cummer scale back and get a restitution, the way things are working now. Under those circumstances we concluded that we would for the present at least continue to move the logs from Hines to Palatka by the Atlantic Coast Line Railroad Company.

Q. Mr. MacPherson have you reached any conclusion as to what course you will pursue with respect to your West Florida—(Tes. p. 1287) to the transportation and manufacture of your West Florida timber in the event that the Cummer scale, which is now being applied in Florida, should again be increased by the order—substantially increased by order of the Interstate Commerce Commission before you have completed the transportation of your western peninsula timber to Palatka.

A. Why no, we have not gone into that question with any fixed policy as to what we will do; I cannot answer that Mr. Adair. I know there are three or four things that we might do. Get lawyers to continue to litigate, we could go after this trackage business again and see if that is feasible, [fol. 1191] now that the Live Oak is in better shape physically, and we could probably put a small mill in our timber now, a mill to saw rough lumber, and we could handle our rough lumber shipments from the woods, because the quantity of our timber is now so much less, and the remaining timber we have of course, is the timber we have long leases on, which of course was not the fact at the time our mill burned. We had some short lease timber at that time too. I mean by rough lumber mill, just a saw mill and a yard to cut the logs into rough lumber (Tes. p. 1288). Just saw the logs into lumber without any planing mill work or any dry kilns or anything of that sort.

Q. And then transport the green lumber to Palatka?

A. Well now, I should not think so. I think what we would do would be to carry that lumber there until it is dry and then ship it out on our rough lumber orders. Well, I imagine we could probably negotiate with some of the people who have moved to the woods, that are right in that

territory, Brooks-Scanlon, Burt-Schwartz, Putnam Lumber Company are all right there in a stone's throw of us, they have their logging railroad right near us and we could probably make some deal with them to cut our lumber for us.

Q. Mr. MacPherson if that unhandy situation should arise would it be possible for you to transport those remaining logs on the western portion of the peninsula to your plant at Palatka and to compete on any sort of reasonable basis with other manufacturers of cypress lumber?

A. No we would just have to take a loss under present conditions. The increased rates would be too high. Any- [fol. 1192] thing substantially over the Cummer scale would be substantially too high.

Q. Mr. Wilson testified in the former hearing with respect to the nature and character of the movement of logs from (Tes. p. 1289) Hines to Palatka that it was in regular train load movements of approximately three trains a week, and that the empty cars going back the next day were likewise in train loads. Has there been any substantial change in the character of that movement since the time that Mr. Wilson testified?

A. No, there has been no substantial change but, there has been a change in two respects. Mr. Langley stated yesterday that the cars were weighed at Palatka. For over a year now they have been handled on an estimated weight basis, and both the Coast Line and ourselves have been relieved of all the unnecessary expense that goes with weighing cars; and about every so often these weights are checked by the Southern Weighing and Inspection Bureau. We are now operating on estimated weights of 65,000 pounds of logs to the car. It has ranged from 58,000 pounds as a minimum to 68,000 pounds but the maximum of that has been since a year ago last May. We have been working on estimated weights. As to what other respect I have comments to make upon any change in arrangement, in respect to the maintenance of the logging cars. You see, under our contract we are liable for any damage in the woods and as a working proposition I imagine most of the (Tes. p. 1290) damage is done in the woods, but as the thing works out we really maintain the logging cars. The Atlantic Coast Line the only thing they do at all, if there was something on the main line road that everybody in Chris-

tendom knew about then, they would pay the bill but otherwise we have to foot it, and their charges were so expensive under the—what do they call that A. R. A.-M. C. B. rules [fol. 1193] that we made an agreement with them sometime ago that we would do the work, and we are doing the work from anywhere from 50 per cent to 70 per cent less than they were charging us for it. We do all of the work to the cars except car wheels and brasses which they handle at their place. We do that at Palatka; and it saves us money and saves them money too. We do that at our machine shops. Just to give you an idea of the costs, they charged us $75.00 a thousand for timber for decking when we could go out in the market and buy it for $26.00, all the way from 26 to 35 dollars a thousand of the same quality; and labor they charged us $1.05 where we paid 30 cents for decking (Tes. p. 1291). Decking the cars. That is in accordance with the M. C. B. rules. Nothing irregular at all about that but I wanted to show you the saving to us to handle it the other way and to the railroads. As to when most of the damage to the cars occurs, I think the bulk of the damage is done in the woods; but as to the working out of it they have no expense in connection with the cars at all. As to when the Atlantic Coast Line made known to us that this rate was unsatisfactory to them, we began to get a little suspicious that they thought so when they really did not appear as bona fide defendants in this suit, when we read the testimony, but we never were actually told that until I saw Mr. Davis in 1929, January 1929, at Wilmington. He made the statement then that they had been wanting to get these rates up for a long while; he said since 1918 as I remember. It was all news to me because they had solicited our business and solicited our entering into this contract (Tes. p. 1292) arrangement with them in 1924 through their field force. We made additions to or extensions to our mill in 1924 at a cost of I could not tell you approximately how much from memory right off-hand but [fol. 1194] it was several hundred thousand dollars.

Q. Now, do you recall any conversation that you had with Mr. Langley who testified here yesterday in the spring of 1929 with respect to your logging movement?

A. Yes, sir; I spoke awhile ago about these trackage arrangements that we were considering entering into with these other railroads after we shut down and were not

handling logs because of our fire. At that time we were diverting our outbound for a while to them so they could see what a substantial amount it was and Mr. Langley came down to see me about it because I think his road was feeling it and we had a pleasant conversation and finally got on the Log Rate Case and he told me * * * * I have a memorandum that I made at the time. When Mr. Langley left, immediately upon his leaving I wrote this letter to Mr. Adair because I thought the things (Tes. p. 1293) Mr. Langley told me had a bearing upon this case, our position in this case; roughly he told me this, he said, in the course of our conversation he stated that our log trains, and the Brooks-Scanlon log trains had constituted one-half the tonnage hauled over his division. I might say at that time Mr. Langley was superintendent of that division, stationed at Ocala. Before he came to Jacksonville as superintendent, yes. And now, that Brooks-Scanlon had been forced to move their mill he hoped we would continue to haul over their division as without the log tonnage he did not know what the division would do. He also stated that the division obtained a larger net revenue from logs than from citrus fruit, vegetables, mellons, and so forth, which was its next largest tonnage. He said that while the freight on these latter commodities would probably be much [fol. 1195] more satisfactory than the old freight on the logs in reality they just about broke even on it, due to claims they were forced to pay the shippers. And, that the log movement was much more profitable and more economical to handle from an operating standpoint. He stated that the very nature of the log movement and the fact that his road was dealing with honorable concerns such as Brooks-Scandon and ourselves precluded any loss from claims on this traffic. That letter was written May 7th, 1929 (Tes. p. 1294), on the same day I had this talk with Mr. Langley.

We have had hardwood logs developed as an incident to and a by-product of our cypress logging operations. That hardwood is scattered throughout the cypress timber. We had considerable hardwoods in West Florida. You are talking about the West Florida timber. We have sold some of those hardwood logs to the Wilson Lumber Company at Perry. We entered into a contract with them in 1927 for the sale of all of our hardwood in that territory.

Q. Please tell me if you will in effect what that arrangement was and what the subsequent operation was under that arrangement and what if any change was made when the Cummer scale was displaced in February, 1929, by the Interstate Commerce Commission scale?

A. Well, at the time we went into the contract with Wilson Lumber Company various hardwoods were specified as a part of the contract, all of which we would cut down to 14 inches except ash, which was (Tes. p. 1295) 14 inches in diameter at the butt, and upwards, with the exception of ash which was to be cut down to 10 inches; that is right. It did not include black gum logs because Mr. Wilson did not want to obligate himself for an indefinite period [fol. 1196] of taking black gum logs, but by informal arrangement they did take black gum logs up to the time the high rate went into effect. About 40 per cent of our hardwood was black gum.

Q. Now, what happened when the high rate went into effect both in respect to the black gum logs and with respect to the other hardwood logs that were being taken by the Wilson Lumber Company?

A. They came to us and asked us if we would change the specifications on the sizes, raising them to 16 inches, with the exception of ash, which remained the same, which we did to help them out and, that amounted to about 15 per cent of the volume. I mean our volume was reduced by reason of the change in the diameters 15 per cent, and added to that was the 40 per (Tes. p. 1296) cent of the black gum, which made a reduction of about 55 per cent of the volume. We could not ship them the black gum when the rate went up, which was 40 per cent of our holdings. When the high rate went into effect in February, 1929, he discontinued taking the black gum logs. They are not willing to take them upon the high rate. And he changed the dimensions on the other hardwood logs by fixing his minimum diameter on everything except ash two inches higher than heretofore. That resulted in a reduction of about 15 per cent. The Wilson Lumber Company asked us to agree to the change in the diameter. Well the diameters were part of the contract, however, we made the change to help them out. In that connection, Mr. Adair, I might say we have cut all of the hardwood that we have in West Florida. We own no more hardwood over there. There (Tes. p. 1297) will be

no more movement from Hines to Perry as shown under exhibit No. 61. We have logged over all the land, all of [fol. 1197] our cypress tracts on which we own hardwood. The timber which we are logging in now has very little hardwood in it and next month our railroad is going to go through some hardwood which is owned by the Standard Lumber Company. The Wilson Cypress Company owns the cypress in that tract, and when we bought the timber there we bought only the cypress and not the hardwood. As to what has been done about that hardwood in this tract which we expect to commence logging next month, the Standard Lumber Company is disposing of that to the Wilson Lumber Company and we are to log it for the Wilson Lumber Company, and the specifications which we are working on now go back to the 14 inches, and we are to take the black gum. There are about one million and a half feet there, and the logging will be complete by October and then (Tes. p. 1298) there will be no more hardwood shipped from Hines.

Now since the Cummer scale has gone back into effect they are again taking the black gum and they are again taking small diameter logs along with the large diameter logs. As to what did we do with our hardwoods before we made this contract with Wilson, we left them in the woods. The trees between 14 inches and 16 inches in diameter at the butt we left in the woods. It would be impossible to go back and get those trees. They are so scattered that it would be uneconomical proposition when our railroads are out of there; so that they are a total loss to everyone because there will never be enough of them to warrant anybody going in there and getting them. The hardwood business, speaking in broad terms is a mere by-product and incident to the conduct of cypress and pine business in Florida (Tes. p. 1299).

Q. Now Mr. MacPherson, Mr. Fleishel on yesterday testified with respect to the location of various tracts of tim- [fol. 1198] ber in Florida at various mills. I am not entirely clear whether Mr. Fleishel by his testimony showed whether or not those particular mills were located in or so nearby the timber that transportation by common carrier was unnecessary—transportation of logs by a common carrier was unnecessary. I would like to ask you about a few

of those, to answer if you know, and if you do not know please say so. Now, he spoke of the so-called Eppinger & Russell or Montague tract.

A. That is the Montague tract, yes, the mill is in the timber. As to the tract near McClenny I don't know about that one. As to the mill at Sears, I understand that Mr. Fleishel testified that there is a mill down there, but they have had an altercation about the timber, but the mill and the timber are right together, and now the timber is in another ownership. When I say the mill is in the timber I mean that there is no transportation of logs by common carrier (Tes. p. 1300), that is, as far as the bulk of the timber. Of course there may be transportation of isolated pieces here and there but the timber that backs up the mill is transported to the mill by their own railroad. I don't know about the Dowling Camp Lumber Company. I have never been down there. My impression is that the mill is in the timber, near those mills, I recall he spoke of the mill at Gulf Hammock; that is in the timber. I have been down there. As to the McGowan-Foshee tract I have never been down there but I think their mill is in the timber.

Q. Mr. MacPherson my recollection is that Mr. Wilson in his testimony estimated the total amount of timber that you had in West Florida in 1927—January, 1927, or whenever that statement was made up, as around 250,000,000 feet. You say that you have from 90 to 100 million feet of cypress left now. Will you please explain the difference [fol. 1199] between the 90 and 100 million feet and Mr. Wilson's former estimate of around 250,000,000?

A. Well, we have had various estimates on that timber. It was purchased at different times, and we have had estimate of it at the time of the purchase, and then have had cruises go in and cruise all, and our estimates range from less than (Tes. —. 1301) 200,000,000 to a little over 300,000,000. The average of our estimates on that timber was 250,000,000, which we always figured in our minds we had there. We also figured we had about—that is talking about cypress; we also figured we had about 50,000,000 feet of pine and hardwood, but accurate estimates have never been made of that. The timber was cruised for cypress and the estimates were incidental on the hardwood and pine; it was never a careful estimate. We found when we got into it we had no such quantity of hardwood and pine at all.

I think probably 20,000,000 would be nearer to it. And, we have leased some timber there which I imagine is probably 8,000,000 feet. And our estimates on cypress have under-run considerably so we are going to actually cut out of that tract about 115,000,000 feet. Now that is what I know about it. I don't know what Mr. Wilson testified to. As to whether we are satisfied what we have got left is around from 90 to 100 million feet; not now, we have got about 50,000,000 feet. We had 90 to 100 at the time the mill burned down, at the time the old rate was displaced by the Interstate Commerce Commission scale. As to any so-called cypress mills (Tes. p. 1302) operated in Georgia anywhere; I know of no mill which operates exclusively on cypress. I know of two mills that cut cypress, they are members of the Southern Cypress Association; that is the [fol. 1209] Reynolds' Brothers mill at Albany, Georgia, which had been practically shut down since last August. Mr. Price testified yesterday that was one of the operating mills down there but, it has been entirely down since January, and practically down since last August. It cuts a million and five hundred feet of cypress normally, per annum. Other mills cutting cypress up there are The Reynolds-Manly company at Savannah and they cut from three and a half to four million feet yearly. The Case-Fowler mill I think is at Macon, cuts some cypress; I don't know whether they are operating now or not; they are in receivership. I think they are at Macon. They cut a small quantity of cypress because they cut largely poplar (Tes. p. 1303). The cypress was incidental to the operation. They might have cut four or five million feet a year, something like that. There is no substantial manufacture of cypress in Georgia. There is probably little cypress timber in Georgia. I think it is practically all cut out some time since. The only large manufacturer I ever knew up there was the Hebbard Cypress Lumber Company at Savannah, and they have been cut out for a long time. I have examined this exhibit No. 61 prepared and filed by Mr. Perrin. I think I have got it here with me. As to whether I can estimate the number of cars in that 18,000 odd cars shown as a two year movement the number of cars which were cypress logs as distinguished from hardwood or pine logs; I went through this thing by destinations where I knew there was nothing there but a cypress

mill, and I have made 12,267 cars of cypress out of 18,000 odd cars here (Tes. p. 1304). As to whether I can make an estimate as to whether the remaining cars on there were largely hardwood or largely pine I don't know; I should [fol. 1201] judge hardwood, though. But they may have been all cypress as shown here two years ago; but that movement is never going to be as great as that again because there is quite a movement there to Everglades at Loughman where they are going to be through this year, and they have been trying to clean up that country down there, to buy all of the logs that are left in the country, and I expect they have pretty well exhausted it. And, J. Ray Arnold at Groveland, quite a movement to Groveland. J. Ray Arnold has been shut down since last November. Also all of the movement from Hines to Perry and Hines to Carbur has ceased and the movement from—that Eastport movement, that is entirely from Perry and Carbur of course is gone. So practically speaking the movement is going to be much less than is shown in this case in the future.

Cross-examination:

I am not familiar with the Bray Lumber Company at Valdosta. I don't know whether they cut any cypress or not. I am not familiar with operations at Doctor Town. I don't know whether they cut any cypress or not. I have heard of the mill but I don't know what they cut. As to whether at our mill at Palatka we use any logs other than what we raft up the river; well, we are not rafting any logs at all as long as we are working in the western part of the peninsula. Our main movement is from Hines by rail over the Atlantic Coast Line to Palatka and has been since 1924 and will be until this 50,000,000 feet are cut out, unless we make some other disposition (Tes. p. 1306) of that timber. We have made some small purchases there in carload lots in the last two or three years as is shown in the shipments to Palatka there in that exhibit.

By Exam. Hoy:

Q. Then, you have got a large tract of timber that you have not started cutting, but that you expect to raft?

A. Yes, that is our main tract, 300,000,000 feet. We are not rafting that timber now. We have in the past. Our op-

[fol. 1202] eration has been in effect since 1889, and all of the timber has been rafted to the mill with the exception of this movement over the Atlantic Coast Line which has been going on since 1924 and which will be completed about October 1932.

As to whether we get any logs into Palatka off of the Florida, East Coast or Southern Railway, I think some few logs may come in. I could not say what percentage of the whole. Let me see. I think last year we purchased I think about 10 per cent of our cut around there, and I should judge that the bulk of it came in over the Atlantic Coast Line, but there may be some that has come in over the Southern. I am sure there have been some cars that come in from scattered locations over the Southern and East Coast but, the bulk of it over the Atlantic Coast (Tes. p. 1307) Line, because their lines run in that direction. Our lumber moves about 85 per cent to the North; and that 85 per cent is about evenly divided between the middle west and eastern seaboard, that is the New England states, New York, Pennsylvania and the East, with the tendency of the movement getting more and more to the West, to Ohio, Michigan, Illinois, getting out into Iowa and up that way. Our eastern business, particularly our New England business is falling off and our western business is increasing. We have handled some shipments by water but in the last year or so I don't think we have shipped anything by water in over a year.

By Mr. Alston:

Q. Mr. MacPherson, from exhibit No. 32 in this case I understood that your timber was in the Dixie, Lafayette and Taylor counties?

A. Yes, sir.

[fol. 1203] Q. And then, in your exhibit you stated approximately 250,000,000 feet in those counties.

Exam. Hoy: Do you want to look at that exhibit?

A. I have never seen it. I have never testified to any of this stuff before. I have never seen what has gone before (Tes. p. 1308) here. Our West Florida tract is at—we are out of Taylor county; we own no timber in Taylor county any more, we have cut out and leased the land. We have a very small amount of timber in Lafayette county,

we will be out in a few months, out of Lafayette county and the remainder is in Dixie county. Now, on the St. Johns river we have timber—I say on the St. Johns river, I mean in that locality tributary to the river, we have timber in St. Johns county, in Clay county, in Putnam county, in Flagler county, in Orange county, in Volusia county, and in Lake county. Now, I may have missed a county but that is where the principal—there may be an odd piece some place in some other county over there. I don't know through which of those last mentioned counties the Atlantic Coast Line runs. We are not going to ship by the Coast Line; log it by water (Tes. p. 1309). I agree with Mr. F. H. Wilson that is is more economical to locate the mill in the timber. I said that the plant at Palatka stood on our books at approximately $800,000. About $300,000 of that is new construction after the fire. That was the cost, that has been depreciated since. This is the depreciated figure I am giving $800,000. We depreciated on the unit basis. We took the amount of timber we have against the cost (Tes. p. 1310) of the mill and we depreciated so that when our timber is cut out the mill is wiped out. I cannot tell you offhand what unit of depreciation we used. It is [fol. 1204] about $1.50.

We had a new—of course all of these figures are based on the taxes basis with the government and we had an entirely reset up of all our holdings with the government in I think it was in about 1926 or 1927, I should judge; and at that time I imagine that that basis was changed from any way we had done in the past, I could not tell you what we had done in the past but, we had a new set up since along about 1927 on the basis I am speaking of now. Well, we have had mills on the same site since 1889. We had fires. We had a fire in which the mill was completely destroyed in about 1909, and it was then rebuilt. It was enlarged along in '23 to take care of this west—after we entered this contract on the Atlantic Coast Line—prior to entering the contract but, when we decided to haul those logs over there it was enlarged, and its capacity practically doubled. Then, we had a fire as I stated in my testimony in 1929; at which time our saw mill and our power plant was destroyed and then the mill was rebuilt along the same lines as the portions that were destroyed. Of course all through there have been additions to planing mills, additional drying kilns, and all that going over a long period of years.

The last purchase of new timber we made was of the so-called Paul tract, and I think it was in 1912, I am not certain. You see, a lot of these questions you are asking me came before my time.

As to whether we meet any competition from the Georgia manufacturers, yes; but in the east or west, no practically we do not. In certain instances we do meet competition in the East but, there is not enough volume of cypress in Georgia to make any competition but occasionally we will [fol. 1205] run on to some cypress up there in the eastern market that is being sold at a low price, because the cypress manufacturing in Georgia is incidental to the other manufacturing—incidental to pine and hardwood. As to when did we meet up with any cypress in the East from Georgia, I could not tell you where or when. I just recollect that our Sales Department has mentioned competition and particularly (Tes. p. 1312) the case of the fellow that was selling some stuff cheap up in the metropolitan district in the last two years. Of my own knowledge I don't know. I get it from our Sales Department. As to the estimated logs per car, we made a test the other day of cypress logs that ran about 10.8 pounds to the foot of logs, and we are loading per car about 6,000 to 6,500 feet I judge. As to what it would be billed at in pounds, I don't know. I do not see the freight bills. Up there where we are working on timber it weighed 65,000 pounds at the present time and that weight is tested. I had a letter the other day from the Standard Weighing & Inspection Bureau saying that they tested a train load and it weighed 67,000 pounds, and they asked us to reduce the loadings which we did. And, one time when we first started out, we started at 58,000 pounds and it had gradually gotten up (Tes. p. 1313). As to how many feet per car of cypress lumber I said I think it runs between 6,000 and 6,500 feet to the car ordinarily. It depends on the class of timber that you are in and the loading and it varies at different times under different conditions. We have run as low as 4500 feet to the car. The present condition of the lumber market is not good. There is no demand for lumber. That has been true for cypress—it is most aggravated in 1931 but it has gradually been getting [fol. 1206] that way for some time, ever since we ran into this western competition. I should judge that was along in the early twenties. In 1928, 1929 and 1930 we had a pretty

good market in those years. Our particular company did not do well because of the fire in 1929 but, we could not keep our inventory balanced because we were not producing and we had to lose some business; in our case our mill would not be a criterion of it. I would say generally that business was pretty good. The peak year in our business was long in the early twenties (Tes. p. 1314). We are cutting at our mill per month now an average of about 3,100,000 feet. In 1930 we were averaging about that, and we cut about 90 per cent of the capacity—now no we average that when we cut, but we shut down for six weeks in 1930. The fire was in 1929. In 1929 we averaged about the same. The mill burned in January, and we did not start cutting until September. The average while we were operating I would say was approximately the same.

By Mr. Gwathmey:

Q. Mr. MacPherson, you said something about having read the record in this case and noticed the attitude of the Atlantic Coast Line as a defendant at the first hearing. You read about the contract which the Coast Line had with the Brooks-Scanlon Corporation didn't you.

A. No, I did not say that I had read the record. I said that I had read some—I had read the Examiner's report and have (Tes. p. 1315) some of the testimony, but I have never read the record through.

Q. I will ask you this. Did the Atlantic Coast Line ever have any contract with your company concerning either the establishment of maintenance of the so-called Cummer scale?

A. No, sir.

[fol. 1207] Redirect examination:

As to when we made a contract with the Wilson Lumber Company for the sale of our hardwoods, I think it was in 1927. I think we first started shipping to them about the time the contract was made, but I am not certain about that. I do not know when their mill was completed. We have practically completed our (Tes. p. 1316) shipments to the Wilson Lumber Company under that contract, as far as any timber we own they are completed now; we are doing a little logging for them. As to what was the length of haul from our shipping point to Perry where the

Wilson mill was located I don't know. The shipping point is Hines. Those cars all moved by the Atlantic Coast Line Railroad. We have about 50,000,000 feet left to transport by the Atlantic Coast Line Railroad and when that is cut we are no longer shipping logs by the Atlantic Coast Line Railroad. At the time we made the contract with the Wilson Lumber Company the Cummer scale of rates was effective on logs on the Atlantic Coast Line in 1927. I am president of the Southern Cypress Association (Tes. p. 1317).. We have mills in Louisiana, Florida, Georgia and South Carolina. Member mills in Georgia are Reynolds Brothers at Albany and Reynolds & Manley at Savannah, Georgia. If there are any other mills in Georgia cutting any appreciable amount of cypress lumber, manufacturing cypress lumber I would like to know it because we need membership. It is my business to know that in getting membership. Our fees for membership have been based on production, therefore when I speak of the amount of cypress manufactured by these two particular mills in Georgia I certainly do have some foundation for speaking. The Reynolds mill has been practically shut down since August.

[fol. 1208] Q. And, has been actually shut down since January. Mr. (Tes. p. 1318) MacPherson there is one thing which I think Mr. Langley was mistaken about. Is your train load movement of logs from Hines to Palatka a night time movement or a day time movement.

A. Night time movement. Night time back, night time in and night time back. It leaves Hines after the passenger train, they leave Hines as I understand it they have no other traffic on the division at that time except an occasional log train when they are hauling logs. That is what the engineer of the railroad tells me. I am not located over there but I think the passenger train goes by around early in the morning around one o'clock or midnight. The logs are placed in the yard at Palatka early in the morning around 7 or 8 o'clock. Switch in half of the train, take out that half at noon and switch in the other half at noon, and pull the other out, and it is about 4 o'clock in the afternoon, and that is all we see of it (Tes. p. 1319). As to the estimated weights, as a matter of fact that is an arrangement made through the Southern Weighing and Inspection Bureau, and we have agreed to protect the rail-

roads with respect to weights based upon certain periodical tests, and if the loading—if we are loading light they make tests and we adjust, and if we are loading heavy—it is something that you can not control exactly in loading logs; you have different sized, different quality of timber some more rot in it than other, and run along in strings we try to keep it as fair as we can. The Bureau represents the railroads in those matters.

Cross-examination:

The Case-Fowler Lumber Company is not a member of our cypress association. I did not mean to infer that all manufacturers of cypress are members of our association [fol. 1209] no; but I wish to give the impression that there is not much cypress produced up there by these mills. There is no mill as I stated producing cypress and nothing else but that (Tes. p. 1320) in Georgia. I did not testify that there is no cypress timber in Georgia. It would be a pretty broad statement because I imagine * * *

Exam. Hoy: Just say no, if there is a fact.

As to whether I am sure that this log train that leaves from Hines to Palatka for our company leaves Hines at night; it is the impression that I have. It comes in—I know we do not see the cars until 7 o'clock in the morning. I do not know what time they get into the yards but our logging superintendent tells me—I got it from him—that it left after the passenger train. I have not seen it leave. I have seen the cars arrive at our plant. I have not seen it arrive in the yards in Palatka, no (Tes. p. 1321). As to whether our company makes repairs to those cars as well as to the wheels and steel sides and things of that sort, I understand that we make all of the repairs except wheels and brasses. As to the steel sides I think we do that repair work. As to whether we are equipped for that, we have a machine shop and an expert machinist and all that at our plant.

Q. Well, a machine shop for one thing is not a machine shop for (Tes. p. 1322) everything.

A. Well, the information I have comes from our machine shop foreman who is in charge of that work and he tells me that they do all of the repairs except wheels and brasses. There is a difference between the cleanness with which

we log our timber under the Cummer scale and under the intrastate rate on cypress timber. When the high rate went into effect we had our woods foreman in the mill and [fol. 1210] watch the cutting, showed him logs that he was shipping in under the old rate, which we would have been able to get something out of, you see and he was instructed on the lower class of logs to leave them in the woods. And as working out the matter I asked him what percentage that would mean and he said about 10 per cent of the cypress was left in the woods. The new rate reduces the volume 10 per cent and that additional 10 per cent is left in the woods. (Tes. p. 1323). It would not be practicable to go back and relog that cypress timber. We are getting something out of it because we put ties crews on and cut our own ties now, but when that was in effect the high rate was in effect. It takes a pretty good tree to make a tie. So that there is a difference in the amount of volume hauled of about 10 per cent under the old rate and under the rate prescribed by the Interstate Commerce Commission. Since the Cummer scale is back in effect we are again logging our timber clean.

By Mr. Alston:

Q. Mr. MacPherson, you said 10 per cent in volume of your haulage. You seem to be hauling the same number of cars?

A. Yes, but we would leave that much more timber in the woods at the tail end, there would have been so many more cars, we would have been getting through that much quicker up there.

By Exam. Hoy:

Q. In feet of lumber or logs, when you say 10 per cent (Tes. p. 1324)?

A. Talking in feet of lumber.

By Mr. Alston:

Q. Well, what extent?

A. I mean feet of logs, not feet of lumber but feet of logs. As to how many cars of logs it takes to make a car of lumber, that is a pretty hard one to answer in cypress; the timber varies so as to defect and waste I could not give [fol. 1211] you an answer that would mean anything. As

to whether ordinarily in hardwoods it is supposed to b
three cars of logs to one car of lumber, I could not tell you
This depreciation of about $1.50 per thousand is based, no
on logs, but on our mill cut on a lumber scale, per thousand
feet of lumber.

F. B. LANGLEY, recalled as a witness, having been pre
viously sworn, testified as follows:

The log train that moves from Hines to Palatka leaves
Hines around 2 P. M. The passenger train, to which Mr
MacPherson has referred, passes Hines about 1:30. I do
not know the exact figure. Between 1:30 and 2 P. M. I
is about an eight hour run which would put them into
Palatka about 10 P. M. As to what repairs are made by the
Wilson Cypress Company on the cars, they take care of any
damage to equipment that occurs on their logging rail
road. That does not include wheels. The cars are metal
with steel sides. I am not in a position to say just what
they are equipped to do, but I do know that prior to April
1930 we took care of that repair work. I put it up to that
time because that was the time I left that division as super
intendent (Tes. p. 1326).

Exam. Hoy: It is understood that the Atlantic Coast
Line will furnish parties to this case the following:

For the movement of logs from Hines to Palatka for the
year 1930, showing the same out-of-pocket expenses which
are shown as out-of-pocket expenses on sheet 2 of Witness
Lamb's exhibit 84, those items are: 401—Trainmen; 392—
Train Enginemen; 394—Fuel for train locomotives; 397—
Water for train locomotives; 398—Lubricants for train
locomotives; 399—Other supplies for train locomotives;
400—Engine house expenses—train; 402—Train supplies
expenses. Show in addition the gross ton miles of serv-
[fol. 1212] ice involved in the movement of logs from Hines
to Palatka for that year. In addition show the same in
formation for out-of-pocket (Tes. p. 1327) expenses for the
empty and return movement and the gross ton miles of the
empty return movement.

It is understood that this information will be served on
the parties on or before July 1, 1931.

It is also understood that if the interveners or the State
of Florida intend to introduce any cost study at the further

hearing or any exhibits that are so intricate that it will take time to analyze before opposing parties are expected to cross examine, they will furnish copies of such exhibits to Mr. Gwathmey and Mr. Alston of the Atlantic Coast Line, and to Mr. Price representing the complainant within at least 10 days before the day of the further hearing.

Mr. Norman, I understand you want to call to the Commission's attention for action the motion that you made on the record requiring the defendant to furnish information showing the revenue and the number of cars of logs moved intrastate in Florida during the years 1926, 1927 and 1928.

Mr. Norman: I do (Tes. P. 1328).

[fol. 1213] Washington, D. C. July 20, 1931.

Exam. Hoy: We will start then with the cross-examination of Mr. Lamb, for the Atlantic Coast Line.

Mr. Adair: Before I embark upon the cross-examination, I should like to inquire whether our freinds, the adversary, have ready for us the data which Mr. Langley was to furnish us on or before the first of July. That has not yet been received. I may say I telegraphed Mr. Alston with respect to it Tuesday or Wednesday of last week and I have had no reply.

Mr. Gwathmey: Frankly, I overlooked the fact myself that this data was to be furnished on or before the first of July (Tes. p. 1330). Mr. Lamb is prepared to deal with that matter and has an exhibit here which will show the compilation that we are ready to submit. If you think it desirable to clear the matter up at this time, we will be prepared to offer that now.

Mr. Adair: We should like to see it as soon as possible. We apprehended we were to have it by an earlier date so we could study it.

Examiner Hoy: Are you going to offer that as an exhibit?

Mr. Gwathmey: Yes. Mr. Examiner, Mr. Lamb has compiled and is prepared to offer as an exhibit a statement showing the consist of log trains operating between Hines and Palatka, together with various items of out-of-pocket expense as enumerated at the last hearing, covering the month of November, 1930. The request which was made by

Mr. Gutheim was that this data be compiled and submitted for each month separately for 1930. We have found that [fol. 1214] the number of cars of logs handled during the months of November in this movement represents approximately the movement for each month in the year. We have available the information which will show the number of cars handled in each month and such information will substantiate that statement. In the compilation of this data it was found that in order to work up a separate exhibit for each month it would be necessary to put at least two men from the car accountant's office on the job and keep them there for quite a considerable length of time, so that we have decided (Tes. p. 1331) to offer at this hearing this statement which we believe to be thoroughly representative and ask if the gentlemen on the other side, after examining it, will be willing to accept it without insisting upon a separate statement for each month. If they feel they must have such separate statement we will, of course, work it up and submit it, but I very much hope that, after examining the exhibit for the month of November, it will be considered sufficient for that purpose. I will be glad to give you copies of this right now, Mr. Adair.

Examiner Hoy: On page 1137 of the record the question was: "Mr. Langeley, is it possible for you to get up within a short time the cost of your wages for your train crew and the amount of fuel that is used by you on this trip for a period of a month. Those figures are in your office, are they not" and so forth. I just call attention to that.

Mr. Adair: I will say first we shall be very happy to examine this statement for a single month and if we think it fairly shows the conditions or can be explained why we [fol. 1215] will not insist of course upon any more work than is necessary. If we may do so we will examine it and try to announce at the noon recess what our views are upon the subject.

Examiner Hoy: I just read that, Mr. Adair, to call attention to the fact that apparently request, as shown by the record, was for such information for a period of one month.

Mr. Adair: I may say, Mr. Examiner, the request as finally made, shown on pages 1326, 1327 and 1328, was for the period (1332) of a year and I understood to that our friends acquiesced.

Mr. Gwathmey: That is my recollection.

FRED PETTIJOHN, recalled as a witness on behalf of intervenors:

This map is a sectional map of Florida, issued by the Department of Agriculture and is the official map issued by the United States, both as to counties and as to railroads.

Exam. Hoy: It will be accepted as Exhibit No. 100.

GEORGE W. LAMB was recalled as a witness on behalf of the defendants.

Cross-examination.

By Mr. Gutheim:

Q. Mr. Lamb, I think we were agreed at Jacksonville that 1926 was the top of the Florida boom, is that correct?

A. I do not know that any reference was made to that fact. 1926 was a large year in the Florida operations (Tes. 1335). I do not believe that it was the largest year from the standpoint of gross revenues up to that time on the Coast Line; probably 1925, as far as I recall. Wait a minute. I may be able to give you that information. I [fol. 1216] think that is a correct statement. 1926 was the highest with respect to gross. As to whether, incident to that boom, there was a considerable expansion of transportation facilities in Florida, I find that in 1926 there were about 40 miles of road added to the Atlantic Coast Line, in 1926, more than in 1925. As to whether there was a general expansion of existing facilities, to be perfectly frank I cannot answer that definitely. As you recall I came with the Coast Line on June 1, 1930, and I am not fully familiar with all of the various improvements that were made in the past years. I do know there were certain additions made to the lines in Florida, but as to just the extent, I am unable to say.

Q. Well, is it a fact, Mr. Lamb, that capital improvements, as a rule, are quite extensive so far as the time of the improvement (Tes. p. 1336) is concerned and cannot be chopped off over night?

A. Well, naturally, if a certain amount of expenditure has been made on an improvement, it is necessary to complete that improvement when the larger proportion of the authorized expenditure has been made. In other words it would be unwise to spend a million dollars on a million and a half dollar project and leave it in an uncompleted condition. The probability is that wise judgment would cause the additional half million dollars to be expended to complete the facility.

Q. Now, at page 1068 of the transcript, Mr. Lamb, you speak of certain assignments of accounts being made on the respective equipment mileage percentages. That is at lines 2 and 3. Should that be equipment and mileage percentages?

[fol. 1217] A. No, sir. The sentence beginning at the bottom of page 1067 reads: "The tentative valuation of equipment, as found by the Commission, was brought up to 1926 through actual expenditures for additions and betterments less retirements and for each year to 1930 and assigned to Florida on a respective equipment mileage percentage." Now, that has reference to the locomotive mileages for value of locomotives and freight cars, mileages for the value of freight equipment and passenger cars and mileages for the value of passenger equipment. I might say that that basis was adopted in accordance with the letter from (Tes. p. 1337) the Florida Railroad Commission, dated January 26, 1918, addressed to H. C. Prince, Comptroller of the Atlantic Coast Line Railroad, in which he said: "Suggest that you use equipment mileage basis for your equipment cost." That was signed by G. H. Eng, statistician of the Railroad Commission in Florida.

Q. Will you give us the termini of the Atlantic Coast Line mileage in Florida that is not included within your third division and would you do it by reference to this map of the State that has just been introduced?

Mr. Gwathmey: You mean the northern termini?

Mr. Gutheim: No, I mean the termini in the State. That takes in the number of miles that are not included on the third division.

The Witness: Our report to the Florida Commission does not show separately the details of the mileage by termini. I will endeavor to mark it off on the map from another record. The third division operates all of the lines south of

[fol. 1218] Jacksonville, including the line running a little bit north of Jacksonville in a southwesterly direction, known as the St. Petersburg line. I am afraid I cannot give you the detailed mileage—that you are requesting there, because I do not happen to have the detail in our report. I will be very glad to furnish it for you, if you will let me know exactly what you want. (Tes. p. 1338.)

Q. Tell us at this time what the termini are between which the Atlantic Coast Line has mileage in Florida that is not in your third division?

A. I can take it from the official time table, give you the mileage of the third division, but it will not give you as between cities there. I cannot give you that. I will be very glad to get the information for you and furnish it for the record.

Q. Never mind the mileage. Give us the termini. Start in at Jacksonville and tell us whether this line runs northwest from Jacksonville is in your third division or not? Is the line running northwest from Jacksonville to the point marked Folkston in your third division?

A. No, sir.

Q. Now, travel down this line that runs southwest from Jacksonville until you find the next branch of the Coast Line that goes in a general northerly direction and tell us whether that is in your third division.

(Discussion off the record.)

Mr. Gutheim: Well, do you agree, Mr. Lamb, with what Mr. Langley stated on page 1133 of the record. to the gen-[fol. 1219] eral (Tes. p. 1339) effect that the line from Jacksonville going northwest through Folkston and the lines west and north of High Springs are not in the third division?

A. I assume that Mr. Langley is more familiar with the termini of the third division than I am, and without having an opportunity to definitely check the mileage, I would be compelled to agree that his statement is perhaps correct.

Mr. Gwathmey: If you will permit me to say say, Mr. Gutheim, I do not think your statement correctly set forth what Mr. Langley said.

Mr. Gutheim: Well, how would you state it?

Mr. Gwathmey: I would state it the way he stated it in the record. Do you want me to read it?

Mr. Gutheim: Yes.

Examiner Hoy: Wait a minute.

Mr. Gutheim: What I want to get definitely set with Mr. Lamb is that the figures he has given on which he has proceeded to make his averages, as the figures for the third division include everything in the State of Florida except the line Jacksonville and northwest to Folkston and the line from High Springs west and north to Lake City and beyond Dupont and north through Live Oak. Do you agree to that?

The Witness: The figures I worked on were the third divisions and embraced all of the mileages operated as the third division only.

Mr. Gwathmey: I would like to direct attention here to Mr. (Tes. p. 1340) Langley's description of the third division as shown on page 1102.

[fol. 1220] Examiner Hoy: It looks to me like Mr. Langley who testified he was superintendent of transportation of the third division, ought to know what comprises his own division. He described it fully on the record and said certain lines were not included in the third division. Now, Mr. Lamb said he took the costs of all the lines in the third division. So he must have taken the costs of the lines in the third division as described by Mr. Langley, I should say.

Mr. Pettijohn: He says "north of High Springs." Now, whether that includes the Lake City branch or excludes it, we do not know. It is north.

Mr. Gwathmey: What Mr. Langley said was this: "We have a line from High Springs up to the State line, which is up north of Live Oak." If you locate Live Oak on the map you can clearly identify that line. He then stated that the balance of the mileage in the State, exclusive of this part over here near Jacksonville, was in the third division; therefore, the logical assumption from Mr. Langley's testimony is that the line running from Lake City Junction up to Lake City is in the third division. Whether it is or not I do not know.

Mr. Pettijohn: That is just the point. We have Mr. Langley's statement as to one thing, and when Mr. Lamb makes his statement on page 1102 he says the third division is from Jacksonville south, from High Springs south and from Fincher (Tes. p. 1341) to Thomasville.

Mr. Gwathmey: We will send a telegram to ascertain if the Lake City branch is in the third division.

[fol. 1221] Mr. Pettijohn: Will you find out the total mileage of road operated in Florida not included in the third division? That is really what we want.

Mr. Gutheim: We want the termini between which there is mileage of the Coast Line in Florida that is not in the third division, as Mr. Lamb has used that term.

Mr. Gwathmey: In order to figure the exact mileage to and from the state line, it will be necessary to complete the thing and give it to you absolutely accurately. We will undertake to give you that information before the close of the hearing today.

By Mr. Gutheim:

Q. Mr. Lamb, can you tell us briefly the principal classes of freight traffic that the Coast Line handles on the third division.

A. Well, there is a considerable volume of fruits and vegetables. I believe there is phosphate rock.

Mr. Gwathmey: Mr. Gutheim, would you object to asking that (Tes. p. 1342) question of Mr. Perrin? Mr. Lamb is not a traffic officer of the Coast Line.

Mr. Gutheim: Mr. Lamb made up the cost statistics on the basis of the entire traffic on this division indiscriminately, and what I want to find out is whether in making up that cost he knew what the traffic was.

The Witness: For example, in the year 1930, as shown by our report to the Florida Railroad Commission, at page 909, we handled 1,077,516 tons of products, of agriculture, 70,812 tons of animals and products 3,792,048 tons of products of mines. Let me answer this question first; then I will [fol. 1222] qualify it. 1,158,650 tons products of forest: 1,395,416 tons of manufacturers and miscellaneous, with 165,616 tons of l. c. l. freight, making a grand total of 7,660,058 tons. As practically all of the third division is operated in Florida and constitutes the majority of the mileage in Florida I should say that that is fairly representative of the commodities handled on the third division. That fruit and vegetable traffic is largely interstate in character. I should say very largely, the bulk of it moving to the north and west outside of Florida. (Tes. p. 1343) It receives on

this third-division one of the terminal services incident to the interstate movement.

Q. When that fruit and vegetable traffic moves as you say north and west, does it move for the most part through Jacksonville?

Mr. Gwathmey: Mr. Examiner, I submit this witness is not qualified to answer that question. He is the accountant on the Atlantic Coast Line Railroad.

Examiner Hoy: If he does not know he can say so.

The Witness: From my personal knowledge of the conditions on the Coast Line I do not believe I am qualified to definitely answer that question.

Mr. Gwathmey: We will be glad to give the information through another witness, if it is necessary.

By Mr. Gutheim:

Q. Now, is it correct to say that in the cost statistics that you have compiled and made of record here, beginning with your Exhibit No. 84, you reach finally a unit cost for all traffic?

[fol. 1223] A. I so stated in my direct testimony that that represented the average cost. That necessarily would include our cost of handling perishable traffic, necessarily. As to whether that perishable freight traffic is a traffic the cost of handling which is higher than the average, that is a transportation feature which I think a transportation witness should answer. I do not know. I have never made any investigation on the ground, or in the field, with respect to the handling of this perishable freight traffic. I have not made any investigation whatever specifically of the cost of handling this perishable traffic by freight; I made some investigations with respect to handling strawberries by express. As to whether I know Mr. George H. Parker, a railroad accounting man and cost statistician of Washington, D. C., I do not.

Q. Are you aware that in a proceeding before this Commission entitled Docket No. 16939, Railroad Commissioners of the State of Florida versus the Aberdeen and Rock Fish Railroad Company, et al., Mr. Parker appeared as a witness on (Tes. p. 1345) behalf of the Atlantic Coast Line, the Seaboard Air Line and the Florida East Cast?

A. I do not.

Mr. Gwathmey: We will admit it.

By Mr. Gutheim:

Q. I call your attention to the fact that as shown at page 1617 of that transcript and with respect to the transportation of perishable freight in Florida, Mr. Parker stated in respect to the scope of his work as follows: "The study embraced an analysis of train sheets showing the train movements, wheel reports, yard reports, supplemented by explanations of operating officers familiar with the practial con- [fol. 1224] ditions, as well as such data regarding operating costs as are obtainable in the general offices of the company and the results of the study are embraced in the various tables and explanatory matter which appear in the exhibits which I shall explain." He also stated at page 1618 when asked approximately how long he had been working on the matter, as follows: "I started in, as I recall it, about the 10th or 12th of September, and I have been engaged practically constantly on it ever since," his testimony being given the following April. Have you ever made any so extensive investigation of the transportation of perishables in the third division?

A. I have not.

Q. Mr. Parker, after stating the scope and the time of his (Tes. p. 1346) investigation, summarized his conclusions, beginning at page 1618, as follows——

Examiner Hoy: Just a second. Mr. Lamb says he has not made any investigation of the fruit rates. Just what is the object of this?

Mr. Gutheim: The object is to find out just what Mr. Lamb knows about the comparative costs of this particular traffic, which, he says, is included in the cost that he has made for traffic as a whole.

Examiner Hoy: I do not see how he can know much when he has made no investigation as to the fruit traffic. He says he has made no investigation except as to express rates.

Mr. Gutheim: Well, he has presented a cost study here which he says is indicative of the cost of transportation generally on the third division and if that cost is merely a cost of all traffic, what I am trying to find out is whether [fol. 1225] as to cost of all traffic it is indicative at all of the cost of log traffic. Included in that cost of all traffic is the cost of perishables.

Examiner Hoy: That is true. He admitted that.

Mr. Gutheim: I am trying to find out what he knows of the cost of handling perishables.

Examiner Hoy: I do not think you can find out what he knows by asking him a long involved question as to what Mr. Parker testified to in another proceeding, then asking him if he agrees to it, when he has made no investigation. He will undoubtedly (Tes. p. 1347) say he does not know. I do not want the record burdened with that. I think he has shown how he has figured his. If you want to show something else, of course, that is your privilege.

By Mr. Gutheim.

Q. Have you, Mr. Lamb, made any attempt whatever in your various exhibits and in your testimony in this proceeding to show any figure representative of the cost of transporting logs other than a figure representative of the cost of transporting all traffic?

A. I have presented figures——

Q. Now, will you answer the question?

A. Let me answer it in my own way.

Q. Will you answer it yes or no; then make your explanation?

A. No, sir.

Mr. Gutheim: Now, Mr. Examiner, I submit the question can be answered yes or no, or it should be.

Examiner Hoy: Well, let the witness answer the question. We do not want any long involved answer as to an [fol. 1226] explanation of what you have done but we do want an answer to the question in your own language.

The Witness: All right. I have stated on my exhibits beginning with No. 86 and running through to 99, two sets of figures. Column A shows what I term haulage costs, which are away below the costs of actually handling logs, in my opinion. In column B I have shown all expenses which would (Tes. p. 1348) embrace the cost of handling your perishables and I have stated that in my opinion the cost of handling logs is somewhere between the figures shown in Column A and in column B.

[fol. 1227] As to whether the figure in column A on Exhibit 86 represents the cost of transporting logs, no, I think it understates the cost of transporting logs. It does represent the out-of-pocket cost of transporting all traffic.

The figure in column B does not represent the cost of transporting logs; as I have previously testified, I think the cost of handling the logs is somewhere between the figure shown in column A and in column B. The figures shown in column B show the average cost of transporting all traffic, as I testified in my original testimony, column B, handling all commodities.

Mr. Gutheim: Now, you stated that in your opinion the cost of transporting logs lay somewhere between the figures shown in column A and column B. What leads you to that conclusion? (Tes. p. 1349).

A. Well in column A I have eliminated some nine million dollars of expenses embracing all yard items and other items, some of which expenses, in my opinion, are properly attributable to the handling of logs; and, as I stated in my direct testimony, I think it is impossible to determine with absolute accuracy the cost of handling any one commodity; but I have shown for the information of the Commission the figures on two bases in column A with the elimination of all of the yard expenses and other expenses, the cost which I believe understates the cost of handling logs. My experience in studying accounts I do not believe it would be proper to include all of the expenses shown in column B; therefore, as I have previously stated, the cost lies somewhere between column A and column B.

[fol. 1228] Q. Is there anything other than your experience in studying accounts that leads you to that conclusion?

A. The figures would so indicate, in my opinion, that the costs in column A are too low and the costs in column B are too high and that the cost lies somewhere between the two.

Q. Is there anything other than that general study of accounts and your observation of the figures in column A and column B that leads you to the conclusion that the cost of transporting logs lies somewhere between the limits of two columns of (Tes. p. 1350) figures?

A. I base my statement on the figures I have developed and my general knowledge of cost accounting.

Q. Now, on this exhibit 84, as I understand your method of computation, you have taken out the total of yard accounts as among the items eliminated in reaching your conclusions. Now, do you know whether it is possible to segregate yard accounts as between road expense as distinguished from terminal expense?

A. Our reports to the Commission prescribe that and we make that separation in accordance with the instructions of the Interstate Commerce Commission as between freight and passenger.

Q. Well, once you get the freight proportion of yard accounts, can you then segregate that proportion between road expense and terminal expense?

A. Well, the separation as to yard account automatically separates your road expense because yard expenses are not road expenses.

Q. Is it not the fact, nevertheless, it is possible to make a [fol. 1229] separation of these yard expenses, between the terminal expenses and the road expenses?

A. I do not clearly understand your question. The yard expenses are set up to distinguish them from road expenses in your classification of accounts. You have the expenses set up separately for yard and road. Take, for example, Account 202 (Tes. p. 1351). We set up roadway, maintenance, yard, and subdivide roadway maintenance and "other", which is your road account.

Q. Do you know Mr. D. McCaig?

A. Yes, sir; he happens to be the Comptroller of the Atlantic Coast Line Railroad, my superior officer.

Q. In Docket No. 17936, in re, refrigeration charges on fruits and vegetables, berries and melons, from the south, beginning at page 1446, Mr. McCraig criticised a formula used by Witness Price and asked to state in detail what corrections should be made therein in order to more clearly reflect the actual cost of handling ice in bunkers of refrigerator cars. He said, among other things, at page 1450: "The formula ignores the fact that a substantial proportion of the expense of certain yards is chargeable to line operations". Do you agree to the fact that a substantial proportion of the expenses of certain yards is charged to line operations?

A. I would like to read his testimony to see what he has testified to. There may be some explanation. What Mr. McCaig testified to was in connection with bunker ice and he shows in connection with refrigeration that there were certain switching hours chargeable to classification of interchange service. By that was meant cars that are going [fol. 1230] through terminals, from one connection to another, which is treated in Mr. McCaig's opinion as an inter-

change service chargeable to line haul (Tes. p. 1352). However, I have eliminated all of that in my calculations and that is another reason why the figures shown in column A in my exhibit are understood.

Mr. Pettijohn: Are you sure, Mr. Lamb, that Mr. McCaig in arriving at his testimony confined it to the interchange of switching crews, or, did he also include therein classification of cars in all yards?

Mr. Gwathmey: Before the witness is asked to answer that question, I submit in all fairness, that he should at least be given an opportunity to read Mr. McCaig's testimony in full to see just what the subject was and what was said.

Examiner Hoy: I think he might answer the original question as to whether he agrees with Mr. McCaig or not?

The Witness: The classification of the cars in breaking up a train and making it into another train going to a connection is part of that service; but in my figures in an effort to be absolutely fair I showed the minimum costs. I have excluded every bit of that expense, which, according to Mr. McCraig's testimony, should be included as a part of the line expense. I have included it under column A. Not under column B (Tes. p. 1353).

Q. Why did you not make an attempt to divide the yard expense in the manner in which Mr. McCaig indicated it should be done?

A. For two reasons: One the limited time I had in which to prepare these exhibits; and, second, I felt that by adopt-[fol. 1231] ing the method which I did there could be no criticism of the costs shown in column A; that unquestionably they were too low.

Q. Now, with respect to the question of this perishable traffic, I find that Mr. McCaig, in the same hearing in 17936 at transcript page 4836 stated: "It will be noted that in the opinion of this authority the tonnage that can be moved at a speed of 20 miles an hour is about one-third less than traffic scheduled at about 12 miles an hour".

At transcript, page 4839 he referred to an authority from the American Railway Engineers Association in support: "Of my statement that the tonnage handled in expedited freight service is transported at a greater cost than the average cost of handling all traffic".

Mr. Gwathmey: I do not want to interrupt this cross-examination, but surely what counsel is doing now is not proper cross-examination of this witness. If Mr. Gutheim desires to put into this record certain testimony that may have been given by Mr. McCaig in another case why there will be an opportunity for him to do it, but this Lamb has distinctly stated he has made no study of the separate costs of (Tes. p. 1354) handling perishables.

Examiner Hoy: Let him complete his question first. As I understand it, he is trying to test out his ability to make a proper cost study.

Mr. Gwathmey: Oh, no, not at all.

Examiner Hoy: It goes to qualifications more than anything else, or to his theory.

Mr. Gwathmey: Not at all. I submit this goes to the [fol. 1232] question that arose awhile ago as to the relative cost of handling logs as compared with other traffic and the whole purpose of this is to read into this record testimony given upon that subject by another witness in another case.

Examiner Hoy: He has not read anything in yet except in the form of questions. That is not testimony. He has asked some questions based upon it. He has not read any testimony in there.

Mr. Gwathmey: He just read a moment ago from Mr. McCaig's testimony.

Examiner Hoy: He reads that. It is really a part of his question. It is not completed yet.

Mr. Gwathmey: But I object to counsel reading into this record statements made by other witnesses in other cases.

Examiner Hoy: He is not doing that. He has read some statements as part of his question. What he has read into the record is not in evidence in this record. They are all in the form of questions so far (Tes. p. 1355).

Mr. Gwathmey: The effort is to get it indirectly.

Examiner Hoy: It is preliminary to a question. I presume he is going to ask him if he agrees with Mr. McCaig's theory.

Mr. Gwathmey: If he does, I submit that this witness has testified plainly that he has made no such study.

Examiner Hoy: We will come to that when the question is completed. Let him finish the question; then make your objection.

By Mr. Gutheim:

Q. At transcript, page 5478 Mr. McCaig was queried and answered as follows: "What condition would make it [fol. 1233] more expensive per gross ton mile on the Atlantic Coast Line to handle perishables than to handle all freight?

"A. The reason you stated, the necessity for speed.

"Q. And it is entirely a matter of speed?

"A. My theory was based upon that fact."

At page 5506 Mr. McCaig was queried and answered as follows: "Mr. McCaig, does the handling of the perishables by reason of the necessity for speed have the effect of reducing the economies which you might effect as to the handling of the other traffic not perishables?

"A. That is true."

I ask you, Mr. Lamb, if you disagree in any respect with the answers given by Mr. McCaig, your superior, to those questions, and whether you adopt his answers (Tes. p. 1356)?

Mr. Gwathmey: I object to the question on the ground it is not proper cross-examination.

Examiner Hoy: That is not proper cross-examination, in my estimation and the objection will be sustained.

By Mr. Gutheim:

Q. Let me ask you, Mr. Lamb——

Mr. Gwathmey: I move that the question be stricken from the record as an indirect effort to get into this record statements of another witness in another case which have no relevancy here.

Mr. Gutheim: I shall use the same basis for the next question, Mr. Examiner.

Examiner Hoy: The question will stay on the record. It is not proper cross-examination and the witness — not answer it.

[fol. 1234] By Mr. Gutheim:

Q. Mr. Lamb, I asked you whether you, as was Mr. McCaig, qualified to testify as did he with respect to the effect of speed and the necessity of speed upon the han-

dling of perishable traffic as distinguished from dead freight?

Examiner Hoy: That is improper cross-examination. He has not testified anything as to a cost study based upon perishable fruit.

Mr. Gutheim: I submit, Mr. Examiner, that is just testing this witness' qualifications. We are entitled to know whether (Tes. p. 1357) he has any qualifications to testify with respect to the effect of speed.

Examiner Hoy: He has not testified to that. That is all based upon perishable fruit.

Mr. Gutheim: I am asking him because I want to know what his qualifications are and whether he knows.

Examiner Hoy: Qualify him as to the study he has made; examine him as to the qualifications with reference to the study he has made. He has made no study based upon the cost of perishable freight.

Mr. Norman: He presented a study based upon all traffic, which includes perishable freight. The question is——

Mr. Gutheim: Does he know anything about the difference between perishable and dead freight? What does he know?

Mr. Gwathmey: If I am not very much mistaken, Mr. Lamb stated sometime ago that he has not undertaken to make a separate study of the cost of handling perishable freight as distinguished from other traffic.

Examiner Hoy: That is true.

[fol. 1235] Mr. Gutheim: But he has also made a cost study of the transportation of all freight as indicative of the cost of transportation of logs. What we want to know, is to what extent he is qualified to say that he can deduce anything about the transportation of logs. If he does not know anything about the difference between handling perishable and unperishable (Tes. p. 1358) freight he is not much qualified and I submit we are entitled to know.

Examiner Hoy: My ruling stands. Go ahead with the cross-examination.

Mr. Gutheim: May we have an exception to that.

Examiner Hoy: Certainly.

Mr. Gutheim: Now, Mr. Examiner, we desire to reserve the right to submit, and will submit, upon rebuttal, or offer upon rebuttal, the testimony of George H. Parker, a witness for the Atlantic Coast Line in No. 16939, Railroad Commissioners of the State of Florida vs. the Aberdeen

Rock Fish Railroad Company, et al. We will put in all of Mr. Parker's testimony.

A. On my exhibit No. 79 as to what basis item 2 was assigned to Florida operations; if you read the note you will find that that investment used on line 2 of this exhibit is based upon the tentative valuation (Tes. 1359). Item No. 3 is on a track mileage basis. Item 5 is assigned to Florida operations on basis of mileage percentage, track mileage percentage. Item 3 is Materials and Supplies and item 5 is Cash. May I correct that statement as to miles operated. My answer should be in both instances miles of road owned in getting at the investment. Item 25, uncollectible railway revenue is assigned to Florida operations [fol. 1236] directly. Item 27, hire of equipment, was assigned to the State (Tes. 1360) on the basis of locomotive miles made in each state. Item 28, joint facility rents was assigned to Florida operations on the basis of location of the facility. As to item 3, assigned on the basis of the miles of road owned the percentages as used in both cases were the percentage of operated mileage in Florida to the system mileage, in other words, miles of road operated; by so doing we assigned the same amount of cash and materials and supplies for a single track mile of road as we do for a double track mile of road.

Q. In determining the value upon which the carrier is entitled to earn a return, the Interstate Commerce Commission goes through a rather involved calculation in arriving at the amount of cash and material and supplies to be allowed and does not accept balances in Accounts 716 and 708, do they?

A. We have made exceptions in the tentative valuation to the amount of cash assigned by the valuation department. These figures represent the proportion of the total cash that we have available for our working funds.

Q. Well, will you answer the question whether the Interstate Commerce Commission in determining value uses the balances (Tes. p. 1361) reported by the carrier in materials and supplies and the cash account and goes through a rather involved formula?

A. They do go through a rather extended formula, but, as stated before, we have taken exceptions to the apportionment made on that basis.

[fol. 1237] By Mr. Pettijohn:

Q. Mr. Lamb, if, in the year 1926, the year in which the carrier had its heaviest earnings and heaviest expenses, the Atlantic Coast Line Railroad was able to operate with $6,700,000 in round figures for materials and supplies and cash, why was it necessary in 1930, a year of depression, to have $8,100,000?

A. It was necessary because we reduced our material and supplies to meet the requirements of the operations in 1930 and we had that much cash, as shown for 1930.

Q. Now, the same amount of material and supplies upon a dollar value in 1930 would represent a greater amount of material and supplies than in 1926, would it not?

A. You mean the market price of material in 1930 as compared with the market price of material in 1926?

Q. Yes.

A. It might. It would depend upon the price of the material and I am not sure as to the cost of the various materials.

Q. Well, the purpose of allowing cash and material and supplies by the Interstate Commerce Commission in valuation is to meet (Tes. p. 1362) the expenses primarily, is it not?

A. To meet the cash requirements of a carrier.

Q. Prior to the receipt of the revenue or the collection of the revenue?

A. That is one of the elements.

Q. Let me ask you with respect to item No. 25. I understood you in answer to Mr. Turnbull to say that uncol-[fol. 1238] lectible railway revenue was a direct assignment to the State of Florida?

A. In reading from my memorandum I got one line below. Let me correct my answer and read as follows: Uncollectible railway revenues shown as item 25 is assigned to States on the basis of revenue accruing to said State. In other words, on a revenue basis, upon the same revenue basis that would be used, or, as was used, in assigning the revenue in the first place, which would be on a mileage basis of the individual shipment. Under hire of equipment, that was assigned on the locomotive mile basis. The biggest item in the hire of equipment is hire of freight train cars.

Q. Do you know the relative percentage of locomotive miles (Tes. p. 1363) in Florida to the system as compared to—— with freight train car miles in Florida to the system?

A. Your locomotive miles freight, Florida, percentage to the system is approximately 29 per cent, and your car miles, approximately 22 per cent; but in distributing the values of the freight equipment it is also a fact that the car miles made in Florida or in interstate are the car miles made up of not only the cars owned by the Atlantic Coast Line but all the cars operated or leased from other carriers or operated or owned by other carriers; therefore, the locomotive miles more nearly reflect the use of the car equipment assignable to Florida. The net hire of equipment is about $25,000 and with the hire of locomotives representing an expense of about $25,000 for locomotives I assigned in the year 1926 $659,000 hire of equipment to the State of Florida. We used the locomotive mileage as our basis for assignment because it more nearly represents the use of the equipment in these respective States.

[fol. 1239] I said that the net charge in the hire of equipment for locomotives was $25,000 (Tes. p. 1364). As to whether the balance of the expenses is for hire of cars, hire of freight cars was a credit balance and the hire of passenger cars was a debit balance and we used the year 1929.

Q. Then the only equipment that you could have used in connection with the transportation of logs for which you paid any hire would be steam locomotives, would it not?

A. Dealing with the figures of the system as a whole.

Q. Now, having a net charge of $25,000 in connection with the hire of locomotives, you have assigned to the Florida operations alone $50,630 in 1929 or over twice the system expense for hire of locomotives?

A. Bear in mind that Exhibit 78 covers all operations, passenger and freight and the hire of equipment in Florida and renting of passenger train cars, being the greatest amount or the greatest charge in the net hire of equipment, I think it assigns a very reasonably proportion of that debit.

Q. Would you also say that the joint facilities rents in the State of Florida was also largely passenger?

A. Joint facility rents were assigned to the State on the basis of the location of the facility. We have a number of

facilities that are passenger and a number that are freight. Some that are joint in the State of Florida.

Q. Is not the big item of joint facility rents in the State (Tes. p. 1365) of Florida the Jacksonville Terminal Com- [fol. 1240] pany and the Tampa Union Depot Company?

A. They are a big item of expense in Florida.

Q. Both passenger facilities?

A. No, the Jacksonville Terminals is also used to handle freight cars. There is a certain expense attached to the handling of freight cars in Jacksonville, on interchange. Jacksonville Terminal is in no wise assignable or apportioned to the movement alone, and in the case of the logs I have eliminated Jacksonville and have included no part of the Jacksonville rent, so far as the cost of logs is concerned. As to whether I have ever, in any other proceeding, undertaken to show the cost of handling any given commodity, I recall in my experience of some 30 years or more one time working up the cost of handling coal on the Middlesburg Division of the L. & N. Railroad. I thought it was a success.

By Mr. Norman:

Q. Well, if you can do it many years ago, if you have learned anything in the last 30 years, you ought to be able to do it now (Tes. p. 1366).

A. It depends on the conditions. It so happened on the Kentucky division of the L. & N. over 85 per cent of the entire traffic handled was coal; therefore, I was able to run down some 685 trains and assign the expenses to those trains and we considered that as the bulk of the traffic was coal it was fairly representative of the cost. That is the only case in my experience where I have estimated the cost of any one commodity. I do not know what percentage of the traffic from Hines to Palatka is logs. As to whether I [fol. 1241] have made any investigation to determine whether the conditions were such as to afford an opportunity to make a real study to show what it really costs us to handle the traffic, I have furnished you a statement to show the out-of-pocket cost of handling the traffic from Hines to Palatka. You have that if you want to use it.

Q. I want, if it is possible to get it, a study showing what it costs to handle logs, not out-of-pocket cost, the same kind of a study you made. My recollection is you made

one in the Slivers Case in Kentucky in connection with the handling of grain (Tes. p. 1367).

A. That was entirely different conditions than existing now. As I testified in the beginning, from my years of experience in cost accounting, I do not believe that the cost of handling any one commodity can be accurately ascertained and on the lines operating there is not only this log service but they handle all other traffic between Hines and Palatka. There are other commodities mixed in. It does not represent 85 per cent or 100 per cent of the traffic; therefore, I would not undertake to find the cost of handling the one traffic except on the basis I have used here, which, in my opinion, understate in column A and perhaps overstates it in column B. As to whether I think I can get anything actually through allocation, I think in the plan I have used I have a very reasonable figure from which the Commission can determine whether or not the traffic is remunerative. I cannot give you the exact cost of handling the logs, but it is somewhere between columns A and B. That allows an ample margin. Column A is materially understated and column B is perhaps a little [fol. 1242] bit overstated. I have arrived at those figures by the use of system averages (Tes. p. 1368). As to what percentage of transportation cost is out-of-pocket cost I would have to work that up for you, Mr. Norman. You mean of the transportation block of expenses. The out-of-pocket expenses of the total transportation expenses are 23.5 per cent, and of the haulage about 34 per cent. That is shown on my exhibit 86 and so forth. That is for the system as a whole. It is my judgment that it is impossible for the Atlantic Coast Line Railroad to present to this Commission figures which will be actual as to the cost of handling these logs. I so testify, with absolute accuracy.

By Mr. Pettijohn:

Q. You would not agree, will you, that the separation of operating expenses between freight and passenger, according to the rules prescribed by the Interstate Commerce Commission, was an actual separation, would you?

A. No; but the Commission has prescribed a formula under which (Tes. p. 1369) we make the separation and I have used the Commission's separation in my calculation.

By Mr. Gutheim:

Q. You were asked this morning about the proportion of perishable freight and vegetable traffic on the third division and I believe you gave in reply to the question some figures on tonnage of agricultural products. Can you tell us what the perishable fruit and vegetable traffic on the third division is with respect to the total perishable traffic on the third division?

A. No, sir. I haven't that information. I have never [fol. 1243] made any investigation into that at all. In my previous statement I gave the total amount of traffic in the State of Florida and as the preponderance of the mileage in Florida is on the third division I made the statement that the figures quoted by me were fairly (Tes. p. 1371) representative of the third division's commodities handled. That is agricultural commodities handled. I have no information whatever as to the perishable fruit and vegetable traffic handled.

Fred Pettijohn, a witness previously sworn and examined, was recalled and testified as follows:

Direct examination:

Mr. Turnbull: Mr. Examiner, at the Jacksonville hearing of this case I read into the record a statement of Mr. Matthews, Chairman of the Florida Railroad Company setting forth the position of the Railroad Commission in this matter, that it was their position that the Interstate Commerce Commission had no jurisdiction to prescribe intrastate rates on logs within the State of Florida. I simply wish to reiterate that is still our position and that while we are offering testimony in this case we still insist upon the correctness of our position in this matter (Tes. p. 1372).

A. I am the same Fred Pettijohn who testified at the former hearing in this case. I am familiar with the issues involved in this case. I have prepared exhibits which I desire to file. The first exhibit is a statement showing the Property Investment and Operating Income accounts of

the Atlantic Coast Line Railroad Company, Florida East [fol. 1244] Coast Railway Company and Seaboard Air Line Railway Company, for the calendar years 1921 to 1930, inclusive. This is Exhibit No. 101. I consolidated the results of operations of the three roads appearing in the title of this exhibit because the investment in these roads in the State of Florida, and the earnings of these three roads in the State of Florida represent over 85 per cent of the investment and earnings of all railroads within the State of Florida. For example, in 1929 the investment in road and equipment of the three roads in Florida was, in round figures, over $278,000,000.00, whereas, (Tes. p. 1373) the investment of all roads in the State of Florida was, in round figures, but $316,000,000.00. Furthermore, in 1929, out of a total operating revenue for all carriers in the State of Florida of $53,900,000.00, the operating revenue of these three roads alone amounted to $48,500,000.00, in round figures. In addition to the above, the Florida Railroad Commission is of the opinion that the Florida traffic of these three lines comprises the backbone of the traffic of these carriers, as we hope to show by a later exhibit. I, therefore, am of the opinion that the investment and the results of operations of the three carriers are more reliable and more informative with respect to Florida operations than are the results of any individual carrier. I chose a ten year period, first, because the defendant, in its Exhibit No. 78, covered the last year of the boom period and the four years immediately subsequent thereto, and I thought that in order to have a properly balanced statement and one which reflected reliable comparisons, that I should cover a period of four years prior to the first year [fol. 1245] of the boom; second, because I do not believe any comparison of property investment and operating income accounts with either an abnormal or subnormal period is proper, or furnishes reliable comparisons; and third, because I believe that a (Tes. p. 1374) comparison with the year 1921, excluding the boom years of 1925 and 1926 and the depressed year of 1930, will show, perhaps, as great a growth as could be expected by these carriers under normal conditions, and particularly so when consideration is given to the automobile, bus, truck and water competition which the carriers have been compelled to meet the last few years. In connection with this statement and in order that

there will be no misunderstanding, I wish to state that the amounts shown opposite item 2, Investment in Road and Equipment, comprehend only the balances reported by the carriers in Account 701, and that this line does not, therefore, include any investment in proprietary companies, or leased lines. The statement shows on line 8 that the average miles of road operated has increased 14.04 per cent; on line 6, that the average investment in road and equipment, material, supplies and cash, has increased 37.14 per cent; that tax accruals have increased 78.55 per cent; that passenger revenue has decreased 35.39 per cent, but despite these facts and despite the further fact that the year 1930 was a year of national depression, net operating revenues increased 56.63 per cent and net railway operating income increased 72.08 per cent compared to 1921 (Tes. p. 1375). My next exhibit, No. 102, is a statement showing the property investment and operating income account of the Atlantic Coast Line Railroad Company for the calendar [fol. 1246] years 1921 to 1930, inclusive, and in connection with this statement I wish to say that the amounts shown opposite item 2, Investment in Road and Equipment, comprehend only the balances reported by the carriers in Account 701; that this line does not, therefore, include any investment in proprietary companies or leased lines; and that, with the exception of the amounts reported on lines 2, 4 and 6, it contains identically the same information as is reflected under Defendants' Exhibit No. 78, items 1 to 29 for the years 1926 to 1930, inclusive. I prepared a statement showing the property investment and operating income account of the Atlantic Coast Line Railroad for a ten year period for identically the same reasons which I explained in connection with the statement covering the ten year period of the Atlantic Coast Line Railroad Company, Seaboard Air Line Railway Company and Florida East Coast Railway Company. Lines 2 and 8, columns (b), (g) and (k), respectively (Tes. p. 1376), show that the investment in road and equipment increased from December 31, 1921, to December 31, 1926, over $55,000,000.00, whereas the miles of road operated increased but 38.04 miles and that between December 31, 1926 and December 31, 1930, the investment in road and equipment increased approximately $12,600,000.00 against a miles of road operated increase of 225.89 miles. State- in another manner—during the five.

years ended December 31, 1926, the miles of road operated increased 38.04 miles against a property investment increase of $55,000,000.00, or almost $1,450,000.00 per mile, whereas, during the next four years there was an increase of 225.89 miles in the miles of road operated and an in- [fol. 1247] crease of $12,600,000.00 in investment, or an increase of slightly more than $55,000.00 per mile of road operated. These comparisons, however, simply go to show how unreliable the factor "miles of road operated" is, because between December 31, 1921, and December 31, 1926, the Atlantic Coast Line Railroad Company put in operation 333.56 miles of second main line track and this mileage is entirely ignored in every comparison of miles of road operated. I speak of mileage in the system (Tes. p. 1377). The statement shows that the average miles of road operated increased 5.39 per cent; that the investment increased 29.46 per cent; that tax accruals increased 79.67 per cent; that operating revenues decreased 5.56 per cent; that operating expenses decreased 14.34 per cent and that despite the decreases in operating revenues and operating expenses, the railway operating income increased 39.41 per cent and net railway operating income increased 43.69 per cent. The reduction in total revenue was brought about entirely by the reduction in the passenger revenue and this reduction in passenger revenue was largely intrastate business as will be shown by a subsequent exhibit. The reduction of 37.22 per cent in the passenger revenue is more than offset by a reduction of 14.34 per cent in the operating expenses and this fact might naturally lead to the conclusion that the reduction in the passenger revenue was largely offset by a reduction in the passenger expenses; however, an analysis of the 1921 and 1930 passenger locomotive miles and passenger car miles indicates to my mind that the reduction was made primarily in the freight service. I make this statement because there has been a reduction of less than 1 per cent in the locomotive miles assignable to [fol. 1248] passenger service in 1930 as compared to 1921, and there has been an increase of over 17 per cent in the passenger car miles in (Tes. p. 1378) 1930 as compared to 1921, while at the same time there has been a decease of about 36 per cent in the passengers carried one mile in 1930 as compared to 1921. The increases and decreases reflected on this exhibit, when contrasted with the increases

and decreases reflected on defendant's Exhibit No. 78, show the danger and fallacy of comparing the operating income accounts obtaining during an abnormal period with those of a subnormal period. This exhibit also shows, by comparing the returns under column (b) for the year 1921, with the returns under column (j), for the year 1929, that the additional investment in road and equipment appears to have been warranted and this is particularly true when consideration is given to the reduction in rates which have been made during the period; the increased automobile, truck and bus competition which has arisen since 1921, and the increased competition which the Atlantic Coast Line has had with boat lines and other carriers, particularly with respect to Florida traffic.

The spread between 1921 and 1929 would, in my opinion have been still greater were it not for the fact that the Seaboard Air Line Railway Company, since 1921, has increased it mileage very considerably and certain large shipping points, which were formerly local to the Atlantic Coast Line and to the Florida East Coast Railroad, are now competitive points and the Seaboard Air Line enjoys a portion of the (Tes. p. 1379) traffic. That the year 1926 used by the defendant in its Exhibit No. 78 for comparative [fol. 1249] purposes was an abnormal year, appears to be warranted by the returns made under columns (f) and (g). Line 9, Total Operating Revenues, and line 15, Total Operating Expenses, show that the year 1926 was the year of both the heaviest earnings and heaviest operating expenses, but despite this fact the net operating revenues and the net railway operating income for the year 1925 were approximately $2,600,000.00 greater than for the year 1926. In addition, as will be shown by subsequent exhibits, the Atlantic Coast Line Railroad Company handled in the year 1926, not only for the system but also in the State of Florida, the largest number of revenue tons that it handled during the ten year period and also handled the greatest number of tons one mile per mile of main line track operated. My next exhibit 103 is a statement of the property investment and operating revenues in the State of Florida for the ten years ended December 31, 1930, the operating revenues being shown separately for the intrastate and interstate business. This statement shows that the 1930 operating revenues assigned to Florida are $619,-

434.36, or 3.65 per cent less than they were in 1921 and that the passenger revenues are $2,167,840.24, or 52.72 per cent less than in 1921. The (Tes. p. 1380) statement further shows that if the $2,167,840.24, decrease in total passenger revenues, $1,940,567.41 was a decrease in the intrastate passenger revenue. This statement further shows that the investment in road and equipment increased $28,595,480.00, or 42.38 per cent between December 31, 1921, and December 31, 1930. With respect to the assignment of interstate operating revenues. According to the sworn report of the carrier to the Florida Railroad Commission, the [fol. 1250] amount of interstate revenue inuring to the Atlantic Coast Line is apportioned to the State of Florida in proportion to the mileage traversed in the State of Florida, to the total mileage traversed over the lines of the Atlantic Coast Line Railroad. This method of apportioning revenues to the State of Florida assigns less revenue to the Florida operations than should be assigned thereto and ignores entirely the manner in which the rates under which the traffic moves are prescribed and applied. In its decision in Docket 13494, Southern Class Rates, the Interstate Commerce Commission prescribed higher rates on class traffic moving to and from points South of the Jacksonville River Junction line of the Seaboard Air Line than on class traffic moving to and from other sections of the South. The higher rates prescribed are (Tes. p. 1381) generally referred to as arbitraries and represent 15 per cent of the standard scale rate applicable to the mileage south of the Jacksonville River Junction line of the Seaboard. Instead of assigning the revenues produced by this 15 per cent arbitrary to the operations in the State of Florida, the carrier assigns such revenue to states in proportion to the mileage traversed in each state. Since the decision in 13494, certain commodities formerly moving under commodity rates, now move under class rates, or percentages of class rates, and as a result thereof the 15 per cent arbitrary applicable to class rates applies to such commodities also. In addition, the Interstate Commerce Commission has prescribed specific commodity rates where the arbitrary South of the dead line for certain distances runs as high as 40 per cent of the standard scale rate for a like [fol. 1251] distance (cement). Other commodity rates to and from Peninsular Florida are built upon a Jacksonville

combination, which combination comprehends the old water depressed rate to Jacksonville plus the full local rate beyond and these rates are uniformly in effect in excess of the 15 per cent arbitrary basis. The Florida Railroad Commission contends, therefore, that every exhibition of the total operating revenues in the State of Florida on the Atlantic Coast Line is incorrect and is less than it should be because of the improper method employed by the Atlantic Coast Line Railroad Company in apportioning (Tes. p. 1382) interstate revenues to states. This criticism applies equally to defendant's exhibits 79 and 81. On this exhibit in column (j) 1929, the property investment in road and equipment was $94,709,630.37. The actual assessed value of the Atlantic Coast Line Railroad Company for tax purposes was in that year in round figures $22,681,000. That amount, I believe, with the exception of personal property, was on a 50 per cent valuation basis and the personal property was assessed around a 40 per cent valuation basis. The next exhibit, 104, is a comparative statement of the revenue tons by general commodities from 1921 to 1930, inclusive, both for the Atlantic Coast Line system and State of Florida. This statement shows that for each of the years from 1921 to 1930, inclusive, the tons handled in the State of Florida represented over 40 per cent of the total tons handled on the system, or expressed in another way—over 40 per cent of (Tes. p. 1383) the tons handled on the Atlantic Coast Line Railroad were handled to, from or within the State of Florida, and since a large portion of the interstate tonnage to and from Florida is long haul tonnage, it is, in my opinion, the most desirable traffic which the Atlantic Coast Line has.

[fol. 1252] This statement furth shows that between 1921 and 1930, the revenue tons handled on the system increased 3,604,217 tons as against an increase of 2,204,461 tons in Florida, which indicates that 60 per cent of the increase in tons handled was Florida traffic. The statement shows also that, with the exception of the years 1922 and 1923, the tons handled in the State of Florida increased as compared to the tons handled in 1921 in greater proportion than did the system as a whole. In conclusion, columns (f) and (g) of this statement show without question of doubt, that the years 1925 and 1926 were abnormal not only with respect to Florida operations, but also for

the system as a whole. My next exhibit, No. 105, is a statement reflecting the freight revenues of the system and of the State of Florida and the freight interstate and intrastate revenue in Florida for the years 1921 to 1930, inclusive, and showing the increases in amount and in percentage as compared to 1921 (Tes. p. 1384). Although the method employed by the Atlantic Coast Line Railroad in assigning interstate revenues to states assigns less to the Florida operations than should be assigned, for the reasons which I have heretofore given, and despite the fact that the decision of the Interstate Commerce Commission in Docket 13494 reduced all intrastate rates in Florida on traffic moving from third class to class D and also had the effect of reducing practically all class rates on interstate traffic formerly made on a Jacksonville combination. This statement shows that the freight revenue assigned to Florida operations, with the exception of the year 1922, has increased in greater percentage than has the system freight revenue as a whole. It also shows that the Florida interstate traffic, with the exceptions of the years 1922, 1927 and 1928, and the Florida intrastate traffic, with the exceptions of the years 1923 and 1929, increased at a greater percentage compared to 1921 than did the system revenues. This statement also shows, I believe, the importance of the [fol. 1253] Florida traffic to the system and particularly so when consideration is given to the fact that no small portion of the Florida revenue is long haul and perishable traffic. My next exhibit, No. 106, is a statement showing the total intrastate and interstate tons of revenue freight handled on the system and within the State of Florida for the calendar (Tes. p. 1385) years 1926 to 1930, inclusive, and the percentages which the different tonnages bear to the system, total Florida and total intrastate and interstate tonnage. It also shows for the years subsequent to 1926 the decrease in tons handled and the percentage decrease of each kind of traffic, and the system tonnage of 1926. In explanation of this statement I wish to say that wherever 100 per cent is used under a column, the tonnage immediately above the 100 per cent is used as the divisor and that the percentages shown under the columns opposite the 100 per cent reflect the relationship which the amounts shown under those columns bear to the column on which the 100 per cent is reflected. This exhibit shows under

column (c) that the tons handled to, from and within the State of Florida during the five year period represented from 42.26 per cent in 1928 to 55.91 per cent in 1926 of the total system tonnage; under column (e) it shows that the Florida intrastate tonnage represented from 20.71 per cent in 1930 to 29.68 per cent in 1926 of the system tons handled, and under column (g) it shows that the interstate tonnage to and from Florida represented from 19.27 per cent in 1927 to 26.63 per cent in 1926 of the total system tonnage. This statement further shows under column (e) that the intrastate tonnage handled within the State of (Tes. p. 1386) Florida represented from 27.82 per cent in 1930 to 61.38 per cent in 1926, of the total system intrastate tonnage handled; and it shows under column (g) that the interstate tonnage handled to and from Florida represented from 37.19 per cent to 50.08 per cent of the to-[fol. 1254] tal interstate tonnage handled on the system. This statement shows, I believe, beyond a question of doubt, the value of the Florida traffic to the Atlantic Coast Line Railroad and further shows that the Florida traffic is the backbone of the Atlantic Coast Line tonnage. The next exhibit, No. 107, is a comparative statement of the revenue tons of freight handled on the system as a whole and in the various states, separated as between interstate and intrastate tons. Being of the opinion that the Florida interstate traffic was the most desirable traffic handled by the Atlantic Coast Line Railroad, but not having the respective ton miles made by the interstate traffic originating and terminating in the State of Florida as compared to the ton miles of all other interstate freight, I prepared this statement so as to show, in a general way, the comparative value of the Florida interstate traffic to all other interstate traffic handled by the Atlantic (Tes. p. 1387) Coast Line Railroad Company. This statement is not actual, but in my opinion, it understates rather than overstates the conditions, because, while I have calculated the statement on the assumption that the interstate traffic to and from Florida is only handled on an average in three states, I believe that if the facts were available, the interstate tonnage to and from Florida would be handled on an average in almost four states. It shows, however, that the Florida traffic constitutes the larges- column of the long haul trans-state traffic handled by the Coast Line.

Item 7 is obtained by multiplying the interstate tonnage in Florida by 3. In other words, it is on the assumption that all Florida tonnage, on the average, is handled in [fol. 1255] at least three states. If that assumption is correct, it is used to determine in how many states the balance of the interstate traffic that does not reach Florida can be handled. I do not mind admitting it is not actual. It is an estimate, but we believe underestimated (Tes. p. 1388). Item 7 is item 5 multiplied by 3. My next exhibit, No. 108, is a statement showing traffic density statistics of the system, of the State of Florida, and of the system excluding the State of Florida for the calendar years 1921 to 1930, inclusive, for the Atlantic Coast Line Railroad Company. This statement has been prepared in identically the same manner as defendant's exhibit No. 83, excepting that I have made my calculations upon the average miles of main track operated including second main track at close of the year, instead of upon average miles of road operated. The defendant, in its Exhibit No. 83, was comparing miles of road operated instead of miles of main track in Florida as compared to that of the system. Since Mr. Lamb used the year 1929 for illustrative purposes in his testimony, I will do likewise, although the comparisons for that year show it to be the poorest year, on a comparative basis, of any of the years since 1926. While column (h) shows that 37.4 per cent of the system main track operated was in Florida, my exhibit 106, column (c), shows that 45.1 per cent of the system tonnage handled was handled to, from and within the State of Florida; while column (i) shows that but 25.1 per cent of the revenue ton miles of the system were made in (Tes. p. 1389) Florida, a subsequent exhibit which I will file will show that but 21.25 per cent of the system loaded freight car [fol. 1256] miles and but 22.43 per cent of the system loaded and empty freight car miles were made in the State of Florida; and while column (j) shows that the Florida tons one mile per mile of main track operated were but 67 per cent of the system average tons one mile per mile of road operated, my exhibit 106, column (e), shows that 50.02 per cent of the system intrastate tonnage was handled in Florida and column (g) shows that 41.31 per cent of the system interstate tonnage was handled to and from Florida. While this statement shows, from a traffic density

standpoint, that the operations in the State of Florida are below the operations of the system as a whole, when considered in connection with other operating statistics, the disparity in traffic density is to a great extent offset and particularly so when the amount of traffic originating and terminating and originating or terminating within the State are considered. The next exhibit, 109, which I desire to offer is a statement showing by primary accounts the total, the freight, the eliminated amounts, and the amounts treated as haulage expenses by witness Lamb, according to his testimony and Exhibit No. 84 (Tes. p. 1390). This exhibit was prepared in detail in order that the record might show the identical accounts and amounts comprehended in those expenses which were eliminated from consideration in determining the haulage expenses and also to show, by accounts, the amounts comprehended in the expenses which were designated and treated by the defendant's witness as haulage expenses. This exhibit was also prepared in order to show that the basis used by defendant's witness in his elimination of the so-called non-haulage expenses is not in accordance with the formula [fol. 1257] used by Dr. Lorenz in Docket 17000; which formula his superior officer, Comptroller W. D. McCaig of the Atlantic Coast Line Railroad Company, adopted in Docket 17936, record 1460, and which formula was also approved by the Interstate Commerce Commission in its opinion and order in Docket 17936. This exhibit will be used primarily in connection with any criticism of defendant's Exhibit No. 84. The next exhibit, 110, is a statement of the train miles, locomotive miles and car miles, separated as between freight and passenger for the system and for the State of Florida, showing the percentage which the Florida mileages bear to the system mileages, for the calendar year 1929 (Tes. p. 1391). This exhibit shows under column (i), opposite items 17 and 41, that the freight train miles and freight locomotive miles assignable to Florida operations represent but 30.63 per cent and 30.92 per cent, respectively, of the system freight train and freight locomotive mileages, and it further shows under column (i) that the total freight, loaded and empty, car miles made in the State of Florida, represent but 22.43 per cent of the total loaded and empty freight car miles of the system. In other words, this exhibit in connection with my Exhibit No. 108 shows that while 37.04 per cent of the mileage of main

track operated is in Florida, that less than 31 per cent of the freight train miles and freight locomotive miles are made in Florida, and that while 25.1 per cent of the revenue ton miles are handled in Florida, but 22.43 per cent of the loaded and empty freight car miles are handled in the State of Florida. This statement also was prepared to show that the percentage of main track miles operated, and revenue ton miles handled are misleading and unreliable [fol. 1258] when comparing the results of operations upon the different divisions, or within the different states, of a line of railroad. Column (f) of this statement also shows that for the State of Florida, as a whole, the Atlantic Coast Line Railroad handled 31.69 freight cars per freight train mile. Since the evidence in this case (Tes. p. 1392) shows that the log train handled from 40 to 45 cars per train, it must be obvious that the average cost obtaining with respect to 31.69 cars per train can not be applicable to the log movement. This completes the exhibits which I have to offer, but I have certain testimony to offer with respect to defendant's exhibits.

Examiner Hoy: Exhibits 101 to 110 will be received.

By Mr. Turnbull:

Q. Turn now to defendant's Exhibit No. 78 and make what comments you desire to make with respect to this exhibit.

A. In so far as the statement itself is concerned, from the check which I have had made of it, it appears to be mathematically accurate. I do not believe, however, that a comparison of the income accounts of the years 1926 to 1930 is of any practical value to the Commission because in 1926 the carrier earned the largest revenue in its entire history, whereas 1930 was a year of national depression and the Atlantic (Tes. p. 1393) Coast Line Railroad's total operating revenues were the smallest they have been since 1921. The comparison of the operating income accounts of 1926 with those of 1930 is a comparison of the incomes during a period of abnormality with those of a period of subnormality and should not therefore, be given much weight. Attention is also directed to the fact that, although the operating expenses of 1930 are but little over 70 per cent of the operating expenses of 1926, the balance in the [fol. 1259] cash account as of December 31, 1930, was $5,-

438,418.00 greater than in 1926, or about 64 per cent. Lines 3 and 5 of this exhibit show that the material and supplies and cash balances in 1930 exceeded the material and supplies and cash balances in 1926 by approximately $3,440,000 or approximately 20 per cent. In addition to the above, in consequence of the fact that witness for the defendant has used the tentative valuation of the Atlantic Coast Line Railroad properties in the State of Florida as of July 1, 1917, brought up to date, in calculating the return upon investment in the State of Florida, and in consequence of the further fact that the witness has compared the returns on investment in the State of Florida with the returns on investment for the system, it would appear that in order to have a proper comparison he should have used the tentative valuation of the Atlantic Coast Line system as of July 1, 1917, brought up to date, instead of investment in road (Tes. p. 1394) and equipment. With respect to the operating revenues reflected on Exhibit No. 79, I have previously pointed out the inaccurate and unequitable basis employed by the Atlantic Coast Line Railroad in its assignment of interstate revenues to the State of Florida. The expenses reflected on this exhibit have been assigned to the State of Florida on the basis of the percentage of Florida revenue to total revenue; that is, Florida is assigned the same percentage of system expenses that the Florida revenue bears to the system revenue. The use of revenue as a factor for assigning expenses is improper because every inequality in the rates producing the revenue is further perpetuated by the use of the revenue itself as [fol. 1260] a factor for apportionment. This basis was condemned in the Minnesota rate case decision. To show how utterly unreliable the basis is, using the year 1926 as illustrative: Had the Florida revenues been twice what they were, the expenses assigned to Florida would have been twice what they were reported on Exhibit No. 79. As a further illustration, the basis employed by the Atlantic Coast Line in effect assigns as expenses to the State of Florida, the system operating ratio of the revenue assigned to the State of Florida in connection with the transportation of each person or unit of property within the State of Florida (Tes. p. 1395). For example, for each $100 of revenue assigned or allocated to Florida operations in 1930 there would be assigned to Florida expenses $78.84, this

without regard to the reasonableness of the rate, the cost of the service or the value of the property utilized in performing the service. For the above reasons it is perfectly obvious that the data reflected on lines 9 to 23, inclusive, are unreliable and inaccurate and do not reflect the facts with respect to Florida operations, and that the rate of return on the investment in Florida is, therefore, inaccurate and unreliable.

Q. What have you to say with respect to Mr. Lamb's conclusion that the cost on the third division, which operates exclusively in the State of Florida, is considerably higher per unit than the cost on the first and second divisions operating North of Jacksonville?

A. Mr. Lamb's conclusion, according to his testimony was predicated upon the comparative out of pocket loaded and empty car mile and gross ton mile costs obtaining on [fol. 1261] the third division as compared to those obtaining on the other two divisions. While it is true that the out of pocket expenses used by Mr. Lamb do not increase or decrease in proportion to the train loading or density of traffic on the different divisions of a railroad, and while it is also true that as the train load increases the unit out of pocket costs decrease, the same condition does not obtain with respect to other expenses (Tes. p. 1396) and this is particularly true with respect to all maintenance expenses. The Interstate Commerce Commission in Finance Docket No. 1606 in final settlement under Section 209, 70 Interstate Commerce Commission, 711, 741 developed a formula for adjusting maintenance allowances for differences in the use of property between the so-called test and guarantee periods and found that upon the average only one-third of the expenses for maintenance of way and structures varied with the use of the property and it also found that 80 per cent of the expenses of maintaining steam locomotives varied with use measured by the ton miles hauled and had 60 per cent of the maintenance expenses of freight train cars varied according to use as measured by the car miles per car day. In addition to the above, it must be perfectly obvious to anyone familiar with railroad operations that neither the traffic, nor general block of expenses increase in proportion to the density of traffic, or are materially effected thereby. With respect to transportation expenses, density of traffic does not materially

increase, either out of pocket expenses or the yard expenses, except when it requires additional yard crews to handle the increased business. In all my experience, however, covering a period of over 20 years, this is the first instance in which I ever saw anyone predicate costs upon the comparative out of pocket costs obtaining either on [fol. 1262] different divisions or with respect to different commodities (Tes. p. 1397).

To illustrate how unsound the basis advocated by Witness Lamb is, assume that you have two trains of either an equal number of gross tons or an equal number of loaded and empty cars operating between the same terminals; one a through freight train and the other a local freight train upon which a 10 per cent higher wage scale obtains than upon the through freight train. To contend, simply because the out of pocket costs of the local train are in excess of the out of pocket costs of the through train, that the total loaded and empty car mile costs of operating the two trains between identical terminals vary in proportion to the out of pocket costs, appears to me to be fundamentally unsound. To contend that the unit out of pocket costs obtaining with respect to different operations reflects the variance in total costs of such operations is tantamount to saying that all costs vary in the exact proportion that out of pocket costs vary. Such a contention is so absolutely contrary to all cost theories as to not warrant serious consideration by this Commission. I am familiar with the methods employed by Mr. Lamb in ascertaining his cost of handling logs in the State of Florida, having analyzed the methods employed by him in arriving at his costs. (Tes. p. 1398). The cost studies introduced by Witness Lamb should be given but little, if any, consideration or weight in measuring the reasonableness of the Cummer scale of log rates because they are computed upon system and division averages and not upon the expenses and the factors pertaining to that portion of the road over which the logs move; because the studies are based upon assumptions [fol. 1263] not warranted by the evidence of record in this case, and because all of the expenses have been assigned either upon the gross ton mile or upon the loaded and empty car mile basis. I say that the cost studies are computed upon system division averages and not upon the factors pertaining to that portion of the road over which

the logs move, because Mr. Lamb has simply applied to the gross ton miles and to the loaded and empty car miles, applicable to specific movements of logs, an average unit cost ascertained by expanding the third division average out of pocket unit cost by the percentage relationship which the out of pocket cost of the system bears to the total freight expenses and the total freight haulage expenses, respectively, of the system. He has in no instance ascertained the expenses applicable to either that portion of the line over which the logs are transported (Tes. p. 1399), or to the trains in which the logs are transported. Considering first the total freight expenses, Mr. Lamb's studies are based upon assumptions not warranted by the evidence of record in this case because, by first ascertaining the unit gross ton ton mile and loaded and empty car mile out of pocket costs obtaining on the third district, and second, by expanding that cost by the application of the percentage relationship between system out of pocket and total freight expenses, the witness has assumed, first, that the total freight operating expenses are properly assignable to commodities upon either the gross ton mile or the loaded and empty car miles basis; second, that there is a definite and fixed relationship between the out of pocket expenses and the total freight operating expenses; and third, that the aver-[fol. 1264] age unit costs applicable to the third district are applicable to the movement of logs. With respect to the assumption that the total freight operating expenses are properly assignable to commodities upon either the gross ton mile or loaded and empty car miles basis, such an assumption is, in my opinion, unwarranted and indefensible. As a general proposition there are three cost elements in connection with the transportation of commodities, i. e., terminal cost, line haul transportation cost and loss and damage cost, and in addition thereto, there is, of course (Tes. p. 1400), to be provided a return upon investment. It must be perfectly obvious that neither loss and damage, nor terminal expenses is properly assignable upon either the gross ton mile or the loaded and empty car miles bases. In addition, before attempting to determine the amount of terminal expense applicable to car load traffic, it is customary to reduce the total freight terminal expenses by eliminating therefrom the station platform expenses

of handling L. C. L. freight and the excess station clerical expense of L. C. L. freight over C. L. Freight. The platform and excess clerical expense of handling L. C. L. freight, according to the terminal studies made in connection with Docket 17,000, part 2, Western Trunk Line Class Rates, was $4.222 per ton. In addition to the above, neither the gross ton mile, nor the loaded and empty car mile basis assigns to commodities the expense applicable thereto because of the extraordinary service which certain commodities require. For example, neither the gross ton mile basis, nor the loaded and empty car mile basis assigns to L. C. L. freight or to the transportation of perishables the amount of expenses which the extraordinary service fur- [fol. 1265] nished to this class of freight warrants. L. C. L. freight is generally handled in local or way freight trains upon which the wage scales paid are approximately 10 per cent higher than for other trains. In addition, the trains are (Tes. p. 1401) lighter loaded; considerable time is spent in intermediate station switching and loading and unloading and the costs in connection there with are considerably higher both per car and per train mile than are the costs of all traffic. Perishable traffic is more expensive to handle than all traffic in the State of Florida because the territory in which the perishable traffic originates extends over a comparatively large area and embraces a large number of branch lines of railroads; the volume of perishable traffic, when considered with respect to the seasonal movement, results in a comparatively small volume per day. This traffic also requires the storage, cleaning and distribution of cars twice daily, and, when handled under refrigeration, requires the additional service of switching cars to and from the icing plant, both before and after loading. For the reasons heretofore given and because perishable traffic must be expedited, it requires a pick-up or an assembly service which is not furnished in connection with the transportation of any other traffic and as a result thereof, a large number of additional trains of small tonnage are required to transport the perishable traffic to the assembly point, from which it moves forward to Northern and Western destinations in through trains. Perishable traffic cannot be held over until sufficient tonnage is available to give a locomotive its full tonnage rating, but must be handled expeditiously in order that it may reach its

market within a (Tes. p. 1402) limited time. In addition to the above, the perishable movement requires a greater [fol. 1266] amount of switching per car; is handled in a heavier type of car; in trains of lighter tonnage, and with a fewer number of cars per train than is the case with other traffic, and particularly dead freight, and enjoys diversion privileges not extended to other traffic. It is, therefore, perfectly obvious that the assignment of total freight operating expenses upon either the gross ton mile or the loaded and empty car mile basis is inaccurate and assigns too great an expense to car-load traffic, and particularly to the log traffic. With respect to the out of pocket expenses representing a definite and fixed percentage relationship to total freight expenses there is, in my opinion, no definite or fixed percentage relationship between the so-called out of pocket expenses and the total freight operating expenses and further, the results of any calculation based upon such a relationship must be unreliable. The reasons that there is no fixed relationship between out of pocket expenses and total freight expenses are that the out of pocket freight expenses depend first upon the number of trains operated, second, upon the time consumed by trains between terminals resulting in over-time, and are not necessarily influenced by gross weight (Tes. p. 1403). On the other hand, according to the findings of this Commission in Finance Docket 1606, 33-⅓ per cent of the maintenance of way and structures expenses and 80 per cent of the steam locomotive repairs vary according to the gross weight and 60 per cent of the freight train car repairs vary according to the freight car miles. The remaining expenses, with the exception of yard transportation and station employees, are largely fixed expenses which do not fluctuate according to the volume of business handled but represent expenses which are incurred regardless of the volume of business. [fol. 1267] Yard and station expenses fluctuate to a certain extent, not proportionately to the volume of business. It, therefore, is obvious to me that there can be no fixed relationship between the out of pocket freight expenses and total freight expenses, because the out of pocket freight expenses are influenced primarily by the number of trains rather than by the size of the trains operated, whereas, those expenses which fluctuate with the volume of business are influenced primarily by gross weight and not by the

trains operated. To state it in another manner, the train loading or the number of cars per train might very well be increased 25 per cent without increasing the out of pocket expenses materially. On the other hand, an increase of 25 per cent in the total volume of business handled would automatically increase those expenses varying with gross weight 25 per cent. If, however (Tes. p. 1404), there is any relationship between the out of pocket expenses and the total freight expenses, it must be obvious that, in a State like Florida where the traffic density is light, due to the large number of branch lines and being scattered over a wide area, thereby requiring the operation of a larger number of trains to handle the same volume of business, the out of pocket expense would represent a much greater proportion of the total freight expense than they do on the system as a whole, where the train loading is heavier and where fewer trains are operated to handle the same volume of business. It, therefore, appears to me that even if the witness for the defendant is correct in his theory he is wrong in his application of the theory because he ignores the conditions which cause the relative amounts of out of pocket expenses on the system and in the State of Florida. [fol. 1268] The well known adage "the proof of the pudding is in the eating of it" applies to the application of formulae with equal force. Witness Lamb, by applying to the freight out of pocket expenses of the third division, the percentage which the system freight out of pocket expenses bear to the total freight out of pocket expenses in effect assigns to the third division that percentage of the total freight operating expenses of the system which the freight out of pocket expenses on the third division bear to the freight out of pocket expenses of the system (Tes. p. 1405). According to his Exhibit No. 84, the system out of pocket expenses were $6,920,684.00 and according to his testimony, record 1101, the freight out of pocket expenses of the third division were $2,059,610.66, or 29.76 per cent of the system expenses. Because the record only reflects the freight out of pocket expenses, the loaded and empty car miles and the gross ton miles of the third division, we can only test the accuracy of the defendant's assignment of system expenses to the third division by calculating what percentage of the freight train car repairs, depreciation and retirement should be apportioned to that division upon the loaded and

empty car mile basis. My Exhibit No. 110, column (c), shows the system loaded and empty car miles for the calendar year 1929 to have been 347,071,175 and Witness Lamb in his testimony, record 1101, testified that the loaded and empty car miles of the third division were 69,775,673, or 20.10 per cent of the system loaded and empty freight car miles. It is, therefore, obvious that Witness Lamb should have assigned but 20.10 per cent of those expenses assignable upon the freight car mileage basis instead of assign-
[fol. 1269] ing 39.76 per cent. 29.76 per cent is 48.06 per cent greater than 20.10 per cent and it appears, therefore, that his formulae has assigned to the third division 48.06 per cent more than should have been assigned for such expenses as are properly apportionable upon the car (Tes. p. 1406) mile basis. In consequence of the fact that the evidence shows that the mill operator pays the greater portion of the repairs with respect to log cars, it must be perfectly obvious that the formula used by Mr. Lamb is arbitrary and wholly unreliable.

Q. What have you to say with respect to the assumption of the witness that the unit costs of the third district are applicable to the movement of logs intrastate in Florida?

A. In consequence of the fact that the train operations in the State of Florida are primarily an assembly service, due to the large area in which the carrier conducts its operations and the large number of branch lines on which the perishable traffic is handled; because the number of cars per train mile in connection with the entire operation is 20 per cent less than is the case with respect to the operations of a log train; and also because the log trains are about 25 per cent more heavily loaded than are all freight trains operating in Florida, the cost of handling logs should be less than the cost of handling all commodities in the State of Florida. Furthermore, the average cost comprehends not only the cost of handling L. C. L. traffic, but also the cost of furnishing all special service in connection with the movement of perishables, whereas the log movement is wholly carload and largely train load and receives no special services whatever. It is a well known fact that commodities handled in train load (1407) lots can [fol. 1270] be handled at considerably less expenses than can all traffic and that commodities handled in carload lots can be handled at less expense than L. C. L. freight.

In addition thereto, the evidence shows that the car repairs in connection with the equipment used in handling the log traffic is very largely borne by the mill operator and not by the carrier as is the case with practically all other traffic. In conclusion, the testimony shows that the only switching involved in connection with the log movement is the switching at Palatka, at which point two switching services are performed per day in the delivery of 40 loads to and from the mill, or at an average of about 20 cars per switching movement. This would result in a cost for switching considerably less than is the cost with respect to the switching in connection with all other traffic, and particularly with respect to the switching of L. C. L., team track traffic and private industrial delivery. For the above reasons I am perfectly satisfied that the average unit cost obtaining on the third district in Florida is not applicable to the movement of logs. With respect to the freight haulage expenses as found by Witness Lamb and as set forth on his Exhibit No. 84 and my Exhibt 109, Mr. Lamb has ascertained what he terms freight haulage expenses by deducting from the total freight expenses all of the (Tes. p. 1408) freight expenses allocated and assigned to yard freight service and the expenses of certain primary accounts which, due to a lack of time, he was not able to apportion on proper factors to the yard and haulage services. The methods employed by Witness Lamb in ascertaining the freight expenses applicable to haulage is not in accord with the generally accepted basis used in [fol. 1271] the division of operating expenses between haulage and yard expenses nor is it in accord with the basis advocated by Dr, Lorenz, Director of the Bureau of Statistics of the Interstate Commerce Commission, in Docket 17000, Part 7, Grain and Grain Products, which basis was adopted (Record 1460) by Mr. McCaig, Comptroller of the Atlantic Coast Line Railroad Company, in Docket 17936, and was approved by the Commission in its report and order in connection with that case. The generally accepted basis for the division of freight operating expenses between haulage and yard services is upon the ratios that the road and yard direct and apportioned maintenance of way and structures and transportation expenses, respectively bear to the total of the road and yard direct and apportioned maintenance of way and structures

and transportation expenses. Under this basis Accounts 390 and 391, Operating Joint Yards and Terminals Debit and Credit, and Accounts 412 and 413, Operating Joint Tracks and Facilities, Debit and Credit, are assigned direct to Yard and Haulage services respectively (Tes. p. 1409). Using the generally accepted basis of assigning total freight expenses to Road and Yard service, respectively, I find the yard proportion of total freight expenses to be $10,764,146.94 as against $4,550,039.00, deducted by Witness Lamb for yard expenses. This one error in ascertaining the amount of expense assignable to yard service, discredits the ascertainment of haulage expenses as found. In addition to the above, all of the expenses assigned to the haulage service are not properly assignable upon either the gross ton mile or loaded and empty car [fol. 1272] mile basis; certain portions of the direct out of pocket expenses are assignable to L. C. L. traffic; some of the out of pocket expenses is properly assignable to extraordinary services in connection with both the distribution of the empty and assembly of loaded cars of perishables and some of such expenses are properly assignable to the refrigeration service and to the diversion of traffic. For the reasons just given, I am of the opinion that the separation of total freight expenses between haulage and yard services is incomplete and inaccurate; that the expenses applicable only to L. C. L. traffic and to furnishing extraordinary service should be deducted from the haulage expenses before calculating the average carload unit cost; and that the average system or divisional carload costs are seldom, if ever, applicable to the transportation of a commodity moving largely in train loads (Tes. p. 1410). As to how did Mr. Lamb ascertain the freight haulage expenses applicable to the third operating division: In effect, Mr. Lamb found the freight haulage expenses of the third division of the Atlantic Coast Line by dividing the freight out of pocket expenses of the third division by the percentage which the out of pocket expenses of the system is of the total haulage expenses of the system. As to the method by Mr. Lamb in ascertaining the freight haulage expenses applicable to the third division of the Atlantic Coast Line Railroad Company: In consequence of the fact that Mr. Lamb has used the ratio of system out of pocket expenses in ascertaining the

third division total freight and total freight haulage expenses, respectively, he has, to all intents and purposes, assumed that, not only the total freight expenses, but also the total freight haulage and total freight yard service [fol. 1273] expenses vary in the direct proportion that out of pocket freight expenses vary, and that the freight yard service expenses and the freight haulage expenses of the third division represent the same percentage of total freight expenses on that division that the system freight yard and haulage expenses bear to the system total freight expenses (Tes. p. 1411). In my opinion, neither the total freight operating expenses, nor the total freight haulage expenses vary according to the out of pocket freight expenses. At one time while I was connected with the Great Northern Railroad Company, one of my duties was to analyze and explain the differences in the accounts of the expenses charged to the different primary accounts each month as compared with the previous month of the same year and as compared to the corresponding month of the previous year. I found that the differences, with the exception of the direct train expenses, which, in this case, are referred to as out of pocket expenses, were largely due to either a change in wage scales, a change in the number of employees, changes in material prices, authority to increase the maintenance budget or to undertake rearrangements of facilities and to an increase in the volume of business. This latter item invariably affected the yard and the station accounts more than any other accounts with the possible exception of the out of pocket expenses. I was never able to explain the differences in total expenses by a comparison of the differences in the out of pocket expenses. In fact, out of pocket expenses would decrease during the dull season and maintenance expenses would increase. On the other (Tes. p. 1412) hand, during the busy season, out of pocket and yard expenses would increase and maintenance expenses would decrease. [fol. 1274] Because the total freight operating expenses and the total freight haulage expenses are occasioned by so many things other than the freight train mileage operated, in my opinion, the out of pocket expenses are not a reliable factor to measure such expenses. In addition to the above, the cost studies which I have made have convinced me that system averages in connection with the transportation of

specific commodities and between specific points is not only unreliable but is entirely theoretical. I say this because different classes of freight are carried in different volumes upon the different divisions of the same railroad; certain classes of freight are carried in train load lots on one division which are only carried in car-load lots on other divisions. The practice of handling trains varies even upon the different divisions of the same carrier; certain classes of freight will be moved by local trains, others by dead freight trains and still others by fast and manifest trains; gathering service may be performed by train crews, but generally by yard crews. The tonnage rating of the same class of a locomotive varies according to the topography of the country, the class of freight being handled, weather conditions and the freight available for movement. All of these things affect the relationship of out of pocket expenses (Tes. p. 1413) to total expenses. In addition to the above, the standard of maintenance on the main lines of a railroad is considerably higher than is the standard of maintenance observed on branch lines and because only 33⅓ per cent of the maintenance expenses is affected by the gross weight handled over it, the out of pocket expenses on the main line divisions, and particularly on a double track railroad [fol. 1275] whose capacity is not being utilized, would represent a smaller percentage of the total freight operating expenses than would the out of pocket expenses in connection with branch line operations where double daily service was being performed over a wide area in order to distribute and assemble perishables. In consequence of the fact that the branch line miles of track operated in Florida represent a greater percentage of the total miles of track operated in Florida than do the branch line miles of track operated on the system, I am of the opinion that the out of pocket expenses on the third division will represent a greater percentage of the total freight expenses than they do on the system as a whole.

By Mr. Turnbull:

Q. What is your opinion with respect to the (Tes. p. 1414) assumption that the third division freight yard expenses represent the same percentage of the total freight expenses of the third division that the system freight yard expenses represent of the system total freight expenses.

A. In my opinion, there is no evidence of record in this case which warrants such an assumption. However, my Exhibit No. 106 shows that in 1929, 45.1 per cent of the total tons handled on the system originated or terminated in the State of Florida. This showing simply goes to prove that Florida is a terminal State and the fact that it is a terminal State warrants the conclusion that its terminal or yard expenses represent a greater percentage of total expenses than obtains on the system as a whole or that a larger amount of terminal service is performed by road crews in Florida than is performed by road crews on the [fol. 1276] system as a whole. If the freight yard expenses in Florida represent a greater percentage of total Florida freight expenses than the system freight yard expenses represent of the system freight expenses, then the application of the system out of pocket percentage of total freight haulage expenses to the Florida out of pocket expenses is in error and assigns too much expenses to the third division haulage expenses, in which event the unit gross ton mile and loaded and empty car mile costs as found by the defendant are excessive. On the other hand, if the road crews on the third division perform more terminal service than is performed by the road crews of the (Tes. p. 1415) system, this excessive terminal service should not be assigned to the movement of logs to which such service is not furnished, but should be assigned direct to the commodities receiving the terminal service in which event both the unit gross ton mile and the loaded and empty car mile costs as found are also excessive. The application of the percentage which system out of pocket expenses are to the total freight and to the total freight haulage expenses to the out of pocket expenses of the third divisions shows conclusively that the operating conditions in Florida and the relationship of freight yard to total freight expenses on the third division was ignored and that the entire case is predicated upon the assumption that total freight expenses and total freight haulage expenses and, therefore, freight yard expenses on the third division bear the same relationship to the out of pocket expenses on the third division that the same expenses of the system bear to the out of pocket expenses on the system. In other words, the defendant has predicated his costs upon system averages applied to the [fol. 1277] third division out of pocket freight expenses and by so doing has assumed that the out of pocket ex-

penses are the controlling expenses in connection with cost ascertainment. Turning now to the second sheet of Exhibit No. 84 (Tes. p. 1416), the 35.027 per cent represents the percentage which the out of pocket expenses are of the total expenses other than the out of pocket expenses and the 23.5492 per cent represents the percentage which out of pocket expenses are of the total freight expenses less out of pocket expenses. Mr. Lamb used the two percentages to expand the out of pocket unit costs per gross ton mile and per car mile obtaining on the third division in the State of Florida. I will now explain for the record just what expenses are comprehended in the expanded unit costs obtained by the use of these percentages. The expansion of the unit cost on the third division by the application of the percentage 35.027 does not produce the total haulage cost, but produces the haulage cost less the out of pocket cost for haulage. This is obviously true because the 35.027 per cent does not represent the percentage which the out of pocket costs is to total haulage cost, but it represents the percentage which the out of pocket expenses are of the total haulage expenses less the out of pocket expenses. The application of th percentage 23.5492 to the average out of pocket unit cost does not produce the total freight operating cost, but produces the total freight (Tes. p. 1417) operating expense cost less the out of pocket expense cost. This is true because the percentage used does not represent the relationship of out of pocket expenses to total freight expenses but represents the relationship of out of [fol. 1278] pocket expenses to total freight expenses less out of pocket expenses. Therefore, the use of expanded factors by the witness produces a unit cost and likewise an operating cost which does not include the out of pocket costs which he purports to use as the controlling factor in a determination of costs. Assuming that the Witness's theory is correct, he should have used 25.9405 per cent in expanding the haulage costs and 19.0606 per cent in expanding the total freight cost instead of using 35.027 per cent and 23.5492 per cent, as used by him in estimating the cost for the different distances. I turn now to defendant's Exhibit No. 85, just above the tabulation of 5¾ per cent return on investment, exhibit No. 85 shows that the Florida taxes are 15.3850 per cent of the total railway operating expenses assigned to the State of Florida. In this connection I want to again direct attention to the fact that

the operating expenses assigned to the State of Florida are assigned upon the operating revenue basis and reference to defendant's exhibit #79, line 22, under the year 1929, shows that for ever- $100.00 of revenue credited to Florida operations, the Atlantic Coast (Tes. p. 1418) Line Railroad assigned $73.83 of expenses as being applicable thereto. To be consistent, therefore, the defendant should, in determining the taxes applicable to specific movements, first assign 73.83 per cent of the revenue secured from such traffic as the expenses applicable thereto for taxable purposes and then apply the 15.3950 per cent to the amount of expenses so determined. It is obviously both unfair and inaccurate to determine a percentage relationship upon one basis and then to apply such relationship to the expenses determined in an entirely different manner.

[fol. 1279] At the bottom of the page is shown a tabulation of the system investment, expenses and return on investment, which on line 7, shows the ratio that the return on investment assignable to freight service is to the freight operating expenses. This tabulation deals with the system as a whole and does not deal with the average conditions in Florida, nor with the return upon the investment of the property used and useful in the transportation of logs intrastate in Florida and in my opinion, there is no evidence of record in this case which warrants the conclusion that the transportation of logs intrastate in Florida uses the same amount of property investment per dollar of expenses as is utilized on the system as a whole. Furthermore, I am of the opinion that the investment in roadway and structures and in equipment is more correctly (Tes. p. 1419) measured by the separation which obtains between the freight and passenger service in the maintenance of way and structures and maintenance of equipment blocks of expenses, respectively, than by the separation which obtains with respect to total operating expenses. I turn now to Exhibit No. 86. If Mr. Lamb had expanded the out of pocket ton-mile costs shown on line 9, by the ratio to the haulage expenses and to the total expenses, respectively, the out of pocket costs per gross ton mile would have been under column (a), .34035 cent and under column (b), .4632 cent, respectively. In other words, the gross ton mile haulage expenses would be approximately 36 per cent greater than the expenses shown under item 10A and the total expenses would be approximately 25 per cent greater than

are reported under column (b). In order to roughly test Mr. Lamb's costs I obtained from the Interstate Commerce [fol. 1280] Commission through Mr. Gutheim, a photostatic copy of form OS-A for the month of December, 1930, which reflects the gross ton miles excluding locomotives and tenders for the calendar year ended December 31, 1929. The gross ton miles reported on this form, in thousands, were 11,600,829, the total freight operating expenses, according to Witness Lamb's Exhibit No. 84, page 2, were $36,308,-813.00, from which an average cost per gross ton mile of 3.1298 mills is produced (Tes. p. 1420). As previously stated, line 10 under column (b) of Exhibit No. 86, if properly computed, shows a cost of 4.632 mills, or an amount which is practically 48 per cent in excess of the average system gross ton mile cost. Considering the amount of L. C. L. traffic handled by the Atlantic Coast Line Railroad in 1929, which my exhibit No. 104, showed to be about 4.4 per cent of the system tonnage, considering the extraordinary services furnished to the perishable freight, considering the volume of the log movement in train-load lots, and considering the loading of the log trains, I am satisfied that the average gross ton mile cost of handling logs in the State of Florida is nowhere near 48 per cent greater than the gross ton mile cost obtaining on the Atlantic Coast Line system as a whole, and this calculation convinces me that the methods employed by the defendant are arbitrary, not defensible, nor in accord with the usual accepted methods employed in cost ascertainment and that the results obtained by the application of such methods are inaccurate and unreliable (Tes. p. 1421).

[fol. 1281] H. J. Flack, was called as a witness and after having been first duly sworn, testified as follows:

Direct examination:

My name is H. J. Flack. I reside in the City of Jacksonville and I operate a traffic bureau in that city. I have been connected (Tes. p. 1422) with the traffic bureau at Jacksonville, Florida for the past nine years, since 1922. During the sixteen years preceding 1922, I was continuously connected with and employed by Armour & Company in the

traffic department, and in connection with the Fruit Growers Express. From 1918 to 1922 I was in charge of loss and damage and overcharge claims for the Fruit Growers Express at Jacksonville. In 1920 Armour & Company transferred its refrigerator equipment to Fruit Growers Express, Inc. I was not employed by the new company though I had an opportunity to do so. During the next two years I continued with the old company assisting in winding up the outstanding accounts and claims and business in my territory.

Q. I hand you Exhibit No. 61 of the witness Perrin in this proceeding and ask you if you have made any investigation or analysis of the log movement shown on this exhibit. And if so, state the extent and result of that investigation and analysis?

A. Shortly after the hearing in this proceeding at Jacksonville, on June 10th, 11th and 12th of this year, and at the request of the intervening lumber companies, Wilson Cypress Company, Cummer Cypress Company and Wilson Lumber Company, and on behalf of the State of Florida, I undertook to analyze exhibit 61 and the log movement shown thereon for the primary purpose of determining [fol. 1282] what portion of the movement took place from the several points of origin to the several destinations shown on Exhibit 61, between February 8, 1929 and January 31, 1930, (Tes. p. 1423) and what portion of the movement took place between February 1, 1930 and January 31, 1931, and to determine the descriptions or species of the logs embraced in the movement shown on that exhibit. And to show the amount of revenue collected in the two annual periods mentioned above and the amount of revenue collected in the two annual periods mentioned above to each of the destinations mentioned in Exhibit 61 and the amount of revenue collected for those two years applicable to the various species of logs. In every instance where it was necessary for me to do so in order to ascertain the facts I went to the points of destination shown on Exhibit 61 and likewise I went to many of the points of origin shown thereon, all for the purpose of ascertaining the facts shown on such exhibit and did ascertain such facts. I have prepared exhibits showing in condensed form the result of my investigation and analysis of this log movement. I have prepared as my Exhibit No. 111 a statement showing

in tabulated form under the various points of destination the log movements shown on Exhibit 61. On my Exhibit No. 111 at the top of columns numbered from 1 to 16 I have listed the various destinations to which logs are shown to have moved by Exhibit 61 of the witness Perrin. Column 17 shows the totals of the figures listed under the preceding sixteen columns (Tes. p. 1424).

Examiner Hoy: Correct Exhibit No. 111 in column (b) to show under the heading "Destination" "Revenue collected on logs moved between February 8, 1929 and January 31, 1930, inclusive."

[fol. 1283] The Witness: Three of the destinations shown on Exhibit 61 are omitted from my exhibit. Those points are as follows: Tampa, Florida: To which destination Exhibit 61 shows that three cars moved during the period under investigation. Claim, Florida: To which destination Exhibit 61 shows that two cars moved during the period under investigation. Childs, Florida: To which destination Exhibit 61 shows that one car moved during the period under investigation. I have shown Palatka, Florida upon my exhibit but have included therein only the carload movement consigned to that destination as distinguished from the solid trainload movement consigned to Wilson Cypress Company at that destination from Hines, Florida. I have omitted the solid trainload movement because that movement has been covered by the testimony of other witnesses. (Tes. p. 1425.) Glenwood and Bonds Mill shown as separate destinations on Exhibit 61 constitute in effect one destination, and the shipments consigned to those points were consigned to and received by but one mill, namely, the mill of Putnam Lumber Company at that point. I have therefore listed them together on my exhibit in column 4. In checking up the movement to the various points of destination shown on Exhibit 61 I failed to find any record in some instances of cars of logs shown by Exhibit 61 to have moved from particular origins to the listed destinations, and likewise found some cars from other origins to those destinations which are not shown on Exhibit 61. The difference between my exhibit and Exhibit 61 in cars to the destinations listed on my exhibit is that I was unable to locate any record of 163 cars shown on Exhibit 61 to have moved during the period covered by that exhibit but I did [fol. 1284] locate records of 88 cars which moved to these

destinations during that period which are not shown on Exhibit 61, so that the net difference between my exhibit and Exhibit 61 is 75 cars.

Mr. Gwathmey: I am sure we will want to hear Mr. Flack's testimony and it seems to me it would clarify the record considerably if he would state just what check he made, that is to say, whose records he checked, the shippers' records or the receivers' records or the railroads' records or what.

The Witness: I can explain that in connection with each (Tes. p. 1426) individual destination.

Mr. Adair: I would like to state, your Honor, that the testimony of this witness and these exhibits are not produced here for the purpose of contradicting the facts set forth in Exhibit 61. They are in explanation and analysis of it as distinguished from contradiction of it.

The Witness: These slight variations are doubtless due to misnomers or errors in the records of the consignees or of the carrier and are not material to my analysis but I will point them out in my discussion of the particular movements to the particular destinations shown on my exhibit. It will be observed that this exhibit shows in the first and second lines, marked (a) and (b) respectively, under column 17 that during the first year of the high rate namely between February 8, 1929 and January 31st, 1930, inclusive, 7,965 cars of logs moved, and that the total revenue collected therefrom was $201,891.20. During the second year that the high rate was in effect, namely, between February 1, 1930 and January 31st, 1931, inclusive, my exhibit shows that 3,204 cars moved, and that the total [fol. 1285] revenue collected was $70,274.75. There (Tes. 1427) were 4,761 cars less in the second year, and $131,616.47 less revenue in the second year. This is the third and fourth lines marked (c) and (d) respectively under column 17. I could not, of course, allocate the discrepancy of 75 cars existing between my exhibit and Exhibit 61 with respect to these two periods, except that Exhibit 61 shows 526 cars to have moved to York, whereas my investigation disclosed only 509 cars moving to York. At no time was there more than one mill at or near York, viz., the mill of Longleaf Lumber Company, and that company abandoned its operations there in 1929 and from thenceforward there was no movement to York. So that of the 75 cars variance between the movement disclosed by Exhibit 61 and that

disclosed by my investigation, at least seventeen cars must be allocated to the year 1929. In the fourth line marked (d) under Column 17 I have shown the total revenue collected by the Atlantic Coast Line Railroad Company on the logs which my exhibit shows to have moved during the second year of the high rate. This is divided under each of the destinations and the total amount of revenue collected during this period to each particular destination is shown. The total revenue collected in this period is shown to be $70,274.75. In arriving at these revenue figures, wherever my records showed more or fewer cars than Exhibit 61, from a particular origin to a particular destination, I had to divide the revenue (Tes. p. 1428) shown by Exhibit 61 to have been collected by the number of cars shown by that exhibit to have been moved from that particular origin to that particular destination, so that I could determine the revenue per car from that point of origin [fol. 1286] to that point of destination. I then multiplied this resultant figure by the number of cars of which I had found records from that point of origin to that destination, and thus arrived at my figures of the revenue collected on the cars of which I found records. Because of the fact that these cars vary somewhat in weight, my figures thus arrived at may not be entirely accurate, but the discrepancies in number of cars between my exhibit and Exhibit 61 as to the various points of origin and destinations were so few that it would be impossible for this to make any material difference one way or the other. Of course, with the exception of the discrepancies above shown, my records coincided with the number of cars shown by Exhibit 61 to have moved from the particular origins to the particular destinations which are shown on Exhibit 61, and in all these instances where my records coincided with Exhibit 61 the revenue collected was taken without change from Exhibit 61. Exhibit 61, excluding the above-mentioned movement to Tampa, Childs and Claim, and the solid trainload movement from Hines to Palatka, shows that the Atlantic Coast Line Railroad Company collected during the whole of the two year period the sum of $273,228.07 from the log movement. My (Tes. p. 1429) exhibits show that the railroad collected during the same period from the same source the sum of $272,165.95, a difference of $1,062.12.

My foregoing exhibit shows that the log movement to five of the destinations listed, namely, Eastport, Gainesville, Live Oak, York and Baldwin, was permanently discontinued within the first year after the higher rate went into effect, [fol. 1287] and that there was no log movement to these destinations during the second year of the higher rate. I now propose, with the aid of certain exhibits I have here, to analyze the log movement to each of the destinations listed in my foregoing exhibit and give such information as I have been able to obtain with reference to each of them. My first exhibit, 111, shows that the log movement to Groveland took place during the second year of the higher rate. I have here marked Exhibit 112, an analysis of that movement showing the points of origin of the several cars moving during this period to this destination, the number of cars from each such origin, the distance in miles from each such point of origin to such destination, the description or species of such logs, and the revenue collected on the movement from each point of origin, as well as the total number of cars to this destination, and the total revenue collected on these cars. It may be observed that this exhibit coincides (Tes: p. 1430) exactly in all of these particulars with Exhibit 61 of the witness Perrin, except that I could locate no record of one car shown by Exhibit 61 to have been shipped from Sorrento to Groveland. Exhibit 61 of course does not show the description or species of these logs, whereas my exhibit does do so. All of the logs shown on this exhibit as having moved to Groveland went to the J. Ray Arnold Lumber Company at that place. They were all cypress logs and that mill cuts nothing else. The mill has been shut down the last several months. This company owns its own tract of cypress timber adjacent to its mill and connected with the mill by its own logging road. Only a small part of the logs cut by this mill was ever transported by common carrier. This company discontinued shipping logs over the Atlantic Coast Line Railroad because——

[fol. 1288] Mr. Gwathmey: Mr. Examiner, I object. Certainly it is not competent for the witness to state why the company discontinued shipping over the Atlantic Coast Line.

(Discussion off the record.)

Examiner Hoy: I will sustain the objection (Tes. p. 1431).

Mr. Gwathmey: To save time, Mr. Adair, I am going to say further that I will have to object to this witness undertaking to testify to what somebody may have told him was the reason.

Mr. Adair: That is what I am going to bring up.

Mr. Gwathmey: I will object then.

By Mr. Adair:

Q. Mr. Flack, in the course of your investigation did you confer with any officer of the J. Ray Arnold Lumber Company?

A. Yes, sir.

Q. What, if any, cause was assigned by that officer for his discontinuance of the shipping of logs over the Atlantic Coast Line, if any such reason was assigned?

Mr. Gwathmey: Mr. Examiner, I want to say in the record, as I have just said off the record, that I have no disposition to be technical but I must object to this witness undertaking to repeat what somebody like the shipper may have told him as to the reason why he did so.

Examiner Hoy: The objection is sustained.

By Mr. Adair:

Q. What officer did you discuss this matter with?

A. I talked with Mr. Arnold, the brother of J. Ray Arnold. I do not recall his initials. He is in charge of the plant at Groveland.

Mr. Adair: May I ask your Honor to note an exception? (Tes. p. 1432.)

[fol. 1289] Examiner Hoy: Certainly. The exception may be noted.

(Discussion off the record.)

The Witness: My Exhibit 112 also shows an analysis of the log movement to Loughman, Florida, in the same form as that used with respect to the movement to Groveland. The shipments shown on this exhibit are identical with the shipments shown on Exhibit 61 to this destination. All of the logs (217 cars in the two year period, and all in the second year of that period) shown on this exhibit to have

moved to Loughman went to Everglades Cypress Company at that point. The mill cuts cypress exclusively, and these were all cypress logs. The mill is located near its own timber and is connected with that timber by its own tram road, over which the logs are transported to the mill. The logs carried over the Atlantic Coast Line are those which it buys from third parties. The Everglades Cypress Company contemplate completing the cutting of its own standing timber by the end of the year. They then propose to discontinue operations. My next exhibit, marked Exhibit 113, shows a similar analysis of the log movement to Slater, Florida. All of this movement, 71 cars, took place during the second year of the (Tes. p. 1433) higher rate, and the shipments shown on this exhibit coincide with those on Exhibit 61. These were pine logs which went to the Dowling & Camp Lumber Company. These logs were all shipped in April and May of 1930, and there has been no subsequent movement, and will be none. Mr. Fleishel has testified that this company will complete its cutting this year. It should be observed that none of these logs moved further than 25 miles.

[fol. 1290] My Exhibit 113 also shows a similar analysis of the log movement to Bond's Mill and Glenwood, segregating the figures between the first and the second year of the higher rate, namely, from February 8th, 1929 to January 31st, 1930, and from February 1st 1930 to January 31st, 1931, respectively. This shows 95 cars in the first year and 121 cars in the second year moving to the mill of Putnam Lumber Company, which is located at these two stations. It likewise shows that the revenue collected in the first year was $2,155.32 and in the second year was $2,630.20. I was unable to locate any record of 14 cars shown on Exhibit 61 to have moved from Cassia to this destination, but located and included in my exhibit records of 1 car moving there from Apopka, which was not shown on Exhibit 61. Of course, I do not know whether the cars of which I could locate no records moved during the first or second year of the high rate. These logs were all cypress except that certain cars as shown on this exhibit were mixed (Tes. p. 1434) cypress and hardwood. The hardwood in these cars amounted to approximately 46 cars and the rest was cypress. The hardwood logs were shipped in to that mill and cut for the account of Wilson

Lumber Company. This Putnam mill is located in the timber and the bulk of its logs were transported to the mill from the timber by its own logging roads. The shipments over the Atlantic Coast Line Railroad to this destination are completed, no logs having moved since February 1st of this year, and no future log movement is expected.

Mr. Gwathmey: Mr. Examiner, I will have to object to this witness testifying as to matters of which he has no [fol. 1291] personal knowledge. I submit that the witness is not qualified to testify, having no knowledge on the subject as to whether or not any future movement of logs from this particular territory is expected.

Mr. Adair: I have no objection to that being stricken out. Mr. Fleishel testified to it and it seemed better to make the narrative read consecutively.

Examiner Hoy: In the form in which the objection is made I feel I will have to sustain it.

Mr. Adair: I have no objection to it being stricken.

Mr. Gwathmey: I am trying not to be technical, but I do feel there is a limit to which the witness should be allowed to go in testifying as to matters of which he has no personal knowledge (Tes. p. 1435).

Mr. Van Norman: I submit your witness went further than that.

Mr. Gwathmey: Two wrongs do not make a right even if I admit what you say.

Examiner Hoy: Let us continue with the testimony.

A. In my next exhibit, Exhibit 114, I have similarly analyzed the log movement to Jacksonville during the first and second years of the high rate, respectively. This exhibit shows that the shipments to this destination during the first year of the high rate amounted to 961 cars, which produced a revenue of $23,772.77, and during the second year amounted to 266 cars, which produced a revenue of $7,646.15. In comparing my figures with those shown by Exhibit 61 I found no record of the following shipments shown by Exhibit 61: From Ascot, 1 car; from Callahan, 2 cars; from Carbur, 3 cars; from Clara, 1 car; from Cler- [fol. 1292] mont, 1 car; from Old Town, 9 cars; from Trenton, 1 car; from York, 1 car; from Oviede, 2 cars and from Hague, 3 cars; a total of 24 cars. However, I located and included in my exhibits records of the following ship-

ments not shown by Exhibit 61: From Hollister, 3 cars; from Johnstown, 10 cars; and from Jones to, 5 cars; a total of 18 cars. So the net difference between my figures and those shown by Exhibit 61 is 6 cars to Jacksonville out of the 1,233 cars shown on Exhibit 61 to have been shipped to that destination (Tes. p. 1436). Of course, in this as in all of my other exhibits I have no way of ascertaining whether the cars of which I found no records moved during the first or second years of the high rate. These Jacksonville shipments were consigned respectively to the American Hardwood Corporation, Thompson-Katz Lumber Company, Wilson-Otwell Lumber Corporation, F. S. Buffum Company, Inc., Hazard Brothers, Gress Manufacturing Company and Hessler Hardwood Company. The American Hardwood Corporation failed and went out of business during the first year of the high rate. It operated throughout the year 1929, and received 566 of the cars of logs shown to have been shipped to Jacksonville during the first year of the high rate. Thompson-Katz Lumber Company formerly received most of its logs over the Atlantic Coast Line Railroad. It received 291 cars in the first year of the high rate, and 118 cars in the second year. This Company is located on the tracks of the Seaboard Air Line Railway. The Thompson-Katz Lumber Company during the period of high rates got cars in by other transportation methods. They decreased their (Tes. p. 1437) shipments over the Atlantic Coast Line Railroad after the [fol. 1293] time the high rate went into effect. Wilson-Otwell Lumber Corporation is likewise located on the Seaboard Air Line Railway at Jacksonville. It received 21 cars of logs during the first year of the high rate, and 3 cars of logs during the second year of the high rate over the Atlantic Coast Line Railroad. About 80 per cent of the logs received by this Company have been and are being transported by truck. F. S. Buffum Company, Inc., began operating in Jacksonville about May, 1930 upon the mill-site formerly occupied by the American Hardwood Company. During the second year the Buffum Company received 99 cars of logs over the Atlantic Coast Line Railroad. Its mill is located on McCoy's Creek in Jacksonville. During the period of the high rate it obtained the greater percentage of its logs by water and by truck.

Mr. Gwathmey: In view of the fact that I am not objecting specifically to a great deal of this testimony but which I might, I think, properly object to, may I ask whether it may be understood that this information, so far as this witness is concerned, is based entirely on information that was given to him by somebody else? (Tes. p. 1438.)

Mr. Adair: Mr. Gwathmey, that question, if it must be answered categorically, must be answered in the negative. If you mean as to intentions with respect to the future I will answer it in the affirmative. It undoubtedly is based wholly upon information given to him by somebody else. As to existing conditions and things in the past it is not wholly upon statements made to him but from an examination of records and upon his own observation and his knowledge of existing conditions.

[fol. 1294] The Witness: Hazard Brothers at Jacksonville received 3 cars of logs during the first year of the high rate, and 22 cars of logs during the second year of the high rate, over the Atlantic Coast Line Railroad. Gress Manufacturing Company received 24 cars of logs during the second year of the high rate over the Atlantic Coast Line Railroad. The Gress plant is located on McGirts River at Jacksonville, and received substantially all of its logs by water and by truck. Hessler Hardwood Company received 80 cars of logs during the first year of the high rate. It failed and went out of business during the first year (Tes. p. 1439). Almost all of the movement to all of the consignees at Jacksonville during the two years of the high rate was hardwood. There were only 58 cars of cypress, and the balance of the 1,227 cars was hardwood. As has been pointed out, the total revenue derived from logs moving to Jacksonville during the first year of the high rate was $23,772.77, and the total revenue derived from such movement during the second year of the high rate was $7,646.15 (Tes. p. 1440).

July 21, 1931.

Witness H. J. Flack continuing:

My next exhibit, No. 115, is a similar analysis of the log investment to Perry, Florida, during this same period, dividing the time between February 8, 1929 and January

[fol. 1295] 31st, 1930, and between February 1st, 1930 and January 31st, 1931. In my investigation I could locate no record of the following cars of logs shown on Exhibit 61: From Athens, 2 cars; from Clara, 2 cars; from Cross City, 10 cars; from Drifton, 4 cars; from Erida 10 cars, from Eugene, 2 cars; from Feson, 5 cars; from High Springs, 3 cars; from Jones Siding, 21 cars; from Lamont, 10 cars; from Miccosukee, 4 cars; from Monticello, 3 cars; from Old Town, 3 cars; from Thompson's Spur, 6 cars; a total of 87 cars (Tes. p. 1441). I did locate and include in my exhibits records of the following cars not shown on Exhibit 61: From Baum, 21 cars; from Carbur, 2 cars; from Hague, 1 car; from Hildreth, 2 cars; from Homosassa, 3 cars; from Palatka, 2 cars; from Santa Fe, 5 cars; from Mt. Plymouth, 2 cars; and from Williston, 2 cars; a total of 40 cars. Baum and Jones Siding are each 59 miles from Perry so the 21 cars from Jones Siding I could not locate may be the 21 cars from Baum which I did locate and of which Exhibit 61 contained no record. The net result is that my records show 47 cars less to this destination in the two years than Exhibit 61 does. My records show that the logs moving to Perry were hardwood logs only and were shipped to Wilson Lumber Company of Florida. My exhibit shows 2,107 cars in the first year of the high rate, and 1,078 cars during the second year of the high rate. The total revenue collected in the first year of the high rate from this movement was $55,438.58, and in the second year $21,766.76. As soon as possible after the high rate went into effect Wilson Lumber Company effected arrangements to transport a large proportion of its logs by truck or over the Live Oak, Perry & Gulf Railroad and the South Georgia Railway.

[fol. 1296] It should be observed that the average haul was 59.4 miles in the first year of the high rate, and only 39.2 miles in the second year of the high rate. The log movement to Cross City has been explained by Mr. (Tes. p. 1442) Fleishel in his testimony. I have prepared and marked Exhibit 116, a similar analysis of this movement during the respective two years of the high rate. I was unable to locate any record of 1 car shown by Exhibit 61 to have been shipped from Hines to Cross City but otherwise the records I found were identical with those shown on Exhibit 61. My exhibit shows 325 cars in the first year

with a revenue of $6,122.26, and 934 cars in the second year with a revenue of $19,778.72. This exhibit shows that this movement consisted almost entirely of shipments of pine logs from Hines and shipments of cypress logs from Carbur. All of these logs went to the Putnam Lumber Company which has a pine saw mill and a cypress saw mill at Cross City. The pine logs from Hines were logs that were developed in the course of the cypress logging operations of the Wilson Cypress Company and which were sold by that company to the Putnam Lumber Company, the Wilson Cypress Company having no pine saw mill. No further pine is now developed by the Wilson Cypress Company in their operations and this movement has therefore ceased. The cypress logs from Carbur developed in the same way as an incident to the pine logging operations of the Brooks-Scanlon Corporation. At that time the Brooks-Scanlon Corporation had no cypress saw mill and therefore sold these logs to its nearest neighbor who could handle them, the Putnam Lumber Company. The Brooks-Scanlon Corporation now has its own cypress mill and is transporting its logs by its own railroad and this movement (Tes. p. [fol. 1297] 1443) is therefore completed. It should be also observed that the movement to Cross City was a very short haul, the average haul per car during the first year being 10 miles and during the second year being 26½ miles. The testimony of Mr. Foley in this proceeding shows that the log movement to Eastport shown by Exhibit 61 took place completely within the first few weeks after the high rate went into effect on February 8, 1929. There has been no movement to that destination (Eastport) since. My Exhibit 116 also shows a similar analysis of this movement. This shows 224 cars of pine logs in the first year producing a revenue of $10,403.43. The log movement to Gainesville shown by Exhibit 61 consisted of certain cars of hardwood logs shipped to Brown Brothers at that destination during the year 1929. Brown Brothers failed and went out of business in 1929 and closed their mill and there have been no further shipments to that destination. In my Exhibit 117 I have tabulated this movement in the same manner as the log movement to the destinations previously mentioned. This shows 72 cars in the first year producing a revenue of $2,100.83 (Tes. p. 1444). Exhibit 61 shows 39 cars of logs shipped to Live Oak. These were hardwood logs shipped

during the year 1929 to Hair Hardwood Company, whi
company had a small mill at Live Oak. No further lo
were shipped there during the period of the high rate, a
that company failed and is out of business. In 1929 the
was no other mill at that point. My Exhibit 117 al
shows an analysis of this movement in the same form as m
preceding exhibits. This exhibit shows 39 cars moving
Live Oak in the first year of the high rate producing
revenue of $854.34.

[fol. 1298] Exhibit 61 shows 526 cars of logs shipped
York, Florida. The Longleaf Lumber Company had a mi
at York during 1929, and I find records of 509 cars shipp
during that year to that company, and after the high ra
went into effect. The mill was then closed down and mov
to Indian Town, which is located in some timber in southe
Florida near Lake Okeechobee, owned by that compan
There is no mill at York. These were pine logs. My E
hibit 118 shows an analysis of this movement in the sam
form as my preceding exhibits. This shows 509 cars of pi
logs in the first year producing a revenue of $8,778.70. Th
average haul to York was 35.2 miles. Exhibit 61 show
that 95 cars of logs were shipped to Buffalo Bluff fro
various points of origin in Florida. These were hardwoo
logs which went to the J. W. Jones Lumber Company (Te
1445). I could find no record of 1 car shown to have bee
shipped to that destination from Jacksonville. All of thes
cars of logs, except one, were shipped during the year 192
This log movement is also shown on my Exhibit 118.
the first year there were 93 cars, producing $1,711.88
revenue, and the average haul was 29.9 miles. In the se
ond year there was 1 car, producing $15.57 in revenue, whi
was hauled 27 miles. In the year 1930 this company tran
ported its logs via the St. Johns River. The log movemen
to Lacoochee has been explained by Mr. Cummer in h
testimony in this proceeding. It was largely a solid trai
load movement. Only a small part of this movement too
place during the second year of the high rate. I have pr
pared and marked Exhibit 119 showing a similar analys
of that movement during these two years. I could locat
no record of two cars shown by Exhibit 61 to have bee
shipped from Linden but I found records of and included i
[fol. 1299] my exhibit, 19 cars from Homosassa, which we
not shown on Exhibit 61. These were all cypress log
shipped to the Cummer Cypress Company. The movemen

was practically completed in 1929. My Exhibit shows 3,004 cars in the first year, producing a revenue of $77,082.64, and 225 cars during the second year, producing a revenue of $3,943.34. It should likewise be observed that the average distance per car (Tes. p. 1446) during the first year was 60 miles, and during the second year 19.9 miles. The log movement to Otter Creek as shown by Exhibit 61 consisted of 519 cars of hardwood logs shipped to the Cummer Cypress Company at that destination for the crate mill of that Company. This all moved in the first year after the high rate went into effect, except six cars which were shipped in February, 1930. This movement was then completed. My Exhibit 119 also shows that the revenue in the first year of the higher rate was $13,034.45, and that the revenue in the second year was $151.92. Mr. Cummer has fully testified with reference to this. My investigation disclosed that the 9 cars of logs shown by Exhibit 61 to have moved to Baldwin were shipped during 1929 by a man named Townsend who attempted to operate a mill at Baldwin at some time during that year. He moved a few logs up the canal to Jacksonville and shipped them from that point to Baldwin. He then closed his mill down and moved it away. This movement is shown by my exhibit 120 in the same form as my preceding exhibits. My Exhibit 120 also shows a similar analysis of the log movement to Palatka, excluding the solid trainload movements from Hines to Palatka. The solid trainload movement will be completed in a short time but has been so thoroughly discussed by other witnesses in these proceedings that I have not included it in my exhibits. [fol. 1300] This exhibit shows 12 cars in (Tes. p. 1447) the first year, producing a revenue of $302.46, and 94 cars in the second year, producing $2,301.62 in revenue. These were the log movements to Palatka other than the above mentioned solid trainload movement from Hines. It will be observed that over the two year period the carload movements shown by my exhibit are slightly less than 1½ per cent of the logs shipped to Palatka, all of which were received by the Wilson Cypress Company. The solid trainload movement from Hines, therefore, accounted during this period for more than 90½ per cent of the logs received by Wilson Cypress Company. I have two further exhibits, marked Exhibit 121 and Exhibit 122. The first of those is an analysis of the log movement during the first year of the high rate showing the number of cars of pine, cypress

and hardwood logs; respectively, moving to each of the destinations referred to in my previous exhibits and the amount of revenue derived from each such movement with the totals at the bottom of the page. I have discussed each of the destinations in Florida to which logs moved over the Atlantic Coast Line Railroad during the two years that the high rate was in effect. The records I have obtained and testified about check very closely with those shown on Exhibit 61 which is said by the Atlantic Coast Line Railroad to show all of the shipments over its lines in Florida during this period. After two (Tes. p. 1448) years of the log rate prescribed in this proceeding by the Interstate Commerce Commission, the log traffic in Florida over the Atlantic Coast Line Railroad, with the exception of the movement of the Wilson Cypress Company from Hines to Palatka, consists of a small movement to Loughman, Flor- [fol. 1301] ida, a small movement to Jacksonville, Florida, and only a slightly less trifling movement to Perry, Florida.

Q. Those are the three destinations to which Mr. Langley of the Atlantic Coast Line Railroad Company at the recent hearing referred as being the only points to which the Coast Line was then transporting logs in Florida excepting Palatka?

A. They are. The movement to those three destinations during the second year of the high rate amounted to 272 cars of cypress logs, 1,289 cars of hardwood logs, and no pine logs, and produced a total revenue of $35,086.74 based upon the high rate. And as has been shown, there is included in those three movements 217 cars of cypress logs moving to Loughman, which produced a revenue of $5,673.83 and as has been shown by the testimony of other witnesses the Loughman movement will be completed this year.

By Mr. Adair:

Q. Mr. Flack, please tell me what investigation you made with respect to the Groveland movement in order to obtain the data which you have included in your exhibit (Tes. p. 1449) and in your testimony with respect to that destination?

A. I proceeded to Groveland to the mill of J. Ray Arnold Lumber Company. I talked personally with Mr. Arnold, who is manager of the mill. I examined and counted the

original Atlantic Coast Line paid freight bills. He did not have all of the paid freight bills at Groveland but advised me that Mr. Tom True, traffic manager Southern Cypress Association, had the balance of these paid freight bills at his office in Jacksonville. Upon my return from Groveland the next day I called on Mr. True and he turned [fol. 1302] over to me the original paid freight bills for examination. I saw all of the original paid freight bills as paid by J. Ray Arnold Lumber Company covering all of the shipments shown on my exhibit to this destination. At Loughman I saw Mr. Lee, Manager of the Everglade Cypress Company. Mr. Lee showed me their log car receiving book but in view of the fact that this record was in charge of the office manager who was in Kissimmee that afternoon, he did not wish to turn over this record without first consulting with the man who kept this book. Mr. Lee advised me that he would get up the record that I requested and forward it to me by mail which he did the following day, and I received it in Jacksonville upon my return (Tes. p. 1450). Slater is located south of Fort Myers, Florida. This mill is operated by the Dowling Camp Lumber Company. I learned that the Dowling Camp Lumber Company had made a claim against the Atlantic Coast Line for restitution for alleged overcharges upon the cars received by it at Slater and had placed all its paid freight bills in the hands of Mr. H. O. Taylor, a traffic man, for that purpose. From Mr. Taylor, I secured the information set forth in my exhibit. The Bonds Mill and Glenwood, this mill belongs to the Putnam Lumber Company, whose headquarters are at Cross City. I personally went to Cross City and found that the records on the Bonds Mill-Glenwood operations were kept there. The records covering these cars were secured from the original paid freight bills and I saw these paid freight bills on all of the cars shown in this exhibit. On the Jacksonville movement I found that Mr. G. L. Moore, traffic manager for the Jacksonville Lumber Dealers Association represented all of the consignees mentioned in my testimony, except the American Hardwood Com- [fol. 1303] pany. Mr. Moore had filed the original paid freight bills in connection with the claim for restitution (Tes. p. 1451). However, he had an abstract of the original paid freight bills which showed the shipping points, date of shipments, car number, consignee, description or species

of logs and amount of freight paid. He had made this abstract up from the original paid freight bills and had prepared the claim on behalf of each of these companies except the American Hardwood Corporation for restitution of the amount over paid during the period of the high rate. It covers all of the shipments shown on my exhibit except American Hardwood Corporation. With respect to American Hardwood Corporation, Mr. Thomas C. Guthrie, who represents certain interveners in this proceeding and who was personally present at the June hearing at Jacksonville, had the same sort of abstract of the movement to American Hardwood Corporation as Mr. Moore had of the others. My information with respect to these shipments was secured in the same way. I interviewed Mr. Towland at Perry. He is the secretary in charge of the books of the Wilson Lumber Company at that point. He showed me the original claim record which is an abstract of all the shipments received by his company at Perry. This abstract of freight bills carried the date of shipment, shipping points; kinds of logs; car numbers and amount of freight paid. I went to Cross City and saw Mr. Summitt of the [fol. 1304] Putnam (Tes. 1452) Lumber Company. He is manager and bookeeper of the company. He showed me the original paid freight bills which show all of the shipments shown on my exhibit to this destination. At the same time he showed me the original paid freight bills to Bonds Mill and Glenwood which I have mentioned before. With respect to Eastport, I went to Foley, Florida, where the Brooks-Scanlon mill is now located, having transferred its operations from Eastport. I saw Mr. Scherer, who testified in this cause in 1927. He told me that these records had been transmitted to Baker, Baker & Rutherford, their attorneys at Jacksonville, and the information was secured from that source. I showed to Mr. Scherer Exhibit 61 and he verified the movement of cars shown on that exhibit to have been shipped to Eastport. I went to Gainesville and endeavored to locate the plant of Brown Brothers. I found out that mill had failed in 1929 and had gone out of business in that year. I tried to locate Mr. Brown, the former proprietor of the mill, but was unable to do so. I called on Mr. Green who has charge of the Lumber Manufacturing Company at Gainesville, which had been manufacturing lumber in a small way at Gainesville for several years. There is no other mill at or near Gainesville. I ascertained

from Mr. Green that no logs were shipped to Lumber Manufacturing Company and that no logs were shipped to any Gainesville mill in recent years except to Brown Brothers (Tes. p. 1453), and that Brown Brothers cut only hardwood logs at their mill. I did not go to Live Oak because I knew the Hair Hardwood Company had failed and gone out of business in 1929. I ascertained that the Hair Hardwood Company had filed a claim against the Atlantic Coast Line [fol. 1305] for restitution and that this claim was in the hands of Mr. Commre of South Jacksonville. I called upon him and he verified the contents of Exhibits 61 in so far as shipments consigned to Live Oak were concerned. I went to York and there found that the Longleaf Lumber Company, formerly located there, had discontinued its operations in 1929 and had moved its operations to Indian Town, which is near Lake Okeechobee. There has been no other mill located at or near York in recent years. I learned that the Longleaf Lumber Company had made a claim against the Atlantic Coast Line Railroad for restitution for alleged overcharges upon the cars received by it at York and had placed all its freight bills in the hands of Mr. H. G. Taylor, a traffic man, for that purpose. From Mr. Taylor I secured the information set forth in my exhibit (Tes. p. 1454). With respect to Buffalo Bluff, this point is located about five miles from Palatka. The mill there is operated by the J. W. Jones Lumber Company. Mr. Jones exhibited to me his paid freight bills and log car receiving book and from these records I obtained the data shown on my exhibit covering this point. With respect to Lacoochee and Otter Creek I secured this information from the Cummer Cypress Company at Jacksonville. It should be observed that Mr. Cummer has testified with respect to this movement. I also went to Baldwin and found that the Townsend mill, which was a hardwood mill, had closed up and moved away in 1929 and that that was the only mill at Baldwin during the period of the high rate. I accepted the figures on Exhibit 61 as to this movement. I went to Palatka to the plant of Wilson Cypress Company and there examined the log car receiving book and the restitution claim filed [fol. 1306] by that company against the Atlantic Coast Line which included an abstract of the paid freight bills. From these records I obtained the information shown on my exhibit with respect to this movement.

Mr. Adair: Mr. Examiner, on behalf of the State I offer (Tes. p. 1455) in evidence the several exhibits about which the witness has testified.

Mr. Gwathmey: No objection.

Examiner Hoy: Exhibits Nos. 111 to 122, both inclusive, will be received.

By Mr. Adair:

Q. Mr. Flack, I hand you what purports to be a letter directed by the Atlantic Coast Line Railroad to the Gress Manufacturing Company under date of April 10, 1931, with respect to rates on logs. I will ask you to examine that letter and inform me whether or not you know whether on or about April 10, or in that neighborhood, any other shippers of logs in the Atlantic Coast Line Railroad received such a communication or a communication of such character?

A. The only particular consignee that I know positively received such a letter is the Wilson Lumber Company at Perry, Florida.

Q. Have you understood such a letter on or about such time was sent to other shippers?

A. I heard of the letter being received and discussed by various traffic men who were connected with lumber interests.

Mr. Adair: On behalf of the interveners we offer this letter in evidence, and tender it to our adversaries for (Tes. p. 1456) scrutiny as to its authenticity.

[fol. 1307] Mr. Gwathmey: Might I ask Mr. Adair what the purpose of the letter is?

Mr. Adair: Yes, sir; it is twofold. First, to show that this rate in so far as shippers generally were concerned appears to have been formerly restored to the Cummer scale on or about April 10, 1931. In the second place, that in the communication of restoration there is advice to the effect that the consignees of logs shipped under that Kummer scale may be called upon to pay in the future an additional sum of money for the transportation of logs.

Examiner Hoy: Well, that second reason has got no purpose in this proceeding at the present time, has it?

Mr. Adair: I am not sure, your Honor, but what it has, because Mr. Langley has testified here that there is only

this trifling amount of stuff since the restoration of the low rate, and I think a letter of that sort going to shippers or consignees of logs would discourage them from making arrangements to transport logs in the future with that implied threat in the letter.

Mr. Gwathmey: What I had in mind, Mr. Adair, by my question was to develop if I could whether or not your purpose in introducing the letter is to suggest that the Atlantic Coast Line had not complied with the requirements of the situation and made effective and maintained the Cummer scale during the (Tes. p. 1457) period after the order of the Interstate Commerce Commission was vacated?

Mr. Adair: Mr. Gwathmey, I consider that that question has no particular place in this case.

Mr. Gwathmey: I do not think so either.

Mr. Adair: I let the thing speak for itself. I do not [fol. 1308] propose to inject that issue into this case.

Mr. Gwathmey: As you probably know, Mr. Adair, there was some correspondence between the Railroad Commission of Florida and the Atlantic Coast Line concerning the publication of the tariff. That is what I had in mind.

Mr. Adair: I am not trying to inject that into this case at all. I am trying to show the effective date upon which the scale generally became effective.

Examiner Hoy: You offer the letter in evidence?

Mr. Adair: Yes, sir.

Mr. Gwathmey: No objection.

Examiner Hoy: It will be received as Exhibit 123.

Cross-examination:

I have no direct connection with any of the lumber companies (Tes. 1458) interveners in this case. I was especially employed for the purpose of this case to make the investigation to which I have testified. When I went to these various points and examined certain records and interviewed certain parties, they fully understood the purpose for which I was making the inquiries and making the investigation and received me cordially and were willing to co-operate in furnishing the information. They all

knew that it was intended for use in this case before the Interstate Commerce Commission for the further hearing.

Mr. Gwathmey:

Q. Mr. Flack, aside from what you learned by your personal investigation of the various records and what you gathered from your personal observation during the period in which you were at these various places, was all of [fol. 1309] the balance of your testimony based entirely upon what somebody told you?

A. As I have previously testified, the data and records concerning the accounts and number of cars, the period as far as years or dates are concerned, was obtained from the records, which I previously referred to. I do not think that there is anything additional to be (Tes. p. 1459) added to that question.

The Witness: The information was received from proper authorities in charge of the mills and plants at the various destinations.

By Mr. Gwathmey:

Q. It appears from your Exhibit 112, for example, the same thing being true in respect to your other exhibits, that taking, for instance, the mill at Groveland, during the first period which you show there was no movement of logs to Groveland, while during the second period, that is, the period from February 1, 1930, to January 31, 1931, there was a movement of 191 cars. In the course of your investigation did you learn why there was no movement during the first period but that a movement commenced during the second period, although the advanced rate was in effect during both periods?

A. I did not develop the reason for the absence of any movement (Tes. p. 1460) the first year.

Q. Did you develop the reason why there was no movement to Loughman during the first period, but a movement of 217 cars during the second period, although the advanced rate was in effect during the entire time?

A. In respect to Loughman, it is my impression that the mill was temporarily not operating during the first year.

Q. Well, it is a fact, is it not, as would appear from [fol. 1310] your exhibit that notwithstanding the fact that

the advanced rate was in effect on February 1, 1930, the movement did commence at Loughman and continued during that second period?

A. That is right.

Q. Can you explain why the Dowling Lumber Company at Slater received no movement during the first period but it had a movement during the second period, the advanced rate having been in effect during the entire time?

A. I am not able to give you any particulars regarding that.

Q. Mr. Flack, I understood you to make the statement a moment ago that the solid train movement from Hines to Palatka will be concluded in a short time. What is your authority for that statement?

A. That information was conveyed to me by the Wilson Cypress Company, Mr. Lecks (Tes. p. 1461). He is secretary of the Wilson Cypress Company. I have no knowledge whatever on the subject except what Mr. Lecks told me. As to whether the Wilson Lumber Company owns any logs, or buys its logs from other sources, they do both, they buy and they have their own timber. I know that through Mr. Rowland of the Wilson Lumber Company. In the course of our discussion that was the information I secured. I do not know of my own knowledge that the Wilson Lumber Company actually owns any logs at all.

[fol. 1311] Witness Pettijohn:

Direct examination (continued):

I have made a study of the records of the Atlantic Coast Line in Florida which enables me to say about what proportion of its total freight traffic is made up of so-called perishable fruits and vegetables. In the year 1929 the number of cars of perishable freight originating on the Atlantic Coast Line Railroad within the State of Florida was 229,068. Of this number of cars 59,687 or over 25 per cent were perishables. The reference to the authority is as follows: Schedule 941, pages 908 to 911, of the annual report of the Atlantic Coast Line Railroad to the State of Florida. I have treated as perishables Class No. 110, oranges, grapefruit, to and including

beans and peas, dried, Class No. 150; No. 111, lemons, limes and citrus fruit, N. O. S., 120, apples, fresh; 121, bananas; 122, berries, fresh; 123, cantaloupes and melons, N. O. S.; 124, grapes, fresh. (Tes. p. 1463.) 125, peaches, fresh; 126, watermelons; 127, fruits, fresh, domestic, N. O. S.; 128, fruits, fresh tropical, N. O. S.; 130, potatoes, other than sweet; 140, cabbage; 141, onions; 142, tomatoes; 143 vegetables, fresh, N. O. S.; 150, peas and beans, dry. In that last item there were two cars of beans and peas, dried.

Mr. Gutheim: That is all.

Cross-examination:

As to what that amounts to in tons I have not figured it up, but it would not be as great a percentage in tons as it is in carloads. Yesterday I testified as to a sum of about ten million dollars for terminal charges. I can point out how I did that. I am going to use 109 to do it. On sheet 1 of my exhibit 109 you use Accounts 202 to 225, inclusive. [fol. 1312] The amounts shown thereunder are (Tes. p. 1464) yard $849,955.03; road $4,457,063.84. Then you turn to page 2 of the exhibit and Accounts Nos. 376 to 389, inclusive, and Accounts 390 to 391, aggregate $3,875,981.02 yard expenses and Accounts 392 to 402, inclusive, and Accounts 412 and 413, aggregate $6,758,181.73 road. Combining the maintenance of way and transportation expenses we get a total yard expense of $4,725,936.05, yard expense; and a total road expense of $11,215,245.57. The sum of these two equals $15,941,181.62 and of this latter figure the yard allocation represents 29.6461 per cent and but 29.6461 per cent of the total freight expenses are assignable to yard operations and assigned to yards are $10,764,146.94 concerning which you made inquiry.

By Mr. Lamb:

Q. I understand then from your figures, that the $10,764,146.94 represents what are commonly known as terminal expenses or are just yard accounts?

A. Mr. Lamb, they are referred to in different cases as terminal expenses and yard expenses. In my opinion they are yard expenses. They do include all of the terminal expenses except such terminal expenses as would properly be assigned for house tracks and team tracks, and for the ex-

penses of local trains doing station work, such as loading and unloading way freight and station switching.

Q. Is it not a fact Mr. Pettijohn, that the $4,550,039 used on my exhibit No. 84 constitutes all of the yard accounts under (Tes. p. 1465) the I. C. C. classification?

A. Sheet 1 of your Exhibit 84 reflects, with the exception of items 278 and 279, maintaining joint tracks, yards and other facilities, debit and credit, all of the yard expenses that are directly allocated or assigned to yard service in the [fol. 1313] classification of accounts prescribed by the Interstate Commerce Commission.

Q. Including not only the maintenance but the operation of those yards?

A. That is correct, as far as the accounts have been provided by the Interstate Commerce Commission to specifically set forth yard expenses.

Q. So that when you state there is a difference of five million dollars, approximately, between the yard expenses shown on my exhibits and the yard expenses developed by you, your comparison here takes into consideration not only the yard account but what are strictly known as terminal accounts under Dr. Lorenz's formula, for example?

A. Well, I would not say that they are strictly known as terminal accounts by a great deal, because there are certain of the expenses that are yard expenses regardless of the terminology that you wish to place upon it. I would be properly stating it to say they would come under the term of non-haulage expenses. It includes a pro-rate of expenses which are common to both haulage, non-haulage, yard, (Tes. p. 1466) and terminal. I believe, Mr. Lamb, I made that statement very clear in my original testimony.

C. R. MacPherson (recalled): I am president of the Wilson Cypress Company.

Q. At the former hearing you testified that you had shipped a number of cars in train load shipments from Old Town to Palatka in 1924 and 1925. I shall be very much obliged if you will now state for the record the number of cars and the (Tes. p. 1467) amount of freight paid in 1924 on this solid train load movement from Old Town to Palatka and likewise state the number of cars and the amount [fol. 1314] of freight paid in 1925.

A. Our movement from Old Town began in April, 1924, and during the balance of that year we shipped 2,191 cars and paid freight of $31,988.68. In the year 1925 we shipped from Old Town to Palatka 4,149 cars and paid freight of $59,096.96. That movement was a solid train load movement. Upon the former hearing I was asked to state some approximation of the proportion of single carload movement to solid train load movement that we had at Palatka in the last year or two. I then gave an offhand approximation. I have since been able to determine just what those percentages are. Confining myself to the Atlantic Coast Line Railroad movement, the proportion runs somewhat less than one and one-half per cent of our total cut. The single carload movements over the Atlantic Coast Line is somewhat less than one and one-half per cent of our train load movements over the Atlantic Coast Line Railroad (Tes. p. 1468) one and one-half per cent of the total.

Q. Mr. MacPherson, we would like to have you state briefly the character of this special equipment with which these log cars are equipped by your company for the transportation of logs in this train load movement. Just what is that equipment? Where is it attached to the flat car and how does it work?

A. The equipment consists of 8 stanchions, four on each side of the car, which are fastened into patent pockets. There is a trip on each side of the car which trips these pockets, releasing the stanchions. The stanchions at the top have a chain running across the car which holds the load in place. On the unloading this pocket is tripped. The log hook is placed on top of the car and pulls the top logs and the stakes fly out and the logs are unloaded. That [fol. 1315] makes for very quick unloading, and eliminates the breakage of stakes. Of course there is some breakage of stakes but it eliminates a good deal of it. The turn around of those log cars is 24 hours turn around; that is to say, we unload them and return them to the carrier of the same day. We retain no cars for our full free period, except for repairs. (Tes. p. 1469.) This equipment consists of these 8 stanchions four to the side and there runs across the top of the car, of logs four chains connecting the four stanchions and thus four times binding the logs across the top.

Q. Can you tell me what effect that has with respect to the amount of logs that can be loaded upon cars so equipped

and the amount that can be loaded upon cars not so equipped with that overhead chain equipment?

A. Well, I can explain that best by saying that our loads on our train load movement run from sixty four to sixty five thousand pounds. We are paying our freight now on an estimated basis of 65,000 pounds and the average of the logs which we are purchasing outside, which are sent in by gondolas or flats with home made stakes run about 51,000 pounds; so we get a bigger load per car by having the special equipment.

Q. How much bigger load?

A. It would be thirteen or fourteen thousand pounds per car. I have made an estimate to determine the amount of the average weight of the single carload shipments that we received during the two year period in which the high rate is in effect. The average weight of those cars (Tes. p. 1470) was 51,105 pounds.

Q. Now, tell me, Mr. MacPherson, would those logs so [fol. 1316] purchased ordinarily load more heavily to the car or lighter to the car than those which you transport from your timber on the Western Peninsula?

A. My judgment is the ordinary movement would weigh lighter. No, our train load movement would weigh lighter if you did not have the special equipment than the cars we have purchased outside, for this reason. The logs that we have purchased outside are only logs which are clear logs, with little or no defect, and we have only purchased logs which measure 16 inches at the butt, whereas the logs that we cut ourselves are 10 inches at the butt and we take logs that are pecky and logs with more defects than the logs we buy outside. By logs only 16 inches at the butt, I mean 16 inches and upwards. We maintain the equipment and we own the equipment (Tes. p. 1471).

Q. Now, while we are on this subject of maintenance, tell me this: At the last hearing you were asked as to whether or not you made the repairs to the sides of the cars, I believe. You expressed the view that you did but were not convinced upon the subject. Have you made any investigation of your method of procedure there?

A. Yes, sir; I have. We do make repairs to the steel sides. That arrangement has been in effect since April, 1930. I do not know exactly when Mr. Langley left Ocala, but I think it was somewhere around that time. The pre-

dominating species of wood in the lumber industry in Florida is long leaf pine, next cypress. Hardwood is logged incidentally to the cypress business and somewhat incidentally to the pine but more to the cypress business than to the pine business. They grow in the same sorts of places (Tes. p. 1472). As to the annual production of long leaf pine in Florida I cannot tell you accurately. I can make a good guess. I think it would run from three-quarters of [fol. 1317] a billion feet to a billion feet of pine. It is somewheres in that neighborhood. The annual production of cypress is around two hundred million feet under normal conditions. There is no such thing as reforestation in connection with cypress or any such thing as second growth cypress in this vast country. As to how old is a cypress tree when it is cut for timber, we had a government man down at our mill some years ago and he figured the logs we were cutting run from 300 to 400 year old. That is ascertained by counting the rings of annual growth on the log. As to whether I have ever seen any second growth cypress at all, I have seen little saplings or little sprouts, but it grows rather rapidly, the sprouts do, the first 10 or 15 years, and (Tes. p. 1473) then they stop. As to how big they get in ten or fifteen years, probably two or three inches in diameter.

Q. You have testified at the last hearing that you had around fifty million feet of timber in your western Peninsula and around three hundred million feet over tributary to the St. Johns River. About how many years cut is that for you?

A. When in full production we cut about 36,000,000 feet a year. Of course it varies with conditions and size of timber in different years and all that. I would say 35,000,000 feet a year would give us a ten-year cut if we ran steadily with no shut-down. In stock at Palatka we have about 48,000,000 feet now; a little over 48,000,000 feet. It is more than a normal stock. The normal stock for us is 35,000,000 to 40,000,000 feet. We are bound to carry very large stocks in cypress on account of seasoning. We carry a little more than our normal cut so that we have plenty of [fol. 1318] assortments (Tes. p. 1474). 85 per cent of our shipments of lumber go to the north and our average freight rate on those shipments is 43 cents. That produces in money between twelve and a half and thirteen dollars a

thousand. It would produce somewhere around four million dollars outbound freight over the 10-year, or say 12-year period because after we shut down it would take us two years to liquidate an inventory. We have not shipped any lumber by water in a year and a half and I doubt if we will ship any by water.

Q. Tell me this: If for any reason before you got out your timber in the Western Peninsula you should make other arrangements, either for the transportation of the remaining portion of it by other than the Atlantic Coast Line Railroad or for the milling of it elsewhere, would under any circumstances that change in plan result in increasing the outbound freight on lumber for the Atlantic Coast Line Railroad?

A. No, it would not. We have about 50,000,000 feet over on the Western Peninsula and our capacity (Tes. p. 1475) is about 36,000,000 feet a year. We run about 3,000,000 feet a month; sometimes a little over. If we should operate normally we would have only a trifle more than one year's cut in the Western Peninsula. As to whether I know anything about the operations of the mill at Loughman, I do.

Q. It appears from other testimony here in this case that during the second year of the high rate, 217 cars of logs were shipped into Loughman, whereas none were shipped in during the preceding year. If you know, can you tell me why there was a log movement in the second year of this high rate?

A. Yes; I think I can. The Everglade Cypress Com-
[fol. 1319] pany at Loughman will be through cutting their own timber in September of this year. They own no more timber down in that territory. During the past year or year and a half the tail end of their timber has been very small and very poor. They have not been able to get the better grades out of it and they have been buying outside logs of about the same quality as the logs we have been buying on the outside to balance their stock of lumber, so that they can have some high grade lumber with the (Tes. p. 1476) low grade, which their own timber produces, to compete in the market, because the only business there is now in selling lumber in mixed cars where they want a few thousand feet of high grade lumber and a few thousand feet of low grade in mixed cars and they could not

compete in this market unless they had this good timber. They are bound to have some high grade logs in order to market their low grade logs in the clean-up.

Cross-examination.

By Mr. Gwathmey:

Q. In answer to Mr. Adair, you said that there is no such thing as reforestation or regrowth of cypress timber. Would you make the same answer in respect to pine timber?

A. No, sir; I would not.

Q. There is such a thing as reforestation or regrowth of pine timber, is there not?

A. Yes, but whether it is feasible on a commercial basis or not is a mooted question between lumbermen.

Q. In answer to the Examiner you stated that your estimate of the cut in Florida was based upon what you term normal conditions. Would you indicate more definitely what period you had in mind, or just what you mean by "normal conditions?"

[fol. 1320] A. I would mean the conditions that prevailed in 1929 and (Tes. p. 1477) early in 1930 when we had pretty fair conditions.

Q. In other words, do you regard conditions that prevailed in 1929 and the early part of 1930 as representative of normal conditions in the lumber industry?

A. No. When you get to talking about normal conditions in the lumber industry, we are getting into a pretty broad field. I think I testified at the last hearing my opinion was that the lumber industry had seen its best years in the early 20's, due to the influx of western wood since that time, which has been constantly depressing the southern lumber markets.

Q. Laying aside the question as to normalcy, I understand you to say in answer to the Examiner you had in mind particularly the period 1929 and the early part of 1930, is that right?

A. Yes, sir; I cannot speak about the pine business as to when their time of normal production was, but in the cypress business we would run along about normal with the conditions the same as they were in 1929.

In reference to these repairs to cars, the logs are loaded on to flat cars. I spoke of 8 stanchions. Those are of

wood. Those are furnished by our company (Tes. p. 1478). I also spoke of certain patent attachments by which the stanchion is attached to the car. They are also furnished by our company. They are permanent attachments to the car. These cars are assigned to our special service. For instance, at the time we had our fire the railroad required us to dismantle those cars and take our equipment off so they could use them in other service because the movement ceased for a period of 7 months. Those attachments are of steel. They are furnished by our company. As to [fol. 1321] repairs to the steel sides of the cars. I am willing to admit my ignorance too, as far as what causes the damage and the exact technical nature of the repairs; but I understand it is largely straightening the sides that are bent and making other repairs on them. I checked up particularly after the last hearing with our man who is in charge of that work and he tells me that we do all of the steel side repair work under the arrangement we now have with the Atlantic Coast Line (Tes. p. 1479).

Q. Does your company stand the cost of any such repairs except when damaged occasioned while the cars are on your own line?

A. According to our contract, we are not required to, but, as a practical working out method we find unless there is main line wreck or something of that sort which the world knows about, that the burden of proof is put upon us and we are billed with the repairs of the car.

Q. You are, however, under no obligation to do that under your agreement?

A. We have had many disputes with the Railroad Company on that point. We have been unable to settle it satisfactorily and the best adjustment which we could arrive at was they would permit the work to be done by us rather than charge us the exorbitant rates they do under whatever your rulings are, under the M. C. B. rules.

I stated that the movement of logs by our company in single car lots represents one and one-half per cent of the total, less than one and one-half. As to what period I have in mind, I have the period shown in that Exhibit 61. I was speaking broadly of the period during which the advanced rate was in effect. As to whether that condition [fol. 1322] or that relationship existed prior to that (Tes. p. 1480) period, I think we purchased more outside logs

in 1930 than we probably ever had before, for the same reason that the Everglade Cypress Company did. We were in poor timber for a period and we wanted to keep our stock balanced, so we bought logs, only 16 inches at the butt and clear, No. 1 logs.

Q. Does that mean during the earlier period, the ratio of your single car movement was larger than it is at the present time—the percentage to the total?

A. No, I would say it would be less, but I have not checked it Mr. Gwathmey to be sure of my statement.

Q. Were these patent attachments, to which we have referred, put on the cars at your suggestion or that of your company?

A. I cannot tell you that exactly. We knew they were being used by Brooks-Scanlon and the Putnam Lumber Company when they were hauling over your lines. When they moved we bought some of their equipment from them. I imagine we talked it over with the lumber people and found out what they were using. As to when we began using the patent attachments I cannot tell you that exactly, no sir. When we determined upon that movement, we determined on using the patent attachment, but there was a period at the beginning when at the time of getting them we waited on Brooks-Scanlon for awhile until they cleaned up some of their (Tes. p. 1481) stuff, and there were various other things that entered into it; so we did not put them on immediately.

Q. What movement do you refer to: You say at the time of that movement.

A. I mean at the time we started hauling logs from [fol. 1323] Cross City, Florida, in 1924. Some of the earlier movements were made in ordinary flat cars with home-made stakes and the logs wired on though our policy prior to the movement was to equip cars with the stakes, but there was a delay before it was done.

I spoke of repairing the steel sides of the car. That is not all the repairs we make to the cars. We make all of the repairs except to the wheels and brases.

Mr. Gutheim: Let the record show that copies of Witness Flack's Exhibit No. 123 have been distributed to the parties.

Mr. Adair: Our adversaries are going to produce for the record a memorandum of cost studies on the single move-

ment, or I should say, the solid train load movement from Hines to Palatka. They have produced it for a month as typical for the year. We wanted to ask Mr. Lamb a few questions about (Tes. p. 1482) that when he comes back on the stand with respect to that cost memorandum before we can say finally whether we will accept that as typical for what they promised to furnish.

J. W. PERRIN recalled as a witness on behalf of defendants, and having been previously sworn, testified further as follows:

Direct examination:

I have prepared several additional exhibits which I desire to offer at this time.

Q. Distribute those exhibits and then we will proceed to deal with them. Certain of your exhibits previously filed in this case show comparisons between Florida log rates, interstate (Tes. p. 1483) and intrastate, and other low grade commodities which, as of this date, are subject to changes. I will ask you first to refer to the exhibits which [fol. 1324] you have produced, bringing these comparisons up to date.

A. At the first hearing in this case I filed Exhibits 18, 19 and 20, showing comparisons as to rates and per car revenues on Florida intertsate and intrastate logs and on other low grade traffic, including brick, gravel, sand, lime, limestone and cement. In the meantime, there have been changes in the Florida interstate log scale as well as in the scales of rates on the other commodities, and I offer three exhibits, Nos. 124, 125 and 126, to show what the comparison is of this date, both as to the rates themselves and the earnings per car.

Q. There has been some testimony by intervener witnesses that the calendar year 1929 was an unusually prosperous year for the lumber industry. What have you to say about that testimony?

A. At the preceding hearing I testified that the reduced movement of logs in Florida was not entirely the result of the increased rates prescribed by the Commission in this case, but that, independent of the change in the Florida

log rates, much of the shrinkage in the volume of log traffic is properly chargeable to generally depressed conditions tending to reduce the volume of all traffic. Statistics show that if there was any unusual degree of prosperity in the lumber industry in Florida in 1929 that condition must have been peculiar to Florida as (Tes. p. 1484) distinguished from the lumber industry of the country as a whole. Intervener witnesses claimed unusually satisfactory conditions in 1929 and that this was due to a good demand for lumber products at good prices, but the record of the lumber traffic as a whole does not bear out that contention. [fol. 1325] My exhibit No. 127 contains a tabulation by calendar years from 1920 to 1930, inclusive, of the record of cars and tonnage of lumber, laths, shingles and box, crate and cooperage stock for the United States as a whole and for the Southern District. These statistics were taken from reports of the Statistical Bureau of the Interstate Commerce Commission, reference to the individual reports for each year being shown in the exhibit.

It will be noted that in the United States as a whole the number of cars for 1929 was less than for any of the years included in the exhibit, except 1921 and 1930; very nearly the same comparison between 1929 and the other years applies in the case of lumber in the southern district. The statement shows that both in the United States as a whole and in the Southern district the heaviest movement was in 1923, and that in 1929, as compared with 1923, there was a falling off in the United States of 465,384 cars, or 23.2 per cent, while in the southern district there was a falling off of 161,717 cars, or 19.3 per cent. In order to show in another way whether or not the year 1929 was an unusualy good year, I have (Tes. p. 1485) added to the statement in this exhibit the lumber tons and revenue on the Atlantic Coast Line for each of these years. Here again it appears that 1923 was the best of the years since 1920, and that Atlantic Coast Line's lumber tonnage in 1929 as compared with 1923 fell off 775,480 tons, which is almost exactly 20 per cent. The Atlantic Coast Line's revenue in 1929 as compared with 1923 was reduced approximately 24 per cent. It is clearly apparent that not only did the lumber industry as a whole continue in 1929 the steady decline that has been in progress for several years until climaxed by the calamities in 1930 and 1931,

[fol. 1326] but that the decrease in the lumber and log traffic applied to the country as a whole and was not peculiar to Florida and could not have been due entirely to the change in the log rates in Florida.

Q. Do you contend that the volume of the Atlantic Coast Line's log traffic in Florida, independent of general depression in the lumber industry, was as great under the increased rates prescribed by the Commission as it had been under the low Cummer scale of rates?

Mr. Adair: I object to that question, or any such conclusion as that. We have been trying our best to get what the revenue was in those pre-interstate commerce days and they have persistently said they could not furnish it without dire cost to themselves and dire result to their case. I do not think they should be permitted now to testify with respect to what happened then (Tes. p. 1486).

Mr. Gwathmey: There was not a word about revenue in my question Mr. Adair:

Mr. Adair: I should like to add to my previous objection this: We also tried to get the amount of movement in those pre-interstate commerce order years and that likewise for the same reason was refused to us by the railroads and by the Commission.

Mr. Gwathmey: I frankly do not fully comprehend the point of Mr. Adair's objection.

Examiner Hoy: You may answer the question. You may give your opinion.

Mr. Adair: Exception.

A. I do not. It is clearly in the record that the Brooks-Scanlon Corporation moved its lumber plant to the interior and discontinued its train load movement of logs to Eastport, which necessarily reduced the volume of the Atlantic [fol. 1327] Coast Line's log traffic; the Putnam Lumber Company likewise established mills in its timber holdings and discontinued its Atlantic Coast Line train movements of logs, although it is of record that the move was made because the manufacture of lumber in the timber was considered more economical than to pay for the transportation of the logs even under the Cummer scale; likewise, the Cummer Cypress Company at Lacoochee shifted its logging operations to its own service, which although not so stated in this record, I understand is a combination of its

(Tes. p. 1487) own log train service over its own tram and thence over the Seaboard Air Line under a trackage right. Because of the fact that the logs formerly handled by the Atlantic Coast Line for these three large manufacturers constituted a large proportion of logs used in lumber manufacture in Florida, it is, of course, true that the discontinuance of these log train operations on the Atlantic Coast Line substantially reduced its total volume of logs transported in Florida.

By Mr. Gwathmey:

Q. Do you consider that such dimunition in the log traffic handled under the Cummer scale as may have come about means a loss in revenue to the Atlantic Coast Line?

Mr. Norman: I object to that question unless he gives the basis of his consideration. I do not know what he means by "consider"?

Mr. Gwathmey: I will ask him, if, in his opinion, it meant a loss of revenue based upon his knowledge of the facts.

Mr. Adair: I think we will have to ask, your Honor, that they give the revenue to show if there was a dimunition of it and the extent of it, and the whys and wherefores. I do not see how this witness can testify with respect to the [fol. 1328] causes of diminution when it does not appear in the record what the former figure was, or what the present figure is.

Examiner Hoy: All he can do is to give his opinion as an informed traffic man in charge of the traffic of the Atlantic Coast Line (Tes. p. 1488).

Mr. Gwathmey: I think Mr. Adair's objection to this question is very much like the objection to the previous question, it is based upon an entire misapprehension as to what the question means.

Mr. Norman: Or maybe what the answer is going to be.

Mr. Gwathmey: Or, what the answer is going to be. I am speaking of the gross revenues of the Atlantic Coast Line. Put in the word "Formerly" there. Now, may the witness answer?

Examiner Hoy: Diminution by reason of the increased rates? I do not care.

Mr. Gwathmey: May the witness answer the question?

Examiner Hoy: Yes.
Mr. Adair: Exception.

The Witness: Only as to gross revenue on logs. As a matter of common sense, no traffic is of value from a revenue standpoint unless it yields more revenue than the cost of its handling, and our study of the result of the operation under the Cummer scale is conclusive to us that such operation yields us no profit, but, on the contrary, resulted in an actual loss on the log traffic as a whole.

Mr. Adair: I move to strike out the last conclusion as not responsive to the question. It has no place in the reply, the last sentence. I also desire to object, Mr. Examiner, on the ground that the witness has not shown that he has made any such study and is evidently testifying as to what [fol. 1329] somebody told him. It has been absolutely established that nobody (Tes. p. 1489) could testify to what somebody else told him.

Mr. Gwathmey: All the question and answer means is, there is no profit to the Atlantic Coast Line in handling the log traffic at a loss.

Mr. Adair: I make the additional objection that they are producing here opinions when they have refused to produce facts heretofore.

Examiner Hoy: Just a minute, Mr. Adair. I will let the complete answer stand and overrule your objection. Of course, I think the Commission is liberal. They let in opinion evidence of traffic officials based upon their traffic experience. As to the weight of the opinion evidence in view of the fact they have not produced what you refer to, that is another question.

Mr. Norman: This witness says, "our" study. He did not say "his" study. Is he going to be permitted to testify——

Examiner Hoy: The word "our" interprets the studies of the various officials of the Atlantic Coast Line Railroad rather than the individual study of the witness. Am I right, Mr. Perrin? Is that what you mean?

The Witness: Yes, sir.

Examiner Hoy: That is my understanding of the word "our" when a railroad man uses it.

Mr. Norman: But when our witnesses use the word "our" we get into trouble.

Examiner Hoy: People he had no employment with (Tes. p. 1490).

Mr. Norman: He is employed by us.

[fol. 1330] Examiner Hoy: Let us not argue that. The objection was made and the objection overruled. Exception has been noted. There is no need for further argument.

Mr. Norman: It is proper for me, I submit, in support of this objection, to refer to the ruling made on another one.

Examiner Hoy: The objection was made at that time and I sustained the objection on the ground that the testimony was hearsay testimony.

Mr. Turnbull: May I ask one question. I do not understand whether your question referred to revenue and his answer refers to net revenue. Do you mean total revenue in your question?

Mr. Gwathmey: I mean net revenue.

Mr. Turnbull: His answer was with reference to net revenue.

Mr. Gwathmey: I will be glad to have the question corrected to use "net" revenue.

Examiner Hoy: Proceed.

By Mr. Gwathmey:

Q. Mr. Perrin, in addition to the lack of adequate remuneration, as we contend under the Cummer scale growing out of the transportation of logs under that scale, has any other circumstance brought about a more satisfactory revenue result to the Atlantic Coast Line under existing conditions than those which obtained before?

Mr. Adair: May I test the qualification of the witness on this exhibit, to see what study he has made of these things (Tes. p. 1491), or who has made these studies?

Examiner Hoy: Is there an objection?

Mr. Adair: Before the question is answered, I wanted [fol. 1331] to ask a qualifying question of the witness; that is from what source he gets it. He reaches up into the stars and just simply gets these figures.

Mr. Gwathmey: The witness is freight traffic manager of the Atlantic Coast Line. He has not had to reach up

to the stars to get the earnings of that company from a traffic standpoint.

Examiner Hoy: I think that is something to be developed on cross-examination of the witness?

Mr. Norman: Is he competent to answer until he has qualified?

Examiner Hoy: He can give his opinion as a traffic official of the Atlantic Coast Line, I think. At least I am letting him do that.

Mr. Gwathmey: May the witness answer the question?

Examiner Hoy: Yes.

The Witness: The location of the large mills of the Brooks-Scanlon Corporation at Foley and of the Putnum Lumber Company at Cross City has resulted in producing tonnage of lumber rather than of logs, and the transportation of lumber from the standpoint of net revenue is vastly better than the transporation of logs under the Cummer scale. During the slack business year of 1930 the revenue that accrued on lumber from the mills at Foley to destination, if on Atlantic Coast Line, and to points (Tes. p. 1492) of interchange with our connections, if destined beyond Atlantic Coast Line rails, amounted to $173,350.69. Similarly, the revenue on lumber from Cross City was $175,587.95. Of the lumber movement from Foley, 79.9 per cent moved to destinations reached by the Atlantic Coast Line, and 20.1 per cent to destinations beyond the Atlantic Coast Line's rails. Of the movement from Foley to Atlantic Coast Line destinations, 90 per [fol. 1332] cent went to Jacksonville, while to points beyond Atlantic Coast Line rails 76 per cent moved to points beyond Richmond, Va. Of the lumber from Cross City, 57 per cent moved to destinations on the Atlantic Coast Line, and 43 per cent to destinations beyond Atlantic Coast Line rails; of the movement to Atlantic Coast Line destinations 70 per cent went to Jacksonville, and 16 per cent to Tampa; of the movement to points beyond Atlantic Coast Line rails 21.5 per cent went beyond Virginia Cities, 21.3 per cent beyond Montgomery, 18.4 per cent beyond Albany and Waycross, and 17.9 per cent beyond Jacksonville or Palatka.

At page 334 of the record of testimony taken at the first hearing of this case in Valdosta, I testified that the average weight of 983 cars of logs handled under the Cummer

scale for the Brooks-Scanlon Corporation and the Putnam Lumber Company was 60,200 pounds per car, and that the revenue amounted to $20.47 per car; that the average haul was 158 miles and that the per car mile earning was 12.9 cents.

On lumber from Foley to Jacksonville the rate is 9.14 cents (Tes. p. 1493) per 100 pounds, and based upon the average per car weight of all lumber in the southern region of 52,000 pounds, the revenue per car from Foley to Jacksonville is $47.53, which, for distance of 169 miles, produces per car mile earning of 28.1 cents. Using as ultimate destinations eight of the principal eastern points to which lumber moves in large volume, the average proportion from Foley to Richmond is 23½ cents per 100 pounds, or $121.33 per car, which, for the distance of 730 miles, is equivalent to 16.6 cents per car mile.

[fol. 1333] From Cross City the rate on lumber to Jacksonville is 8⅓ cents per 100 pounds, producing revenue to 36.7 cents per car mile. From Cross City to Tampa the distance is 154 miles, the rate 9.6 cents per 100 pounds, the per car revenue $49.92 and per car mile revenue 32.4 cents. From Cross City to Richmond the distance is 775 miles, the rate proportion 23⅓ cents per 100 pounds, the revenue per car $121.33 and per car mile revenue 15.6 cents. From Cross City to Montgomery the distance is 315 miles, the rate proportion 14 cents per 100 pounds, the revenue per car $72.80 and the per car mile revenue 23.1 cents. From Cross City to Albany the distance is 162 miles, the rate proportion 9.8 cents, the revenue per car $50.96 and the per car mile earning 31.5 cents. From Cross City to Waycross the distance is 175 miles, the rate proportion 9.8 cents per 100 pounds, the per car revenue $50.96 and per car mile revenue 29.1 cents (Tes. p. 1494).

It will be noted that on lumber for the longest hauls to Richmond, which from Foley is 730 miles and from Cross City 775 miles, the per car mile earnings are 16.6 cents and 15.6 cents respectively, as contrasted with the 12.9 cents per car mile for the short haul of 158 miles on logs handled under the Cummer scale. For the shorter hauls of lumber that are more nearly the same in distance with the 158 miles haulage of logs, it is apparent that the revenue on the lumber traffic ranges roughly from two to three times the revenue on logs under the Cummer scale.

In the case of the train load movement of logs, an empty return of 100 per cent of the cars is necessary, and taking into consideration the fact that much of the lumber traffic [fol. 1334] to points beyond Atlantic Coast Line rails is loaded in foreign line cars, thus requiring no empty return of cars, the more satisfactory revenue result from handling the lumber than the logs is even more striking (Tes. p. 1495).

By Mr. Gwathmey:

Q. Mr. Perrin, testimony of various witnesses for the interveners in this case has been to the general effect, that eliminating the timber now held by a few large saw mill interests in Florida, there will be a very limited amount of logs remaining in that state. What have you to say as to that?

A. The testimony of intervener witnesses seems to definitely locate a billion feet held by the Brooks-Scanlon Corporation, a billion feet held by the Putnam Lumber Company, four hundred million feet held by Cummer Cypress Co. and four hundred million feet held by the Wilson Cypress Company, a total of two billion, eight hundred million feet. Testimony was given that the timber in Florida, other than these large holdings of the companies named, has been cut, is seen to be completely cut or is of such small volume and inferior character as to offer slight opportunity for further development of the saw mill industry in that state. Mr. Fleishel testified about relatively small holdings of some of the existing lumber operators, and undertook to establish the fact that the lumber manufacturing conditions in Florida are so different from the conditions in other southern states that there never (Tes. p. 1496) will be the number of small operators in Florida that are found in the other states. Within my experience there was a time when the same conditions existed in the other states served by the Atlantic Coast Line as now exist in Florida, whereby the large bulk of lumber manufactured was by large saw mill companies holding large tracts of [fol. 1335] standing timber. The real difference between Florida and these other States is that the manufacture of lumber in its larger proportions began earlier in the other States than in Florida, and the large individual holdings of standing timber in the other states have been cut earlier

than in Florida. Nevertheless, these other states, in which 60 per cent of the Atlantic Coast Line's mileage is located, are still producing 50 per cent of the lumber that we transport. The lumber industry at points on the Atlantic Coast Line in North Carolina and South Carolina still constitutes one of the most important industries to be found in those sections, although the manufacture of lumber is no longer confined so largely to the operations of large companies, many of which no longer exist. I have previously stated that approximately one-half of the Atlantic Coast Line's log traffic is in States other than in Florida. There is no reason that I know of upon which to base the conclusion that the future of the lumber industry in Florida will be any different from what has been, and still is, the lumber manufacturing conditions in these other states, and the fact that (Tes. p. 1497) standing timber in Florida may within the course of a few years become scattered in its larger proportions does not mean that as long as standing timber exists there will not be a demand for its use. What Mr. Fleishel said about bleeding trees for naval stores and cutting trees for cross ties in Florida has likewise been the practice in the other states. What I have just said applies to the entire state of Florida and is not limited to any particular part of it.

Q. What is your opinion as to the correctness of the representation made by the intervener witnesses as to the available timber in Florida?

A. First, with respect to the general movement of logs in [fol. 1336] large quantities and in small quantities, in practically every direction, as shown in my exhibit No. 61, it is, I think, not sufficient for the intervener witnesses to attempt to explain away this general and miscellaneous movement of logs even in a peroid of depression, merely by citing the circumstances under which some of the logs covered by Exhibit 61 were bought, sold or transported. My experience has been that it is impossible to forecast individual log movements based upon any reason for log movements that have already taken place. I here call attention to my exhibit No. 128, in which has been shown the number of cars of long length logs moved via Atlantic Coast Line within the State of Florida during the period February to June, inclusive, 1931. I have not the slightest doubt that even after the large operators in Florida have (Tes. p. 1498)

discontinued their operations, and even after present generations have passed away, logs will still be cut, bought, sold and transported between points in Florida.

Q. As bearing upon the testimony of intervener witnesses upon this subject, have you some additional information concerning the amount of standing timber in Florida and the likelihood of the movement of such timber in the future?

A. I have previously mentioned the testimony of intervener witnesses which definitely place at 2,800,000 feet timber owned by Brooks-Scanlon Corporation, Putnam Lumber Company, Cummer Cypress Company and Wilson Cypress Company and the inference to be drawn from their testimony that the remaining timber in the state of Florida is of very small importance. However, the United States Department of Agriculture in its Circular 124, issued Oc- [fol. 1337] tober, 1930, shows on page 4, Table 1, a compilation of the area of pine lands in each of the Southern states. I have that document here and available for examination, if any one wishes to see it. The explanation is made that "Table 1 is a computation based chiefly on a survey of standing pine timber made in the main producing region, from Virginia to Texas, in 1924. This was conducted by the Southern Pine Association, New Orleans, and is believed to be the most accurate survey of timber resources (Tes. p. 1499) yet made in any important lumber-producing region of the United States. The data were obtained in the form of board feet, but have been converted into acreage for the purposes of this bulletin. The computed figures have been checked against the local knowledge of state and Federal forest officers and other authorities." What I have just quoted is the explanatory note in connection with Table 1 on page 4 of Circular 124 of the United States Department of Agriculture. This Table 1 shows the area of pine lands in acres, by states, as follows: Virginia, 4,000,000; North Carolina, 10,700,000; South Carolina, 8,000,000; Georgia, 15,500,000; Florida, 18,000,000; Alabama, 15,500,000; Mississippi, 12,000,000, etc.

The 18,000,000 acres of standing pine timber in Florida represented 19,283,000,000 feet of long leaf pine and 2,630,000,000 feet of short leaf pine, total pine timber 21,913,000,000 feet. These last figures are contained in "Economic Conditions in the Southern Pine Industry" presented to the United States Timber Conservation Board by Southern Pine Association dated July 1, 1931.

Mr. Gwathmey: This circular, 124, from which Mr. Perrin (Tes. p. 1500) has quoted is a publication of the United [fol. 1338] States Department of Agriculture. We have a copy here which is available for the inspection of any one who wishes to see it. Unless counsel for the other side shall insist upon the document as a whole as an exhibit in the case, we do not care to do so. It is a public document.

Mr. Gwathmey: The publication to which Mr. Perrin last referred described as "Economic Conditions in the Southern Pine Industry" is a publication presented to the United States Timber Conservation Board by the Southern Pine Association. It is dated July 1, 1931. We understand that the Lumber Company, interveners in this case, are members of the Southern Pine Association. The record in the case also shows that the Southern Pine Association is a party to the case. I shall ask leave to offer this document as an Exhibit, subject to the qualifications, as it is a document of such recent date we have not been able to secure but one copy. However, if anybody desires it, we will undertake to obtain and secure copies later. I would like to ask Mr. Perrin to refer to the particular portions of the document which he has in mind and to which he wishes to direct attention.

The Witness: That part of this document having particular interest in connection with the matter before us is under title (Tes. P. 1501) II Timber Supply, beginning on page 4 and running to page 15. On page 2 is a compilation by states containing the information as to the measurement of standing pine timber in the State of Florida that I just put into the record. These figures which I have just read, showing in feet the amount of short leaf pine and the total of pine timber figures of the Southern Pine Association are reported to the United States Department as late as July 1, 1931. The Southern Pine Association has members lo- [fol. 1339] cated generally throughout the State of Florida, in various parts of the State.

Mr. Gwathmey: We ask that this exhibit be received.

Mr. Adair: We should like to ask a few questions before the document is admitted in evidence. As to the authenticity of it, I would like to ask a few questions.

Examiner Hoy: Mr. Perrin wants to make a little correction on the record, or an additional statement.

The Witness: I want to make this clear; The statement (Tes. p. 1502) of 18,000,000 acres of standing pine timber

is made in the Government publication to which I have referred. That 18,000,000 acres was converted from statistics furnished by the Southern Pine Association on a measurement basis. The other figures given by me, showing the measurement in feet, a total of something more than 21,000,000,000 feet, were furnished directly as such by the Southern Pine Association in its subsequent publication, as representing a fair estimate of the number of feet. And in this document from the Southern Pine Association, it is explained the method in which they arrive at their estimate. From reading the pages to which I have referred, 4 to 15, inclusive, you will find a detailed explanation of the thoroughness in which that survey was made, going to the extent of saying they traveled in each county by automobile, they conferred with the owners of the timber, they examined railroad records, and, in addifion to that, used their own expertness in the matter of timber survey.

Examiner Hoy: Mr. Perrin, those figures in the Government publication, if they were converted as stated in their publication from a measurement basis to an acreage basis, [fol. 1340] you do not know what method was used in so converting them, do you?

A. No, sir. My testimony with (Tes. p. 1503) respect to the number of acres of timber land in Florida was taken from Table I, on page 4 of the Federal Government publication.

Q. Would you be good enough to examine that page, or that table, and see if you have not included in there cut, overland as well as timber lands in determining the number of acres?

A. The figures I have put in the record are, in the first column, under the caption, "Total Area". It carries a footnote explanation reading: "Exclusive of cleared land and improved pastures formerly in pine". Now to the extent that that includes cut over land, I would answer yes to your question.

Q. Mr. Perrin, I will ask you again to examine this table and see if the first and second columns are not there expressly shown to separate in the first column the total area of what was formerly pine land, cut over and unimproved pine land and the second column showing the area of the old growth and the next three columns dividing up the areas of cut over lands?

A. I think the table speaks for itself. I have not referred to any column except the first column, which shows the total area in pine lands of all description, excluding cleared land and improved pastures, formerly in pine. The remainder of it is of no special interest to me because the first column gives (Tes. p. 1504) the information as to the acreage in pine timber.

Q. I am giving you an opportunity to explain this thing, because I feel in fairness we are going to assert that this table——

Examiner Hoy: Wait a minute. That is not offered in evidence.

Mr. Adair: The book is offered in evidence.

[fol. 1341] Examiner Hoy: No, that is not.

Mr. Adair: Well, I want it in evidence.

Mr. Gwathmey: Now, if Mr. Adair will pardon me. If that book is offered in evidence, as we are perfectly willing to do, it is a publication of the United States Department of Agriculture and nothing that this witness could say could change it one way or the other. It speaks for itself.

Mr. Adair: May I say this: I apprehend that the witness has misconstrued the meaning of the table and I want to give him an opportunity to examine it now at this hearing so that he might have an opportunity to guide himself accordingly.

Examiner Hoy: Do you offer, Mr. Gwathmey, both publications?

Mr. Gwathmey: Yes Mr. Examiner. I will offer Circular No. 124, which has been identified, and I will ask that it be received and numbered.

Examiner Hoy: That will be accepted as Exhibit No. 129 (Tes. p. 1505).

Mr. Gwathmey: I now offer the other publication, entitled "Economic Conditions in the Southern Pine Industry" to which the witness has also referred, and ask that that be received and numbered.

Mr. Adair: Your Honor, we have no objection to the filing of it. Never having seen the book before, we do not admit the truth of anything contained in it.

Examiner Hoy: Have you any objection to its admission?

Mr. Adair: We have no objection to its admission, for what it is worth.

Examiner Hoy: It will be admitted as Exhibit No. 130.

[fol. 1342]. By — Gwathmey:

Q. Mr. Perrin, based upon the amount of timber still remaining in Florida, to which you have referred, what effect upon the Atlantic Coast Line's revenues might reasonably be expected to result from the use of the Cummer scale of log rates as contrasted with the results under the scale prescribed by the Interstate Commerce Commission?

Mr. Adair: May I interpose an objection to that. I object (Tes. p. 1506) to the witness answering the question because he has not been shown to be qualified; second because no standard of comparison of former revenues has been here produced; and, third because it has been made to appear that the testimony of the witness is based wholly upon a comparison of rates to rates or upon the basis of a system of averages which clearly are improper and there is no foundation laid for such a study.

Examiner Hoy: Objection overruled. You may answer.

Mr. Adair: Exception.

The Witness: Not less than one-half of the timber in Florida that is now reasonably adjacent to railroads is reasonably adjacent to the Atlantic Coast Line. Pine timber along the South Atlantic seaboard has been characterized by the United States Forestry Department as one of the fastest reproducing kinds of trees in the world, and the total amount of timber in Florida will be large as a result of re-growth. However, if the Atlantic Coast Line can be assumed to transport 40 per cent of the logs to be produced in Florida from timber now standing, it will handle approximately nine billion feet, or approximately 128,570 cars og logs. If the average length of haul should be 81 miles, as was the case in 1929-30, which average haul may be ex-
[fol. 1343] pected to be increased as the timber becomes more scarce, our revenues under the Cummer scale, at an average revenue of $16.10 per car would be equivalent to gross revenue of $2,169,977.00. If the same transportation should be performed at the rates prescribed by the Interstate (Tes. p. 1507), Commerce Commission, which for the average haul of 81 miles is 5.5 cents per 100 pounds, or $38.50 per car, the gross revenue would be $4,949,945.00. The difference in the gross revenue under the two scales of rates would be $2,779,968.00.

Mr. Gwathmey: I will ask that the exhibits identified by this witness be received in evidence.

Examiner Hoy: The exhibits will be received.

A. There is only one thought that I have to suggest in addition to what I have already said and that is this: By a reading of the document that was prepared by the Southern Pine Association and filed as Exhibit 130, it will be very clear that the expert lumbermen who prepared that document confirmed almost the entire line of testimony I have given today about the priority of the manufacture of lumber in the regions farther to the north and the gradual extension of it to the south so as to now be heavier in Florida than in the States north and it makes a definite statement that there never will be a time in the South when timber will not be available for manufacturing (Tes. p. 1508).

[fol. 1344] Cross-examination.

By Mr. Adair:

Q. Mr. Langley testified at Jacksonville in June of this year in effect that the movement of logs other than the train load movement from Hines to Palatka, now consisted of a movement from certain specified points of origin to Perry, Florida and certain specified points of origin to Jacksonville, Florida, and from certain specified points of origin to Loughman, Florida. Are you prepared to say that that testimony is correct or incorrect as to whether or not the movement—I am not talking about since the first of January but I am talking about the movement that was made when Mr. Langley testified.

A. I gave you in my exhibit No. 128 the actual movement of logs between those points on our line in Florida for the period from February 1, 1931 to June 30, 1931.

Q. I understand that. You did not give the dates of the movement. I wanted to know whether or not you purport by that exhibit to contradict Mr. Langley's statement made in June?

A. Not at all. As to whether or not there is any pine logs which moved to Jacksonville, Florida (Tes. p. 1509), or to Perry, Florida, or to Palatka, Florida or to Loughman, Florida, at any time during that period, or whether there

are any pine logs moving now at any of those four points of destination, No; I have not dealt with it from the standpoint of pine versus cypress, for instance. I do not know whether or not any of those logs shown on my exhibit No. 128 there are pine logs. I do not know the extent of the pine log movement over the Atlantic Coast Line Railroad Company in Florida at the present time. None of our statistics make any difference between pine logs and cypress logs. My testimony here with respect to the areas [fol. 1345] and the like were confined to pine in respect to the number of acres and the number of feet standing. I did not understand Mr. Fleishel, Mr. Cummer and Mr. Foley to assert there are only 2,800,000,000 feet of pine timber standing in Florida. I did not indicate in my present testimony today (Tes. p. 1510) that I had done so.

Q. As a matter of fact, they testified there was a considerable quantity of pine timber standing in large tracts owned by specified owners in the Southern portion of the State?

A. I think you misunderstood me. The 2,800,000,000 is the amount of timber that was testified as being owned by the four companies. They did testify as to the holdings of other smaller companies, with the tendency to show it was small and immaterial. That did not relate to northern Florida primarily, it covered the whole state of Florida.

Q. Mr. Perrin, please state what, if any, study you have made of this log rate as such? What study have you made of it to determine whether or not it is a remunerative rate or not a remunerative rate?

A. Why, I can only refer you to our cost studies made by our accounting officers. I suppose your inquiry runs to the general question as to whether the expense of handling logs is stated in the accountants' testimony.

Q. No. My question runs as to how and upon what you base your testimony that the Atlantic Coast Line Railroad is losing money on this rate. I understood you to testify to that effect today (Tes. p. 1511).

[fol. 1346] A. Yes, sir, that is what I testified to. That is based upon the study of our accounting department as to the cost of the service and my own knowledge of the fact as to how much revenue we get from it. That is the basis for my testimony in evidence in this case. I have talked about the studies of our accounting department, I refer to

those studies which are already on file in this case by Mr. Lamb. I refer to my knowledge of our own statistics. I know what logs we have handled and I know how much we get for it. That is the evidence upon which I base that opinion in this record here. It is in the record. It is up those two things, both of which are in the record that I base my statement that we are losing money based upon this rate (Tes. p. 1512).

Q. What difference, if any, will result in the revenues which the Atlantic Coast Line Railroad may derive from the transportation of lumber if the Cummer scale is in effect as distinguished from some other scale of rates being in effect for the transportation of logs. The question does not run to the point of relationship between log rates and lumber rates. I want to know if, for the future there will be any difference in your revenue derived from lumber if the Cummer scale is in effect and your revenue derived from lumber if some other scale of rates for logs is in effect?

A. Why, that is easily answered. The lumber rates have no relationship to the log rates. I have testified at some length in respect to the lumber revenue received from the Brooks-Scanlon Corporation and from the Putnam Lumber Company during the calendar year 1930. I cannot tell you how much revenue was derived from the lumber shipped by those respective companies in any preceding year (Tes. p. 1513). I have not figured on that. That is [fol. 1347] based upon a special compilation for 1930. It is a fact that when the Putnam Lumber Company and the Brooks-Scanlon Company were located at Milldale and at Eastport, that they were located upon the tracks of the Atlantic Coast Line Railroad Company. It is not a fact that under our service log train contract with them they were required by the terms of that to favor us upon all outbound movement that they could, all other things being equal.

Q. You had no arrangement with them with respect to their favoring you with the outbound movement whenever they could honestly and honorably do so?

A. Well, I think that might have been the case as to the rail movements but at Valdosta I tried to find the records of it. We will not delay the hearing to do so. I testified that we got less than 15 per cent of the Brooks-Scanlon out-

put of its Eastport mill. The purpose in carrying the logs from Eastport (Tes. p. 1514) to Jacksonville for those two companies, their purpose was to get water transportation and our handling of lumber from either one of those mills under those conditions was very limited. I mean to say more than 85 per cent of that output moved by water or moved by water, since 1925. Yes, sir; I gave you statistics at the first hearing. I gave you the number of cars of lumber that were produced and the number of cars of logs handled and figured out the number of cars that were handled. There were less than 15 per cent of the total.

Q. That does not mean that 85 per cent went by water?

A. They did not go by the Atlantic Coast Line. They might have gone by some other carrier that was in the southern group, but I was speaking only as to lumber that we handled.

[fol. 1348] Q. I call your attention to the fact there seems to be a clause similar to the one to which I referred in my question with respect to favoring your company in the 8th paragraph, at the top of the page, 261 of the printed record, in that connection.

A. The fact is we did not get any more than 15 per cent of the output.

Q. Mr. Perrin, I was not entirely clear on how you arrived at your estimate on how many logs you were going to ship in the future out of this stand of timber that is said to be shown (Tes. p. 1515) by these two pamphlets that you have got in the record here?

A. I do not try to say that we would handle any particular amount of logs, but I said this: At least half, which is conservative, of the standing timber that was within a reasonable distance of the Atlantic Coast Line and if in the future we should be called upon to handle 40 per cent of the logs, then we would earn so much money under those two scales, that is assuming that all of the logs in the future are going to be transported by common carrier.

Q. But do you not know it to be a fact that all of the larger pine mills have discontinued transportation of pine logs from the timber to their mill?

A. Mr. Adair you are speaking from the standpoint of the large saw mill operator only. There is a distinction between your viewpoint in this matter, and ours. We today have no exceedingly large operators in the other states.

The extent to which the large operators disappear will increase the percentage of logs that the railroads will handle. That has been true in the other states because the larger operator locates in his timber and he does not have to have railroad transportation; but when it resolves itself down [fol. 1349] to a situation where it is a small operator then with the exception of a few cars right around him which generally are very small in number, he has to go out and haul logs in there by railroad (Tes. p. 1516). I do not know whether or not there are any pine logs moving over the Atlantic Coast Line Railroad at the present time or has any pine log movement taken place over the Atlantic Coast Line Railroad within the past several months, in Florida. It may be; I am not saying. I do not know; but I will say this, that the movement of logs of any kind throughout our whole system is at a woefully low volume right now. As to when it again will move in substantial volume, I wish I could say (Tes. p. 1517). I cannot say where the log traffic will move in any substantial volume in the future, but if it does not move for a long time when it does start to move there will be more logs than ever before. I base that statement upon the Southern Association study. There will be more logs in the woods.

Q. You do not mean to prognosticate that more people are going to haul them by common carrier.

Examiner Hoy: I think it is clear that his answers are based upon assumptions and hopes. I do not see that there is much reason to pursue that further.

Mr. Adair: I want to make that the answer was based upon assumptions.

The Witness: And of course, upon our experience in other situations where the situations have been alike.

Examiner Hoy: You cannot say whether there is any particular per cent or any will go to you?

A. Oh, yes.

[fol. 1350] Examiner Hoy: You just hope it will in the future.

Redirect examination (Tes. p. 1518):

I said our compilation was based upon the assumption all of the logs would in the future be carried by railroad. It is a fact that in making that 40 per cent computation

I allowed a pretty substantial margin to take care of any movement that may go by trucks or otherwise, and I also made a conservative estimate in saying that not less than 50 per cent is tributary to the Atlantic Coast Line. Conservatively, yes, I said 50 per cent is tributary to us but in the interest of conservatism we would assume not more than 40 per cent of the total moved by us, and the other 10 per cent would move in some other way from the forest to the mill (Tes. p. 1519).

Mr. Gutheim: We now offer, Mr. Examiner in rebuttal of the testimony on behalf of the defendants and with particular reference to the compilation by the defendants of the out-of-pocket cost and total cost on the basis of system averages, the testimony of Witness W. D. McCaig and G. H. Parker, in Docket No. 16939, Railroad Commissioners of Florida vs. Aberdeen and Rock Rish Railroad Company, et al., wherein the Atlantic Coast Line Railroad Company was one of the defendants. We offer particularly the testimony embraced in the transcript pages, as follows:

Witness W. D. McCaig, pages 1220 to 1221, also pages 1262 to 1270, both inclusive.

Witness G. H. Parker, pages 1612 to 1627, both inclusive; also page 1702.

We request that your Honor allow us the usual time of about ten days in which to have these particular pages [fol. 1351] from the record certificated by the Secretary of the Commission and we will submit them in that manner with copies to all parties.

Examiner Hoy: It is agreed then that pages 1220 and 1221 and 1262 to 1270, both inclusive, and 1612 to 1627, both inclusive and 1702 of Docket 16939 are received as a part of the record in this proceeding without objection by defendants.

Mr. Gwathmey: No objection (Tes. p. 1520).

GEORGE W. LAMB was recalled as a witness on behalf of the defendants.

Direct examination.

A. Exhibit No. 101, filed by Mr. Pettijohn, is statement of property investment and operating income for the Atlantic Coast Line Railroad Company, the Florida East Coast and Seaboard Air Line, for the calendar years 1921 to 1930, inclusive.

Mr. Pettijohn, in basing his comparison on the year 1921 versus 1930: You will note under the year 1921, line 29, net railway operating income, you will observe these figures are $8,193,040.50, while the very next year, 1922, they jumped to $21,346,199.43, or 2.7 times the net railway operating income for 1921. You will also note that for 1930, line 29, the figures are $14,098,496.45. If Mr. Pettijohn had used any year other than 1921 the results shown in the last column would have indicated a decrease instead of an increase in most cases. On page 13 of the Atlantic Coast Line Railroad Company's annual (Tes. p. 1521) report for the year ended December 31, 1921, the following appears under the head of "General Remarks": "Operating revenues during the year ended December 31, 1921, show a decrease of $7,391,187.88, or approximately 10 per cent as [fol. 4332] compared with the previous year, only a small part of which was due to reduction in freight rates. There was a decrease of $4,144,802, or 23.92 per cent in the number of tons hauled and a decrease of $3,152,991, or 31.55 per cent in the number of revenue passengers carried."

For the purpose of demonstrating the facts I have prepared an exhibit which I will offer as Exhibit No. 131, and have reproduced Mr. Pettijohn's Exhibit No. 101 for the years 1922, 1926 and 1930, and have shown the increase or decrease, 1930 versus 1922 and 1930 versus 1926. Taking the year 1922 you will note that instead of an increase of 1.03 per cent in the total operating revenues, line 9, there is a decrease of 4.23 per cent. Operating expenses are substantially the same in 1922 and 1930, but there is an increase in the maintenance of way and structures expense of 17.11 per cent as compared with 4.59 per cent when comparing 1930 with 1921. Instead of being a decrease of 9.30 per cent in operating ratio, there is an increase of 4.69 per cent with an increase of 43 per cent in railway tax accruals and a decrease in net railway operating income, line 29, of 33.95 per cent instead of an increase as shown by Mr. Pettijohn of 72.08 per cent (Tes. p. 1522).

Another defect in this exhibit as shown by line 2 of property investment in roads and equipment, 701. Therefore, as Mr. Pettijohn stated on his direct testimony he has omitted from his investment in road and equipment the value of all lines operated under lease or contract by the three roads, but he has included in the income account, operating expenses, and so forth, that results from the operation over these properties. In the case of the Atlantic Coast Line Railroad for the year 1930, the value of these [fol. 1353] properties exceeded $12,000,000 and I am positive that for the Seaboard Air Line Railroad there would be substantial sums to be added, which would greatly increase the investment in road and equipment as shown by Mr. Pettijohn from which the net railway operating income is derived. 1921 was the first year after the return of the railroads from Federal Control. I intended to call attention to that. 1921 reflects the chaotic conditions experienced by the railroads immediately after being turned back to their owners, following our experience with Government operation as a war measure. I do not mean immediately after being returned; they were turned back 10 months before 1921, very closely succeeding their return.

Exhibit No. 102, filed by Mr. Pettijohn is a statement by the Atlantic Coast Line Railroad Company property investment (Tes. p. 1523) and operating income for the calendar years 1921 to 1930, inclusive. Again Mr. Pettijohn has, as stated by him, omitted from investment in road and equipment the value of lines operated under lease or contract, whose operations are reflected in the net railway operating income to the Atlantic Coast Line Railroad Company as shown by his exhibit No. 102. Mr. Pettijohn has again compared 1930 with 1921, and it will be noted that had any other year been used for comparative purposes the figures in 1930 for net railway operating income would have been shown decreased instead of an increase of 43.69 per cent, the figures for 1921, line 29, for net railway operating income, being $5,039,567.33; in 1922, $14,416,367.73; the lowest other than 1930 being in 1928, $9,[illegible]95,363.97, while 1930 shows $7,241,303.64. Mr. Pettijohn has filed his Exhibit 103, statement of the Atlantic Coast Line Railroad Company property investment and operating revenues in [fol. 1354] the State of Florida. Again Mr. Pettijohn used 1921 versus 1930 and my previous comment with

respect to 1921 also applied to this exhibit. Investment in road and equipment shown in the first line of the statement omits value of all lines operated under lease or contract by the Coast Line whose revenues are included in the figures following.

Mr. Pettijohn: Where you said "excludes values" you mean the investment?

The Witness: The investment—Account 701.

Mr. Pettijohn: No (Tes. p. 1524).

The Witness: It does not include the investment of the leased line companies or lines operated under contract whose revenues are included in his statement.

I will file as part of my testimony Exhibit 132, showing the figures drawn by Mr. Pettijohn's exhibit for the years 1922, 1926 and 1930. The exhibit will speak for itself.

Examiner Hoy: Well, the investment in road and equipment figures are not drawn from Mr. Pettijohn's Exhibit No. 103, are they?

A. No, I should modify that statement. I have added the lines operated under lease and contract whose earnings are included in Atlantic Coast Line Railroad returns, as indicated by the foot-note at the bottom of the exhibit.

Referring to Mr. Pettijohn's Exhibit No. 106 for the Atlantic Coast Line Railroad, statement showing the total intrastate and interstate tons of revenue freight handled on the system and within the state of Florida, calendar years 1926 to 1930, inclusive. The principal error in this exhibit is Mr. Pettijohn's item under each of the years 1927 to 1930, inclusive, reading "Percentage of total de- [fol. 1355] crease". For example, in column C, the total of Florida for 1927 is shown as 15.27 per cent. This figure is obtained by dividing the decrease of 1927 versus 1926, 4,128,153 by 27,025,422, column B for 1926. This same method is used in obtaining the percentage of total decrease for each of the years 1927 to 1930, inclusive. This (Tes. p. 1525) is a misleading statement because, as you will note in column B, the total system decrease, 1927 versus 1926, under the year 1927 is 3,890,926 tons; decrease of Florida 1926, under 1927, is 4,128,153. Therefore, the percentage of total decrease is obtained by dividing 4,128,153 by 3,890,926, which produces a percentage of 106.10 instead of 15.27. In other words, there must have been an increase

in the system outside of Florida because the decrease in Florida exceeds the total system decrease, including Florida, and instead of reading 15.27 per cent the percentage total decrease in 1927 should read 106.10. The same erroneous statement is made in all of the other years. For example, in 1928 Mr. Pettijohn shows percentage of total decrease, total Florida, column B, as 24 per cent. This should be 97.98 per cent, the decrease of 1928 versus 1926 for the system, column B, being 6,622,500 while for Florida column C, the decrease was 6,488,561. Without reading any more examples, that same method of calculation was followed by Mr. Pettijohn throughout the exhibit.

Mr. Pettijohn: In fact, isn't that total decrease all computed on the decrease from the total system 1926?. That is what the exhibit purports to show, does *not* not?

The Witness: But your comparison, when you have a decrease for 1927 of 3,890,926, as shown in Column B and a decrease for (Tes. p. 1526) Florida of 4,128,153, your decrease of the system total is not 15.28——

[fol. 1356] Mr. Pettijohn: Now, let us see. Take under Column C, decrease of 4,128,152 tons. That represents a decrease of 15.27 per cent of the total tonnage handled on the system, does it not?

The Witness: 727,025.

Mr. Pettijohn: That is exactly what it was intended to show, was it not?

The Witness: I do not know what it was intended to show, but if the system decreased 3,890,000 which includes Florida, and Florida decreased 3,128,000 it seems to be axiomatic that the decrease in Florida was greater than the decrease on the system.

Mr. Pettijohn: Exactly. My percentage showed that the system decrease was 14.4 per cent, and that the decrease in Florida alone was 15 per cent of the system.

The Witness: Yes, sir. Looking at column B under the year 1927, under the head of "Percentage of Total Decrease 14.4 per cent" that means a percentage decrease from the figure at the top of column B (Tes. p. 1527). I have taken the total system tonnage. Mr. Pettijohn took then the total system tonnage under column B and found out how much that had been reduced for the total system. In column C, at the top of the column is total Florida tonnage. When he took a reduction he did not take the

relation borne between the Florida tonnage at all but took the reduction between the Florida tonnage and the total system. Those figures 14.4 in column B, and 15.27 in column C are both percentage of total decrease. The 15.27 is not a percentage of total decrease but a percentage of the total system tonnage as shown at the top of column B.

By Mr. Pettijohn:

Q. I understood you, in answer to a question of your attorney, to say I did not show the percentage of Florida decrease. Does not the 27.32 per cent represent the per- [fol. 1357] centage of Florida decrease right above the 15.27?

A. It certainly does. I did not understand him to ask that. I do not think he raised a question on that, so far as I recall his question, but the figures immediately (Tes. p. 1528) above the 15.27. I just want to show one other percentage which is particularly outstanding, in column E, intrastate Florida, 1927, which shows a percentage of total decrease as 5.54, where, as a matter of fact of the total intrastate decrease shown in column D, it was 111.25 per cent.

Examiner Hoy: This 5.54 shown in column E, as I understand it, the amount shown two lines above that is 5.54 per cent of the first figure in column D, 13,069,803; is that right?

Mr. Pettijohn: No, it is 5.54 per cent of the first figure shown in column B, 27,000,000.

The Witness: In other words, he used 27,000,000 as the divisor in each case. I will now refer to Mr. Pettijohn's testimony with reference to Exhibit No. 79. Mr. Pettijohn made some comments relative to Exhibit No. 79 as to the assignment of revenue expenses to Florida. Dealing first with the apportionment of interstate revenue to Florida, we make the distribution of this revenue or charges collected on the basis of a mileage pro-rate through the states traversed by the individual (Tes. p. 1529) shipments, based on the published tariff rates. In making this division we cannot tell the construction of each individual published rate. It is impracticable to make the endless investigation necessary to develop just how each rate is constructed; in most cases impossible.

Operating Expenses: Let us assume, for the sake of [fol. 1358] illustration, that we have through our method of handling the division of interstate revenue credited the State of Florida with a smaller proportion than Mr. Pettijohn claims it is entitled to. Under the method of assigning operating expenses to Florida on a revenue basis, we therefore debit or charge to Florida a correspondingly smaller proportion of operating expenses. We feel that Florida has been benefited rather than injured by our method. For example, Florida, as stated by Mr. Pettijohn, is an originating and terminating state. That is to say, every ton of interstate traffic originating or terminating in Florida has a terminal expense, which expense is spread over a short haul compared to the average haul of the system. There is no interstate traffic in Florida which originates in any other State, passes through Florida and terminates in another state. The peninsula shape of the State of Florida precludes this. On the other hand, every ton of interstate freight originating in Florida destined to the east via the Richmond gateway has terminal costs in Florida, but no other terminal delivery cost on the balance of the Atlantic Coast Line. The same is true of every ton originating beyond Richmond, Virginia, destined to (Tes. p. 1530) Florida. There is a terminal cost in Florida, but no originating cost on the balance of the system, the traffic in both of the illustrations being turned over to our connections or received from our connections. The same applies to all other interstate traffic received from any of our connections consigned to Florida or vice versa. There is no so-called overhead traffic in the State of Florida.

Mr. Pettijohn has testified as to the expensive cost in connection with originating perishable traffic. Taking all of these features, as well as others, and the further fact [fol. 1359] that the cost per gross ton mile and per loaded and empty car mile on the particular division are so much greater as measured by the out-of-pocket cost than the balance of the system, it is our opinion that Florida has not been injured by our method of apportioning revenues and operating expenses.

Another feature is the service performed by the balance of the A. C. L. system in getting coal and supplies to Florida. A very substantial amount of coal comes from either the Alabama fields or from western Virginia and

West Virginia fields. In either case the haul over the system is substantial, for which no charge is made to the State of Florida. Florida performs no like service for the other parts of the system. Coal is charged to the State of Florida at the average system cost, no additional costs being added to the Florida coal for the extra service performed by the balance of the system for the benefit of Florida. It is my opinion that the operating ratio (Tes. p. 1531) in Florida would be higher than the system if we could absolutely assign all operating expenses directly to Florida.

Referring to my Exhibit No. 84, on which Mr. Pettijohn commented. There seems to be some misunderstanding on Mr. Pettijohn's part as to the figures shown on my Exhibit 84 and referred to in his Exhibit 109. Possibly I did not make it clear on my direct testimony, but the so-called haulage expenses are not to be considered as the technically known haulage and non-haulage expenses, which would be derived under Dr. Lorenz' formula in Docket 17,000, nor were they intended to be. What I attempted to do upon my Exhibit No. 84 was to eliminate from the total freight operating expenses sufficient accounts which would, in my opinion, give costs below the [fol. 1360] actual costs of handling logs or any other commodity. I have eliminated all yard accounts, regardless of whether or not they applied to the log service. Unquestionably some of these expenses are properly attributable to handling logs. Other accounts were also eliminated. But it should be distinctly understood that no effort was made to develop what are technically known as haulage and non-haulage expenses. By the elimination of all yard accounts and certain other accounts I felt I had established a minimum from which we could build up some figure or figures which would give the Commission some idea as to where the costs lay. When Mr. Pettijohn said "I find the yard proportion of total freight expense $10,764,146.94 as against $4,550,039, deducted by Witness Lamb for yard expenses" he, of course, means all terminal expenses, (Tes. p. 1532) under the technically haulage and non-haulage formula and not yard expenses, because the $4,550,939, represents all the freight yard expenses. Mr. Pettijohn, I believe, agreed to this statement under cross-examination this morning.

Relative to the cost of handling logs, commented on by Mr. Pettijohn: He states before attempting to determine the amount of terminal expenses applicable to carload traffic it is customary to reduce the total freight operating expenses by eliminating therefrom the station platform expenses of handling less carload freight, and so forth. Perhaps he overlooked the fact that all such expenses were eliminated in Account 373—Station Employees, in column A of Exhibit 86, and so forth.

It will be noted from Mr. Pettijohn's Exhibit 109 for those accounts there was eliminated $3,281,352.20.

[fol. 1361] With reference to the extraordinary service given to handling perishables, we all know that one of the large items of expense in connection with perishable traffic is getting the traffic through the terminals as expeditiously as possible. All of this expense has been eliminated by me through the elimination of all yard expense.

With reference to the less carload freight being handled on local freight, logs, with the exception of the Hines to Palatka movement, are handled on local freight trains and the same crews handle logs that handle l. c. l. and the local trains have to pick up logs in single car lots just as perishable cars are picked up on branch lines. Mr. Pettijohn testified that (Tes. p. 1533) perishable traffic was held in terminals without waiting for a full loading of the locomotive.

Mr. Pettijohn: Was not held.

The Witness: Perishable traffic is not held until there is sufficient tonnage to give the locomotive its full tonnage rating. This is true. But other freight is added to fill out the tonnage if it be necessary to forward the train before the full tonnage of perishables is received. The greater amount of switching per car for perishables which Mr. Pettijohn referred to has already been eliminated in column A of my Exhibit. Logs are handled in single car shipments like all other commodities and only in the Hines to Palatka business in train loads.

Mr. Pettijohn stated that the only switching in connection with logs is at Palatka. This only applies to the Hines-Palatka movement. As testified by Mr. Langley, superintendent of the A. C. L. at Jacksonville hearing, the cars are switched and weighed at Palatka and trains cut [fol. 1362] apart to be weighed. Page 1134 of the record.

At page 1141 of the record, Mr. Langley testified that terminal service is performed at practically all terminals where the log movement passes through and then gives a list of the terminals. I quite agree with Mr. Pettijohn that the extent of the unit costs of the third division by the application of the percentage 35.027 does not produce the total haulage cost but produces the haulage costs less out-of-pocket (Tes. p. 1534) costs for haulage in column A of my exhibit. For this and other reasons the figures in column A, of Exhibit 86, etc., are understated. To include all of the out-of-pocket expenses the 25.9405 per cent should be used in expanding the haulage costs and the 19.06 per cent in expanding the total freight costs instead of 35.027 and 23.549.

As frequently stated by me in my present testimony, it is my opinion that the figures reflected in column A greatly understate the cost of handling logs and the figures in column B possibly overstate the costs by reason of inclusion of certain expenses which may not be attributable to handling logs. In column B the various expenses that Mr. Pettijohn referred to, are included excepting that I have not shown the total expenses but the expenses less the haulage expense. I would therefore say that column B as shown on my exhibit still overstates the expenses, having used the wrong percentage. I think there are expenses in column B which are not applicable to the log traffic.

Mr. Pettijohn referred to the assignment of taxes, or the method of assigning taxes used by me. On my direct testi- [fol. 1363] mony at Jacksonville I stated I had deliberately adopted Mr. Pettijohn's basis for assigning taxes. If you will refer to Exhibit No. 39, filed by Witness Pettijohn pages 3 and 4 of four pages which is reproduced—(Tes. p. 1535) you will find on page 4 that Mr. Pettijohn shows the following: "Line 247, grand total railway operating expenses, $19,406,536.32 (page 312, schedule 350" and immediately following that "line 5, Florida, $1,427,529.86." This refers to the 5th item on page 3 of the 4 page exhibit, giving the amount of taxes for the State of Florida. Immediately following he shows the per cent 7.471. It was because of Mr. Pettijohn's using this basis in this same case at one of the original hearings that I adopted it in assigning taxes on my Exhibit 86 and so forth. Taxes are an overhead item, just as return on investment, and if it is proper to

assign taxes in relation of operating expenses it seems equally logical to assign the return on investment on the same basis.

Mr. Pettijohn testified to what I assume he claims is an inconsistency in the gross ton mile cost in which he stated that for the year ended December 31, 1929, he found that the average cost per gross ton mile for the system was 3.1298 mills. There is no inconsistency in the average cost per gross ton mile for the system of 3.1298, as testified to by Mr. Pettijohn and the cost of 4.623 mills which would be reflected on Exhibit 86, if I had used 25.9405 per cent in expanding the haulage cost used instead of 35.027 per cent, because as testified to by me and as shown at page 1082 of the record, the ratio of (Tes. p. 1536) the third division out-of-pocket cost per thousand gross ton miles to the first and second division was 155.62. If we should raise the 3.1298 mills cost per gross ton mile for the system [fol. 1364] as testified to by Mr. Pettijohn for the year ended December 31, 1929, by multiplying it by 155.26 per cent, we would produce a cost of 4.86666, which would seem to support the 4.623 which would be obtained by raising the out-of-pocket cost as indicated.

I was asked yesterday to obtain the mileage in Florida other than the third division. I have received a telegram from Mr. W. D. McCaig, Comptroller of the Atlantic Coast Line, which I will read giving the information requested:

"Miles in Florida other than third division: Georgia State line to Jacksonville 36.90 miles; Georgia State line to High Springs 67.95 miles; Georgia State line to River Junction 2.52 miles; Lake City branch 18.97 miles; total 126.34 miles." That is the information you wanted.

The amount of loss and damage on the system is approximately 2 per cent. I cannot give the exact figures. As shown by Mr. Pettijohn's Exhibit 109, loss and damage freight was $581,727.36. The total amount treated as haulage (Tes. p. 1537) expenses, as shown on the third sheet of Mr. Pettijohn's exhibit is $26,701,014.07 or approximately 2 per cent.

Exhibit 133 is a statement showing the consist of log trains operating between Hines and Palatka on the Atlantic Coast Line Railroad for the month of November, 1930, and at the bottom is added the out-of-pocket expenses of these trains. The information for Account 392, train and en-

ginemen and 401, trainmen, was furnished me by Supt. Langley of the third division. The other information under out-of-pocket expenses was furnished by the superintendent of motive power. This is the information that is submitted in response to a request made by the interveners [fol. 1365] at the previous hearing. I have only undertaken to give the figures for the month of November, 1930, instead of for each month of 1930. I found that it was quite a task to get up the information. I noticed from the original transcript of the record that they called for the information for one month and I requested it originally for the one month. It was not until some time later that on reading the last page of the transcript of the record I (Tes. p. 1538) found they wanted it for a year. I made a request for the information for a year and was informed that it would require a large amount of labor and in connection with the car accountant it would be necessary to put on one or two additional clerks and under our present operating conditions we could not feel that the expense was justified; and further, I went to the car accountant and some other sources and found that the month of November was fairly representative of the operations for the year, and, therefore, selected November, 1930. This exhibit shows there were handled during the month of November 490 loaded cars of logs. I have made a study or examination to determine how that compares with the average for other months during the year. It is approximately the same.

Mr. Gwathmey: Now, Mr. Examiner, I believe I stated this morning we would like to tender this exhibit and ask whether, under the circumstances the gentlemen on the other side desire to insist upon a separate showing for each month than November. If they do, we will undertake to furnish it.

Mr. Pettijohn: It is your position that this is a typical statement of operations of the log trains between Hines and Palatka? (Tes. p. 1539.)

[fol. 1366] A. Yes, sir; I think it is fairly representative of any log train you would get.

Mr. Pettijohn: We will not except to that.

Examiner Hoy: Exhibits 131 to 133, inclusive are accepted.

Mr. Pettijohn: We do not admit the accuracy of all the figures in accepting this in lieu of what is demanded.

Examiner Hoy: No one admits the accuracy of figures in some one else's exhibit.

Mr. Pettijohn: I want to direct your attention to the second item under the out-of-pocket expense [illegible] for train locomotives. This item, as you will note, represents twice as much as the train expenses, train and enginemen's expense, under Account 392, whereas in your testimony on page 1101 of the record you show trainmen expense for the trains of the third division to be $497,364.58 and fuel for locomotives to be $606,920.94. I will ask you to explain how it happens that the fuel in connection with the movement of log trains is so much higher compared to the train expense than it is in the third division as a whole?

A. I am unable to explain that apparent discrepancy. As (Tes. p. 1540) just explained by me, these figures were furnished by our superintendent of motive power. I will be very glad to investigate that figure and if there is any way to advise the record or state for the record if there is any correction to be made to make it.

Mr. Pettijohn: We would like to have that done.

Examiner Hoy: If you find your exhibit is incorrect, you can file a corrected exhibit within 10 or 15 days; probably within 10 days you could file it.

[fol. 1367] Cross-examination:

A. I use the same average cost per ton on all coal that is consumed in Florida that I use on the system as a whole. In our charges to Florida we charge out coal to the State of Florida on the average system cost, regardless of the fact that a very large amount of service is performed by other sections of the system for the benefit of Florida which is not compensated by similar services in Florida.

Q. In other words, then the average cost per ton of coal consumed, is calculated for the system as a whole and then the average cost applies to the coal consumed at the different 1541 coaling stations irrespective of what the actual service may be with respect to the coal furnished at such stations?

A. I think you made a mistake in your question. The average cost of the coal purchased not consumed.

Q. Well, then, in that event the only difference between the cost of coal consumed in Florida and the cost of coal consumed on the system as a whole would be the difference

which would be due to the loading and unloading of coal in tenders in Florida as compared to the system as a whole?

A. I do not know that I can definitely just say what the conditions are on the third division as to the handling of the coal.

Q. Whatever variance there would be of individual handling at the different coal stations would reflect the major portion of it?

A. I think that would represent the bulk of it. Referring to exhibit 131 and my criticism of your comparison of the years 1921 and 1930, it is true that the operations in 1921 were sub-normal rather than abnormal.

[fol. 1368] Q. Therefore, any comparison of 1921 and 1930 is a comparison of the same normal years?

A. No, I do not agree that that is a fair comparison because we are dealing with the present conditions not with ancient (Tes. p. 1542) history. I do not, in my opinion, believe there will ever be, at least for many years—as rapid a growth in Florida as they experienced up to about 1926, since which period there has been a decrease of business in Florida. If you compare 1921 to 1930, you are comparing practically the same revenues, total revenues, substantially the same revenues.

Q. Was it not the position of the carriers in 1921 or 1920, when the roads were returned, that they were returned in poor physical condition and they were in need of heavier maintenance than would ordinarily be necessary in order to rehabilitate them?

A. In some cases that was true; in other cases the reverse was true. As to whether the Atlantic Coast Line and the Seaboard Air Line Railroad made that claim in their settlement under Sections 204 and 209 of the Transportation Act, I do not know. I know in 1922 we expended $15,956,000 for maintenance of way and structures and $25,190,000 for maintenance of equipment; whereas, in 1921 we spent $17,865,000 for way and structures and $25,600,000 for maintenance of equipment. As to whether the railroads were given an increase under Ex Parte 74 in 1920, I do not remember the year. (Tes. p. 1543)

Examiner Hoy: The date of the increase was August 26, 1920, and the reduction July 1, 1922, except on agricultural products. Agricultural products about January, 1922 or in the spring.

A. As to whether there was a higher scale on commodi-
[fol. 1369] ties in 1921 and 1922 than there is at the present time, I do not know. Exhibit 79. As to whether there is a higher scale of rates in effect than there is in the balance of the south under class rates, I am not familiar with the rates in Florida.

Q. Now, as an accounting proposition if the rates to and from Florida included an arbitrary for a portion of the haul south of River Junction—Jacksonville line—should not that arbitrary be allocated to the Florida operation?

A. If it were readily possible to ascertain the amount on an absolute distribution perhaps that would be correct, but it is impossible and impracticable to develop, as I stated a while ago, the construction of every published rate. It is impracticable and the cost would be prohibitive.

Q. Perhaps. You did not mean to insinuate in commenting upon (Tes. p. 1544) your exhibit No. 84 and my exhibit 109 that all terminal expenses were ascertained by the formula which I used, did you?

A. No; I had not checked your formula at all. As I understood you to say this morning in your cross-examination that the $10,764,000 represented what is generally known as non-haulage expenses, which embrace yard expenses as well as other expenses not affected by the haulage of traffic. There is a certain terminal expense in connection with the operation of a train for its local business. If you were making a technical separation of your operating expenses between strictly haulage and non-haulage expenses we would classify the switching performed by the road locomotives as a terminal expense.

Q. You said that perishable freight was filled out with dead freight and I assume that you meant that the perish-
[fol. 1370] able locomotives were given full tonnage rating in Florida; is that correct?

A. To as nearly as possible the tonnage rating which they can handle and maintain their schedules. The point I wanted to bring out was from your testimony it might be inferred that, taking for illustration five cars of perishables, if they were ready for movement, and the engine could haul 50 cars, that they would move it with the five cars and, as an economical railroad operating policy, that would not be permitted. If there were five cars of perishables and the train had to leave (Tes. p. 1545) to maintain

delivery date, additional cars of other freight would be added.

Q. Do you or do you not know whether it is a fact that they do actually handle five cars of perishables in trains and bring them into the assembly yard?

A. In bringing cars to the assembly yards, I do not know of my own personal knowledge just how many are handled. I do know there have been exceptional cases where a few number of cars were handled in a train in order to maintain the schedule of delivery. I don't know what the average engine rating or what percentage of the average engine rating is given to locomotives from the assembly point in Florida to Jacksonville and the northern junction points, such as High Springs.

Q. Would you be surprised if it was 80 per cent of the engine rating that was utilized?

A. I would not form any opinion until I saw the figures and checked up on them.

Q. Now, you said that under your basis you thought that column A understated the cost and column B overstated the cost of handling logs and in answer to a question by me in cross-examination you still thought that that statement was correct, notwithstanding the fact that you [fol. 1371] had used the wrong percentages in expanding the costs. (Tes. p. 1546)

A. If the percentage, 25.9450, had been used, it would have brought into the figures in column A all of the haulage costs including out-of-pocket expenses, and in column B all expenses excluding the haulage costs.

Q. Well, take it this way: You say on Exhibit 86 that you have column A which shows a cost of 17.75 and that understates the cost; that column B, which shows a cost of 27.77 overstates the cost. If I understood you you further said that notwithstanding the fact that you had used the wrong percentages in expanding you still thought the same condition existed, that column A, as testified to, and column B, as testified to, understated and overstated respectively the costs?

A. That is true. As to what the costs would have been under column A if I had used the right percentage in expanding the costs, I have not got that worked out; no, I have not that figure.

Q. Well, if that figure increases column A costs from $18.75 to $25.23, and if the application of the correct per-

centage for expanding under column B increases the cost from 27.77 to 34.32, do you still say that the cost of handling that shipment would lie between 18.75 and 27.77?

A. I think I have reiterated very frequently that the costs in column A produced by me were deliberately produced with the (Tes. p. 1547) intention of getting a figure below ——

Examiner Hoy: I do not think you need to repeat all that again. You have got that in the record three or four times.

A. It would be somewhere between 18.75 and 34.32. I [fol. 1372] used the basis for taxes because I used it in the previous case. So that if you made a mistake I perpetuated it.

FRED PETTIJOHN was recalled as witness on behalf of the interveners.

Direct examination:

The Witness: In further support of my position that the (Tes. p. 1548) cost of all traffic in the State of Florida was not properly applicable to the log traffic or that the expansion of system costs were not applicable to the log traffic, if we take defendant's exhibit 133, I find that the total ton mile costs of handling logs is to be found by dividing 2,398.55 out-of-pocket cost, by the total gross ton miles, namely, 3,863,451. This produces an average cost per thousand gross ton miles on the log trains of 62.083 cents, as against 88.288 cents, which Witness Lamb testified as being the cost applicable to the third district. 88.288 cents is 42.2 per cent greater than 62.083 cents. It is, therefore, apparent by Exhibit 133 that the defendant has assigned to the cost of logs, even under this basis, 42.12 per cent greater expense than should be assigned.

Cross-examination:

A. The costs that I have produced of 62.083 represents the cost per gross ton mile for handling the log trains, Hines to Palatka, as developed from Lamb's exhibit 133,

but the 88.288 represents the gross ton mile cost on the third division. (Tes. p. 1549)

Q. You will admit, will you not, that the cost of handling logs in single car lots, would be considerably in excess of handling them in solid train lots?

A. That would depend on what trains. If they were [fol. 1373] handled on trains as heavily loaded as these 25 trains on your exhibit 133 the costs should be the same. There is only one terminal expense attached to the movement of logs from Hines to Palatka.

Q. Mr. Langley, Superintendent of Terminals of the Coast Line, testified that on all of the other traffic than train lot movements Hines to Palatka, there was considerable terminal expense, that there was a switching in every terminal through which the traffic passed; is that not correct?

A. I think that is his testimony, but I do not agree to the correctness of it. As to whether I put my opinion against the opinion of the man in charge of the third division, yes, sir; or any other man that stated if you picked up a log intermediate between stations and set it out intermediate between stations that you would perform any switching service by yard crews. You cannot switch a car in a yard unless you move actually through a yard. I will admit in so far as cars moving through a yard and needing different classification in switching they get it, but I do not admit for a minute (Tes. p. 1550) that because a car is handled in single car lots that it necessarily is handled in a yard at all.

Q. If it is brought in from a branch line to one of the terminal points and handled in a local train and is diverted to another section, it requires the breaking up of that local train to classify the log car into another train, does it not?

A. If it goes through the yard there would be that expense.

Q. So there would be a great amount of expense in handling a single car lot than in a solid train movement?

A. Not necessarily as far as train expense is concerned. That would be true as to yard expense if it moved through a [fol. 1374] yard, yes, sir.

Examiner Hoy: The record in this proceeding is closed. (Tes. p. 1551)[1]

[fol. 1375] Jacksonville, Florida, November 21, 1932.

APPEARANCES:

No appearance for the complainant.

Same appearances for defendant, and intervenors on previous hearing, and also

F. C. Hillyer, Chamber of Commerce Bldg., Jacksonville, Florida, appearing for intervenor, F. S. Buffum Company, Incorporated (Tes. p. J-1439).

Exam. Hoy: Gentlemen, the Interstate Commerce Commission has set for further hearing at this time and place Docket No. 18364 Georgia Public Service Commission versus Atlantic Coast Line Railroad Company.

The scope of the further hearing is limited by the order of the Commission. The further hearing will be for the sole purpose of receiving evidence respecting any change in the rates on logs since the close of the last hearing in this case, the circumstances connected with, and the conditions which occasioned such changes; and whether such circumstances and conditions or any of them are present with respect to the Florida intrastate log rates on defendant Atlantic Coast Line. The proceeding was reopened upon petitions of intervening Florida log shippers, and the State of Florida, and the Florida Railroad Commission. I think the orderly procedure would be for these petitioners to proceed and show the changes in log rates upon which they rely; and then for the defendant to proceed and show the

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[1] Narrator's Note: The Washington hearing closed with pages 1551 of the record. The subsequent hearing was held in Jacksonville, November 21-22, 1932. Through error the transcript of the latter hearing commenced with page 1439. There is therefore a duplication of pages 1439 to 1551 inclusive. For convenience in numbering the duplicated pages of the later Jacksonville hearing have been numbered with the prefix "J" starting J-1439 to J-1551 inclusive. The J does not appear in the Commission's official transcript of these pages.

circumstances connected with and the conditions which occasioned such changes; and then for the Florida interests to continue and show whether such circumstances and conditions, or any of them, are present with respect to the Florida intrastate rates on logs (Tes. p. J-1442).

Mr. Turnbull: Mr. Examiner, as representing the Florida Railroad Commission I would like to reiterate the posi- [fol. 1376] tion that the Commission took at the outset of this hearing, so far as the jurisdiction of the Interstate Commerce Commission is concerned.

Exam. Hoy: I don't think it is necessary to do that Mr. Turnbull. That position is on the record very fully, and this reopening is for a limited purpose. I don't think it would help the record any to reiterate the position, unless you have changed it. If the Commission or the State of Florida has changed their position, why you may state so, but if it is the same, why the record shows your position, and that is sufficient, and it shows it very clearly (Tes. p. J-1444).

Mr. Turnbull: It is the same that we have formerly and previously stated, but any testimony that we introduce here I want it understood that it was introduced with this reservation.

Exam. Hoy: It will be understood, Mr. Turnbull.

Mr. Adair: We make the same statement on behalf of the Florida intervenors, and with the same reservation (Tes. p. J-1445).

E. C. Green, called as a witness, being duly sworn, testified as follows:

Direct examination (Tes. p. J-1446):

My name is E. C. Green, address, Chamber of Commerce Building, Jacksonville, Florida, Manager, Jacksonville Traffic Bureau. I have had some twenty years experience in traffic and rate matters in the employ of railroads and of the Jacksonville Traffic Bureau. At the request of the [fol. 1377] F. S. Buffum Company, which has recently intervened in this proceeding, I have made an investigation into the transportation rates on logs, especially in connection with the new tariffs which have been filed since the Commission's decision of July 5, 1932.

Mr. Adair: Mr. Examiner, we offer in evidence photostatic copies of various tariffs on file with the Commission, which have been certified to by the Secretary of the Commission. We ask that they be received in evidence, one exhibit. I have a particular exhibit coming on later in which they are described; in which reference is made to them in particular.

Exam. Hoy: You let them inspect these, and offer them later (Tes. p. J-1447).

A. I have made considerable study of these tariffs to determine their application and method of use. These tariffs cover the transportation of logs on some twenty-one railroads, applicable for both interstate and intrastate traffic, and apply from logging areas into lumber mills from and to the states of Alabama, Florida, Georgia, Mississippi, Louisiana, Tennessee, Kentucky, Arkansas, Missouri, Oklahoma, and Texas. A map has been prepared indicating the lines of railroad upon which the new reduced rates apply in the Southern Classification territory, that is, Southern States east of the Mississippi River, in the States of Missouri, Arkansas, Oklahoma, Louisiana, and Texas. The Southwestern tariffs cover a great many miles of railroad in the Southwestern States west of the Mississippi River, and a map prepared in colors for this purpose would [fol. 1378] show that practically all of the timbered areas of the Southwestern region are covered by the new reduced rates on logs. The map which I have prepared to accompany my testimony indicates that there has been a very general—— (Test. p. J-1448)

Mr. Gwathmey: If the Examiner please, I very much dislike to interrupt. I have no objection to the witness undertaking to testify as to what his understanding of these tariffs is; however the tariffs themselves are the best evidence of what they show. Now I would like to object to the witness undertaking to say anything in explanation of these tariffs of which he has not personal knowledge. For instance the witness has just said that the tariffs apply over the territory in the Southwest, which constitutes the principal lumber producing areas in that section. I object to that statement unless the witness first shows that he knows what the lumber-producing areas in the Southwest are.

Exam. Hoy: That objection is sustained.

A. (continued) I will correct that testimony to read in this way: The Southwestern tariffs cover a great many miles of railroad in the Southwestern States west of the Mississippi River, and a map prepared in colors for this purpose shows that the (Tes. p. J-1449) rates on the Southwestern railroads in the Southwestern region cover a great many new reduced rates on logs. The map which I have prepared to accompany my testimony indicates that there has been a very general and widespread application of the new reduced rates throughout the timber areas in the Southern States, east of the Mississippi River. New tariffs have been coming in constantly for a period of over several months, covering reduced rates on logs, and it has been [fol. 1379] very difficult to check up on each one of these tariffs and figure out the exact application of the new rates on each of the lines and branch lines over which the new tariffs apply. This examination warrants the general statement that there has been a very widespread and general reduction in rates on logs between mill points in the South and Southwest. I will next explain the application of the new rates, grouping the rates of certain carriers as best I can in the interest of brevity where the reduced rates are similar. For this purpose I shall discuss first quite a large number of tariffs which carry practically the same reduced rates on logs in the States of Mississippi, Alabama, and parts of Tennessee, Georgia, and West Florida. Thereafter I shall discuss another class of tariffs which apply exclusively inbound to Chattanooga, Tennessee, and Gadsden, Alabama. And thirdly I shall discuss a number of new tariffs which apply to specific designated lumber mill points located mostly within the State (Tes. p. J-1450) of Mississippi. We offer in evidence list of tariffs that show opposite the tariff designations the application of the new reduced rates on logs shown in those tariffs. These exhibits that I have there before me were prepared by me.

Exam. Hoy: It will be received as Exhibit 134.

A. (continued) In all of the tariffs enumerated on this exhibit 134, the scale commences at $12.00 per car, and runs up to $22.50 per car. This exhibit, Mr. Examiner, shows the names of the railroads, the I. C. C. tariff numbers, the supplement numbers, and the application of the

scale against each tariff. I now offer the next division of these exhibits.

[fol. 1380] Exam. Hoy: 135. The exhibit will be received (Tes. p. J-1451).

A. (continued) In this exhibit 135 the tariffs enumerated are applicable only to Chattanooga, Tennessee, and to Gadsden, Alabama. In these tariffs the scale commences at $12.50 per car and runs up to $20.00 per car. I now offer the third division of these exhibits, which will be Exhibit 136. In Exhibit 136 is shown the tariffs which are applicable to specific mill points located almost exclusively in the State of Mississippi. In this exhibit a scale of rates is published commencing with $12.00 per car and ending at $20.00 per car for 100 miles. I now offer the fourth division of this exhibit, which is Exhibit 137.

Exam. Hoy: The exhibit will be received.

A. In Exhibit 137 it shows the tariffs applying to Montgomery, Selma, and Mobile, Alabama, in which the scale starts at $14.50 (Tes, p. J-1452) per car and runs to $22.50 per car. Tabulating these scales and checking the territory in which the three different scales apply, we find that the 25 mile scale of $12.00 per car applies generally in the Mississippi Valley territory. The 25 miles scale of $12.50 per car applies only to Chattanooga, Tennessee, and Gadsden, Alabama; and the 25 mile scale of $12.00 per car applies generally to specific points located mostly in Mississippi, with a few in Tennessee and Alabama. The 50 miles scale of $15.00 per car, and the 75 mile scale of $17.00 per car is uniform in all of the tariffs we have called attention to. The 100-miles scale of $22.50 per car applies generally in the Mississippi Valley territory, while the 100 mile scale of $20.00 per car applies to Chattanooga, Tennessee, and [fol. 1381] Gadsden, Alabama, and to specific named points located mostly in Mississippi, with a few exceptions in Tennessee and Alabama, also one in Louisiana. All three of these scales are published in tariffs which are not generally subject to transit rules, regulations, or privileges, but are generally published as local, joint and proportional rates or net rates on the logs, regardless of the weight per car, with very few exceptions, to lumber milling points widely scattered in the Mississippi Valley, Tennessee, and Alabama,

as well as points in the Southwestern territory, contiguous to the Mississippi River. There are a few exceptions to the applications of the rates per car regardless of weight (Tes. p. J-1453), to which we will now call attention. Supplements 9 and 10 to Chicago, Rock Island & Pacific Railroad, I. C. C. C-12130, carry two scales of rates, both of which apply per car of 90,000 pounds, or less, excess in proportion. One of these scales commences with the charge of $12.00 and ends at $22.50, which is applicable between stations in Arkansas, between stations in Louisiana on interstate traffic, and between stations in Arkansas on the one hand and Louisiana on the other. The other scale applies from stations in Arkansas and Louisiana on the Rock Island to Memphis, Tennessee, as follows:

	Per car
For distances 25 miles and less	$17.00
For distances 50 miles and over 25 miles	20.00
For distances 75 miles and over 50 miles	22.50
For distances 100 miles and over 75 miles	27.50

In supplement 17 to Missouri Pacific, I. C. C. A-7349, and in Missouri Pacific I. C. C. A-8163, applicable respec- [fol. 1382] tively between stations in Missouri and between stations in Arkansas this 90,000 pounds per car scale of rates also applies. It will be noted from this explanation and the tariff situation that the charges are assessed on a per car basis of 90,000 pounds only by the Chicago, Rock Island & Pacific, and the Missouri Pacific, between points which are west of the Mississippi River and on interstate traffic in Louisiana. Some of these scales are published for distances beyond (Tes. p. J-1454) 100 miles. These are published in tariffs which I will describe specifically by number and by application. Supplements 6 and 8 to Columbus & Greenville Railroad, I. C. C. 36, applicable from Columbus & Greenville Railroad stations to Columbus, Greenville, Grenada and West Point, Mississippi, where the 25-mile charge of $12.00 per car and the 100-mile charge of $20.00 per car is extended, also for the following additional distances: For distances 125 miles and over 100 miles $22.50 per car; for distances 150 miles and over 125 miles $25.00 per car; for distances 170 miles and over 150 miles $27.50 per car. The rates for these additional distances are also published per car regardless of the weight of the car.

Supplement 15 to Missouri Pacific, I. C. C. A-7349, applicable on interstate traffic only between stations in Missouri, where the 25-mile charge of $12.00 and the 100-mile charge of $22.50 is extended to cover the movement of logs from distances 125 miles and over 100 miles, at a rate of $27.50 per car regardless of the weight of the car, from stations on the Missouri Pacific Railroad to Cape Girardeau, Missouri, only. In supplement 25 to Illinois [fol. 1383] Central Railroad, I. C. C. 7313, a specific rate applying per car regardless of weight is published from Minter City, Mississippi, located on the Yazoo & Mississippi Valley Railroad to Memphis, Tennessee, a distance of 116 miles, of $22.50 per car, regardless of weight (Tes. p. J-1455). In addition to the scales already pointed out, there are a few additional exceptions or slight differences from the other scales already mentioned, published by individual carriers in Southern and Southwestern territories, which we now point out. Then New Orleans & Northeastern Railroad in I. C. C. 3101, publishes a scale applicable regardless of the weight of the car, from stations on the [fol. 1384] New Orleans and Northeastern Railroad to Laurel, Mississippi, only, which differs slightly from the other scales in the following respect:

	Per car
For distances of 25 miles and under	$12.50
For distances of 50 miles and over 25	15.00
For distances of 75 miles and over 50	17.50
For distances of 100 miles and over 75	22.50

It will be noted that this New Orleans & Northeastern scale differs only in the Mississippi Valley scale in the rate per car of 25 miles or less, and the difference only amounts to 50 cents more than the general Mississippi Valley scale. The new scales of rates with respect to which I have testified with one or two exceptions were all published in 1932. By the terms of the tariffs they expire within one year after publication, unless extended for a longer period. The Southeastern Freight Bureau has assented to a proposal to extend the effective dates of those rates one year beyond the expiration date in that territory (Tes. p. J-1456). So that the new reduced rates on logs will continue to apply within Southwestern territory throughout the year 1933. There are more than 38 tariffs in which the new reduced

rates are published as stated in the previous portion of my testimony. Of these, about 20 can be applied on a strictly local shipment regardless of any transit arrangement. And of the balance of them, a few apply on inbound shipments under bond, and the balance under a transit arrangement providing for refunds on the inbound movement after the outbound shipments of lumber have been made. Nine of these tariffs state that they are published [fol. 1385] to meet truck competition, the tariffs containing the statement that the new scales are published to meet truck competition being:

Missouri Pacific Tariffs, I. C. C. A-7349, A-8018 and A-8163.

Southern Railway, I. C. C. A-10472 and A-10448.

Chicago, Rock Island & Pacific, I. C. C. 12130.

Central of Georgia, I. C. C. 2848.

Seaboard Air Line Railway, I. C. C. A-7638.

Agent Speiden's for the Tennessee, Alabama & Georgia Railway A-659.

With the exception of these nine tariffs, I have been unable to locate any reference in the other tariffs specifically designating the reduced rates as rates to meet motor truck competition. In many of the tariffs to which I have called attention the (Tes. p. J-1457) reduced rates on logs are published as local, joint and proportional rates, without reference to any transit rules or regulations.

Q. Will you now take your Exhibits 134, 135, 136 and 137, and indicate as to each tariff shown on those exhibits whether the new reduced scales apply locally or as transit rates. That is, make a separation between those tariffs which apply the reduced rates on inbound shipments of logs without being tied up definitely to any transit rules in connection with the outbound shipments of lumber on the other hand, and those tariffs in which the reduced rates are definitely tied up with the outbound lumber movement by transit rules.

A. Exhibit 134—commencing with Missouri Pacific tariffs No. A-7348 applies on local shipments of logs without any restriction as to transit arrangements. The same [fol. 1386] is true as to Missouri Pacific, A-7349, and A-8163. The fourth tariff, Missouri Pacific, A-8018, is shown as a local scale on logs for stacking, reshipping, etc. The St. Louis & San Francisco tariffs 9639, 9640,

9638, 9346, 9019, 9567, 9235, and 9195 are all applicable locally without any restrictions as to transit. The Gulf, Mobile & Northern tariffs 1137 and 1058 are designated as local rates, but there are tariff provisions which require that the shipper give bond to insure the outbound movement of lumber over the lines of the Gulf, Mobile & Northern (Tes. p. J-1458). The Chicago, Rock Island & Pacific tariff C-12130 applies as a local tariff. On page 2 of this exhibit, St. Louis & Southwestern tariff 4676, is published as a local or proportional tariff for stacking, dressing, etc. J. E. Johanson's tariff 5-H applicable intrastate in Arkansas applies as a local rate. On Exhibit 135 Southern Railway tariff A-10425 is a local tariff, and Southern Railway tariff A-10472 is a transit tariff, that is, the rates apply in connection with outbound movements of lumber and are known as net transit rates. The third tariff on this exhibit, Speiden's Tariff A-659, applies locally without any transit restrictions. On Exhibit 136 Southern Railway Tariff 10472 is a transit tariff, and 10448 is a net transit tariff. Illinois Central Tariff 7789 applies on logs as a proportional rate to be manufactured and reshipped, etc. Illinois Central & Yazoo & Mississippi Valley tariff 7810 is also a proportional tariff, applicable when for manufacture and reshipment. Illinois Central 7786 is a proportional tariff, applying on logs inbound for manufacture and reshipment. Illinois Central and Yazoo & Mississippi Valley tariff 7811 is a strictly transit tariff which provides [fol. 1387] for assessment on inbound logs with refunds made upon claim statements in connection (Tes. p. J-1458-A) with outbound shipments of lumber and other forest products. Nashville, Chattanooga & St. Louis tariff 3284-A is a strictly local tariff. Columbus & Greenville Railroad tariff No. 36 is a transit tariff. In addition to the scale shown on the bottom of Exhibit 136 provides rates up to 125 miles of $22.50, 150 miles, $25.00 and 170 miles, $27.50. Mobile & Ohio tariff B-860, is a proportional tariff, applying inbound only when the lumber products are reshipped outbound. On Exhibit 137, Seaboard Air Line tariff A-7638 is a transit tariff. Western Railway of Alabama tariff No. A-129 and Central of Georgia tariff 2848 are transit tariffs. Southern Railway tariff A-10425 is a local tariff. Mobile & North Arkansas tariff, I. C. C. 678, Supplement 1, and Mobile & North Arkansas tariff 5-1632,

Supplement 2, which I mentioned in my testimony but have not shown on the exhibits, are purely transit tariffs. The Nashville, Chattanooga & St. Louis also carries or publishes with the Tennessee Commission under rate issue 41926, Supplement 7, which is not shown on my exhibits, this reduced scale on logs (Tes. p. J-1459).

Mr. Adair: Certified copies of those Mr. Examiner are in this batch here.

The Witness: This Nashville, Chattanooga & St. Louis Railway tariff was filed with the Tennessee Commission on October 6, 1932, and applies a scale beginning with a charge of $12.00 for 25 miles up to $20.00 for 100 miles on intrastate traffic in Tennessee, and this is also strictly a local tariff. Another tariff mentioned by me is Illinois Central 7313, Supplement 24, carrying a specific rate from [fol. 1388] Minter City, Mississippi, to Memphis, Tennessee. This is a proportional rate published as a reshipping rate. New Orleans & Northeastern tariff 3101, which I mentioned in my testimony, and which is the Laurel tariff, published a scale as a net transit scale with provision for a bond by the shipper that the outbound shipments of lumber will move over the line of the inbound carrier. As a rule the tariffs apply either at the mill points specifically designated by the tariffs themselves, or between all stations within a particular territory located on the railroad publishing the rate. Some tariffs apply only when the logs are stopped for manufacture of the various lumber products, and the manufactured products are to be subsequently forwarded or reshipped to a further destination either over the line which brings the logs inbound to the manufacturing point (Tes. p. J-1460) direct, or in connection with a subsidiary or affiliated line. Some of the tariffs require the surrender of freight bills at the time the outbound manufactured products is reshipped, and limit the application of the proportional or net rates either with the expiration date of the tariff, or in any event, within eighteen months from the time the logs are received at the manufacturing point. Such tariffs generally provide that for each pound of manufactured lumber shipped outbound the proportional or net rates will be applied on three pounds of logs shipped inbound. Some of the lines in the Mississippi

Valley require a bond and agreement to be executed by the manufacturer at the manufacturing point, in order to insure the proper protection to the rail carrier that the lawful rates will be applied under the tariff and to insure that no loss will accrue to the rail carrier. The condition [fol. 1389] of the bond is such that in the event the manufacturer does not comply with the rules and regulations of the tariff in securing or attempting to secure the application of the reduced proportional or net rates on the inbound products, he must promptly pay the full lawful local published rate on the raw material in effect at the time it moves. Under Southern Railway I. C. C. A-10472, publishing transit privileges on logs at Chattanooga, Tennessee, and Corinth, Mississippi, and under New Orleans & Northeastern Railroad, I. C. C. 3101, publishing manufacturing privileges at Laurel (Tes. p. J-1461), Mississippi, the usual transit regulations are applicable, such as application, designation of the privileges, surrender of freight bills, time limit, ratio of raw material to outbound products, cancellation of freight bills rendered for reshipment, supervision and inspection of records; and the keeping of records by consignees of receipts from all sources and all dispositions upon prescribed forms are all required in the tariffs; but the proportional or net rates are assessed against the inbound logs at the time they move inbound, instead of through claim channels or through refunds made at the time the outbound products are shipped. Under the other transit tariffs, Southern Railway, I. C. C. A-10048, publishing transit privileges on logs at Memphis; Central of Georgia, I. C. C. 2848, publishing transit privileges on logs at Montgomery; Seaboard Air Line, I. C. C. A-7638 publishing transit privileges on logs at Montgomery; and Western Railway of Alabama, I. C. C., A-129, publishing transit privileges on logs at Montgomery and Selma, Alabama, the inbound shipments of logs are subject to the usual transit and policing rules, but when the logs move inbound to the [fol. 1390] manfacturing points the regular published local, not the reduced proportional or net rates up to the manufacturing point, are assessed and charges on that basis are collected from the consignee. When the manufactured product is shipped outbound from the manufacturing point, and when all of the rules and regulations

(Tes. p. J-1462) of the tariffs have been complied with, refund is made based upon the proportional or net rate published in the transit or manufacturing privileges tariffs, figuring a ratio of three pounds of logs inbound to one pound of lumber or other manufactured product outbound. The refund under these particular tariffs is made immediately by the railroad agents at the time the outbound product moves, or later through the usual claim channels. I here call attention to the fact that in all of these tariffs, whether published as proportional or net rates, or as proportional or net rates under transit, or manufacturing privileges, no transit charge at the manufacturing point is assessed either against the inbound movement of logs or the outbound movement of lumber or other manufactured product. The reduced scales, all of them, therefore form the basis upon which settlement of freight charges is made, either at the time the logs move inbound to the manufacturing point or later, without the assessment of any penalty charge or so-called transit charge at the manufacturing point. So far my testimony has dealt entirely with the rates on logs. At practically every large lumber manufacturing point located on the lines of the Atlantic Coast Line Railroad, Seaboard Air Line Railway, or Southern Railway system, in Alabama, Georgia, South Carolina, North Carolina, Virginia, Tennessee, and Mississippi, [fol. 1391] transit privileges are also in effect (Tes. p. J-1463) and available on lumber and articles taking the lumber rates, such as conduits, cross-arms, cross-ties, fence posts, paving blocks, piling, poles, and timber; but not applicable to logs, bolts, billets, cants, or flitches. These transit privileges on lumber apply when moving into the manufacturing points for storage, dressing, resawing, drying, sorting, conversion, creosoting, or treating with preservatives for reshipment to a subsequent and further destination. In the transit arrangements on lumber and other articles taking lumber rates, a penalty charge or transit charge of 2½ cents a hundred pounds is assessed at the manufacturing point under the operation of the rules which usually provide for the protection of the through rate from original point of shipment to final destination via the transit point over direct routes over which a through rate is applicable. This transit

arrangement on lumber and articles taking the lumber rate is also in effect and available at Jacksonville on shipment received and forwarded via Jacksonville in tariffs published by the Atlantic Coast Line Railroad, I. C. C. B-2745, and in Seaboard Air Line Railway tariff A-7606. One exception to the usual lumber transit arrangement carried in the three tariffs just enumerated is an arrangement in effect at Charleston, South Carolina, published by the Southern Railway Company in a separate tariff, I. C. C. A-10467, to become effective August 12, 1932, publishing charges, rules (Tes. p. J-1464 & J-1465) and regulations governing the milling and creosoting of lumber and articles taking the same rates (which articles are described in the tariff as follows: Conduits, Cross-Arms, Fence Posts, Lumber, Paving Blocks, Piling, Poles, Cross-[fol. 1392] ties, and Timber, at Charleston, South Carolina, subject to a transit charge of 2½ cents per 100 pounds. The points specified in the tariff as points of origin (from which the lumber and articles taking the same rates may be shipped into Charleston under the transit privileges provided for in the tariff) extend as far as: Edgefield, South Carolina, 144 miles from Charleston; Augusta, Georgia, 137 miles from Charleston; Park Hill, South Carolina, 141 miles from Charleston; Baynham, South Carolina, 133 miles from Charleston; Columbia, South Carolina, 130 miles from Charleston; Hardeeville, South Carolina, 168 miles from Charleston; Denmark, South Carolina, 82 miles from Charleston; Bath, South Carolina, 131 miles from Charleston; Kingville, South Carolina, 106 miles from Charleston; May, South Carolina, 103 miles from Charleston; Orangeburg, South Carolina, 79 miles from Charleston; Sumter, South Carolina, 130 miles from Charleston, and apply from all points of origin and stations located on the Southern Railway Company on the various branches and the mainline of that running between Augusta, Georgia, and (Tes. p. J-1466) Columbia, South Carolina; between Columbia, and Hardeeville, South Carolina; between Columbia, and Branchville, South Carolina; and between Branchville and Charleston, South Carolina, down to and including West, South Carolina, the nearest railroad station on the Southern Railway to Charleston, only 5 miles from Charleston. The tariff provides for final settlement at rates and

charges shown below from some of the shipping points, and I shall also show the revenues per car of 50,000 pounds. All of the revenue figures I will give will be per car of 50,000 pounds.

[fol. 1393]

Origin	Distance from Charleston	Net transit rate into Charleston per 100 pounds (cents)	Revenue per car of 50,000 pounds
Edgefield, S. C.	144	2	$10.00
Augusta; Georgia	137	2	10.00
Park Hill, S. C.	141	2	10.00
Baynham, S. C.	133	1½	7.50
Columbia, S. C.	130	2	10.00
Hardeeville, S. C.	168	2	10.00
Denmark, S. C.	82	1	5.00
Bath, S. C.	131	1½	7.50
Kingville, S. C.	106	2	10.00
May, South Carolina	103	1½	7.50
Orangeburg, S. C.	79	1	5.00
Sumter, South Carolina	130	2	10.00

(Tes. p. J-1467.)

The figures which I have just given are not based upon actual shipments of which I have knowledge, but are merely theoretical figures showing what the revenue would be if a shipment moved. I have no knowledge about the movements of lumber or logs into or out of Charleston. These rates are carried in the tariffs, Southern Railway, I. C. C. A-10467, published for transit arrangement at Charleston. Based on the net transit rate into Charleston, as shown above, the total revenue per car, on a shipment originating at Hardeeville, South Carolina, 168 miles from Charleston, on a shipment weighing 50,000 pounds, would be $10.00. I have prepared an exhibit showing the rev-
[fol. 1394] enues per car of various weights under the so-called Cummer scale, with various other scales, or proportional net rates, or other of these new rates, and also with the rate formerly approved by the Interstate Commerce Commission for intrastate use in Florida. (Tes. p. J-1468).

Mr. Adair: I now offer the exhibit in evidence as 138.

Exam. Hoy: The exhibit will be received.

A. I am not sure that this caption is not a little misleading. The caption is: "Statement showing revenues per car of various weights under the so-called 'Cummer' Scale compared with various other scales of proportional or net rates applicable to logs." As a matter of fact, that exhibit contains, or is equally applicable to the local scales under the new reduced rates as well as to proportional or net transit scales. The heading does say various other scales of proportional rates. That is what I meant to convey by that. I meant to include in that those 20 local scales to which I have testified as well as the net transit scales. This exhibit is probably self-explanatory, Mr. Examiner, but I call attention to the fact that in my testimony I have pointed out what I have termed in my testimony a scale of rates existing generally throughout the Mississippi Valley, beginning with $12.00, and ending with $22.50. I have also testified about another scale applying into Chattanooga (Tes. p. J-1469) beginning with $12.50, and ending with $20.00. I have testified about another scale generally applicable at points within the State of Mississippi, specifically designated points, beginning at $12.00, and [fol. 1395] ending at $20.00. Also to certain scales in effect to Montgomery, Alabama, and Selma, Alabama, beginning with $14.50, and ending with $22.50. This exhibit is prepared to show what the revenues would be on carloads of 70,000 pounds, 75,000 pounds. It is self-explanatory, and goes by steps of 5,000 from 70,000 to 100,000 pounds. I just call attention to the fact Mr. Examiner that the revenues under these reduced proportional rates in the Mississippi Valley, and the other scales about which I have testified generally, approximate the so-called Cummer scale, and are considerably less than the revenues——

Exam. Hoy: I don't think it is necessary to go into that Mr. Green. The exhibit shows that—this exhibit has been received (Tes. p. J-1470).

Mr. Adair: I offer this map in evidence. We have only two copies. We will have additional copies made and transmit them. One we have here, and one we have delivered to our adversary. That is a map showing the lines in Southern territory.

Exam. Hoy: It will be received as Exhibit 139.

Mr. Adair: I now offer the certified copies of the tariffs, and we will supply for the record and for our friends just a list of them, naming the railroad, and the number.

Mr. Gwathmey: If the Examiner please, we don't concede the relevancy of many of these tariffs, but we offer no objection (Tes. p. J-1471) to their receipt in evidence in the case, because they are tariffs which are on file with the Interstate Commerce Commission, and I really think they are available for use without being formally incorporated [fol. 1396] into the record.

Exam. Hoy: Well, that would be my understanding, that all tariffs referred to in the exhibits of the witness and in his testimony, that all provisions of all those tariffs that are on file with the Interstate Commerce Commission will be available.

Mr. Norman: There are one or two not on file with the Interstate Commerce Commission.

Exam. Hoy: Don't you think it would be sufficient to offer those that are not on file with the Commission. If they are offered, then all of them will be received.

Mr. Adair: I would like to offer them all, and I think our adversaries will concede the wisdom of this, and if for no other reason, if we should be so unfortunate as to hereafter get into the courts on this thing it would present an anomalous situation as the record having a lot of papers made a part of this record only by reference to Interstate Commerce Commission records, and that is the reason that we offer them.

Mr. Hoy: You understand, Mr. Adair, that when these are received, that the Commission can also take into consideration other provisions of those same tariffs? (Tes. p. J-1472.)

Mr. Adair: We concede that; yes, sir.

Mr. Gwathmey: I think that should be very definitely understood, Mr. Examiner, because I was about to call attention to the fact that many of these tariffs that are filed here are supplements, and our brief check that we have been able to make since they have been produced here leads us to believe that there may be notes or provisions [fol. 1397] in the original tariffs to which these are supplements, that have a very direct bearing. I refer par-

ticularly for instance to these tariffs of the St. Louis Southwestern Railroad, and the Frisco, on exhibit 134.

Exam. Hoy: The certified copy of the tariffs will be accepted as Exhibit 140, but the parties should distinctly understand that all of the provisions in each and every one of those tariffs which are on file with the Interstate Commerce Commission can and may be considered as a part of the record.

Mr. Hillyer: Mr. Examinder, I think a further explanation should be made in regard to these certified tariffs. They are taken from the Commission's files, and only the title page, and the page on which the new reduced scale appears, and it was not thought necessary to produce the entire tariff. That was done in order to put this in the briefest possible compass, expecting that this understanding will be reached, that the entire tariffs, as well as the supplements in those pages will be considered in evidence (Tes. p. J-1473).

Exam. Hoy: Yes, sir. The parties understand I think thoroughly that each and every provision in each and every supplement to these tariffs may be, and can be, and possibly will be considered.

Mr. Gutheim: You mean supplements up to these?

[fol. 1398] Exam. Hoy: Up to this time, up to the date of the hearing, of course.

Mr. Gutheim: Does that include supplements published later than the ones that are here introduced in evidence?

Exam. Hoy: No.

Mr. Adair: Gentlemen, I don't want to be misunderstood on this thing. I want to have the record show that we are making the record here with the expectation that we may have to get into the courts, and your Honor may rule, while I am not asking, and your Honor I think said that all records of the Interstate Commerce Commission pertaining to these tariffs come in. Speaking for the Wilson Cypress Lumber Company, and Mr. Turnbull says I may likewise speak for the State of Florida, we are offering these tariffs here to make a record, whatever the law is with respect to the right of the Commission to go back later, to do something else, to go back and make that a part of the record, as evidence, such as the law is—we don't concede it. Am I making myself clear about it?

Mr. Gwathmey: Will you stipulate or agree that the Commission may have that full authority? (Tes. p. J-1474.)

Mr. Adair: I think the law settles that question. I don't think you should ask me to do that.

Mr. Gwathmey: The point is pretty well illustrated by the tariff I have just referred to.

Exam. Hoy: I don't think Mr. Gwathmey it is necessary to talk any further than that. It is true, Mr. Adair, that [fol. 1399] you have offered certified copies containing certain provisions of certain tariffs, but the witness has offered exhibits, and he has offered direct evidence; and my ruling is that the tariffs referred to in his exhibits, and in his direct evidence are really a part of this record. He has testified as to their provisions, and those provisions thereby become a part of the record; and if there are other provisions of those tariffs to which he has called no attention, they are also a part of this record.

Mr. Adair: I understand your Honor's ruling; I don't want to be put in the position of conceding something about which we may be quarreling in the future. I prefer not to be misunderstood upon the subject (Tes. p. J-1475).

T. M. TRUE, called as a witness, being duly sworn, testified as follows:

Direct examination:

A. T. M. True, Barnett National Bank Building, Jacksonville, Florida; Secretary Manager of the Southern Cypress Manufacturing Association. The membership of our association is located generally throughout the South Atlantic and Gulf Coastal states in the South and Southwest. The Association's membership embraces a majority of the larger cypress mills throughout the Southern lumber region (Tes. p. J-1476). For the past sixteen years I have been employed by various lumber manufacturing industries in the South and Southwest; and prior to that time I had fourteen years' experience in the freight traffic departments of various roads in the Southeast and Southwest, such as the Illinois Central, New Orleans & North- [fol. 1400] eastern, Frisco, Missouri, North Arkansas

Railroad, and Appalachicola & Northern Railroad. Most of my railroad experience related to the compilation of rates on lumber and forest products. My duties made it necessary for me to become familiar not only with the actual movement of logs into the mills, and lumber out of the mills, over a period of a good many years, but have made it necessary for me to travel extensively throughout the Southern region particularly in the States east of the Mississippi River. It is part of my duty to keep in touch with these mills at all times in work which would benefit the industry as a whole, especially in connection with inbound transportation of logs and outbound transportation of lumber. I have kept in close touch with conditions in the industry, particularly during the months of the current year since July, 1932 (Tes. p. J-1477). Conditions have been changing rapidly due to the wholesale reductions in log rates since July, 1932, particularly. I have made some special study of these changing conditions during the past few months. I have made a personal investigation of the records of various companies at various points to inform myself of the effect of these reductions on logs. I have made special studies at such points as Jacksonville, Montgomery, Memphis, and Chattanooga, and have been through this region within the past month or so by automobile where I have had an opportunity not only to examine the books of various lumber companies, but also to see the character of the country in which the logs are cut, and the highways over which the logs have been moving by truck, and the facilities for loading and unloading at various plants. I will describe briefly the conditions at Montgomery in regard to the transportation of logs [fol. 1401] prior to the reduced rates and subsequent to the reduced rates of the summer of 1932. A hardwood mill operating at Montgomery uses principally whiteoak, redoak, and hickory logs. Its average mill capacity is thirty to forty thousand feet per day. Prior to the reduced rates this mill received about 90 per cent of its supply of (Tes. p. J-1478) logs by truck, and since the reduction it has received about 50 per cent by rail, and 50 per cent by truck. However, the reduced rates to Montgomery did not apply over the Atlantic Coast Line and the Louisville & Nashville. If the reduced rates had applied over these lines, the rail movement would have become about 95 per cent of the total movement.

Mr. Gwathmey: Now, I object to this testimony, Mr. Examiner. On what grounds can this witness undertake to say what the rail movement would have become? All of it is the purest sort of hearsay in the first place.

Exam. Hoy: That objection is sustained.

Mr. Norman: If the Examiner pleases, it may be mere prophecy as to what would happen, but so far as his testimony with reference to the movement of logs, it is not hearsay at all, any more than testimony of a railroad official as to what he finds out from his agents.

Exam. Hoy: I think the testimony up to the very last statement is perfectly proper, but when he testifies that if the reduced rates had applied over certain other lines, why a certain percentage of the logs would have moved by rail, I don't think he has stated any basis for that. If you will [fol. 1402] state a basis for it, why that might be good (Tes. p. J-1479). I think he should state his facts first, and then his conclusion.

A. About ten to twelve cars were shipped per month prior to the reduction, and about 60 to 90 cars per month have been going in by rail since the rates were reduced over the Central of Georgia. I noted a car of this weight, 93,500 on Central of Georgia expense bill 699, dated October 14, 1932, in Central of Georgia car 17184, which originated at Brantley. The distance from Brantley to Montgomery over the Central of Georgia is about 96.3 miles. The majority of logs at this mill have been originating in the vicinity of Luverne and Troy, both of which are on the Atlantic Coast Line. Prior to the reduction in rail rates they were hauled by truck from Luverne, a distance of about 53 miles to Montgomery. Luverne and Brantley are on a dead-end branch lines, and the movement from Luverne is now made by truck 12 miles to Brantley thence via Central of Georgia to Union Springs, thence over another line of the Central of Georgia into Montgomery. If the reduced rates had been in effect over the Atlantic Coast Line shipments could have moved from Luverne and Troy direct into Montgomery at a great saving in distance. This car which I mentioned as weighing 93,500 pounds paid a transportation cost from Brantley to Mont- [fol. 1403] gomery per car, regardless of weight, of $22.50; on a (Tes. p. J-1480) shipment moving the same distance

on the Atlantic Coast Line in Florida under the Cummer scale the Florida shipper would have paid $24.31 for the same distance—— The same weight, 93,500 pounds—for the same distance the charges on a car based on the rates prescribed by the Interstate Commerce Commission would have been $56.10. While in Troy recently I noticed three cars being loaded with logs. These were Central of Georgia 17086, 17087, and 17088, which were gondolas with high wooden sides and steel ends with marked capacity of 125,400 pounds. The price of logs f. o. b. the woods around Troy ranges from $10.00 to $14.00 per 1,000 feet, and the variety consists of oak and poplar with oak predominating. About 90 per cent of the outbound lumber from this mill moves over the line of the inbound rail carrier, and goes to far distant markets in the East, the Carolinas, and the mid-West. This mill uses the transit arrangement on the basis of 3 pounds of logs to one of lumber outbound, and the new reduced rates apply both on interstate and intrastate traffic. I have recently been in the Luverne, Troy, and Montgomery section by automobile, and have looked over this territory myself (Tes. p. J-1481). They are not members of our association. I took these cars etc., from the actual records myself. As to the effect of the reduced rates on the truck and rail competitive movements of logs into Montgomery: Due to the previous high log rates the truck movement developed rapidly. The reduction in the rail rates has caused a corresponding increase in the rail movement, and a reduction in the truck movement. When the mill had to rely upon the trucks for its [fol. 1404] principal supply of logs it could only operate about one-half time on account of the high price of logs, and high price of transporting the logs.

Mr. Gwathmey: Mr. Examiner, I don't want to be obstructive or captious at all, but I shall insist that this witness confine himself to facts of which he has personal knowledge. Now I have not objected to his testifying that he has taken a trip through this country, and has examined the books of certain mills, and that he finds that certain mills get certain shipments at a certain time—I am not objecting to that—but I do object to this witness undertaking to go beyond that and speculate as to what would be done, or what would not be done, or why.

Mr. Hillyer: May I qualify the witness further, Mr Examiner? (Tes. p. J-1482.)

Exam. Hoy: Yes.

By Mr. Hillyer:

Q. Mr. True, did you go into the records of the company and see yourself what shipments were moving in by truck, and what by rail prior to the reduction, and subsequent to the reduction?

A. Yes, sir; I had access to the records, and I developed this information from personal examination of the books.

Exam. Hoy: I think the witness should confine himself to facts, and in doing that he may testify as to the result of his examination of the books of the various companies that he has inspected as to the movement by truck before the reduced rates, and the movement afterwards, the relative movement by rail, but it should be confined to what he has found out from examination of the books of the companies, or what he has found out otherwise.

[fol. 1405] Mr. Hillyer: Mr. Examiner, let me see if I understand the ruling. Mr. True has attempted here to draw a general statement from the individual records without introducing the exact numbers of cars in my truck, and in by rail at one period, and then the cars in by rail, and the truck movement after that date. Now he has attempted to make a general statement here from an examination of all of those cars. We didn't think it was necessary to bring in complete statements of all movements through all mills. Now we will have a complete showing as to one mill, a very definite showing, but Mr. True was testifying as to the general effect from his own observation (Tes. p. J-1483) of the books of the reduced rates on this movement, rather than going into the particular cars in each case.

Exam. Hoy: I don't mean Mr. Hillyer that he should go into particular cars in each case, but I think he should testify as to the books, of how many companies he has examined, and then testify what that examination showed. He can do that. He need not give the detailed results of the examination of each company, but I think he should show a basis for his statements.

Mr. Hillyer: Up to this point he has been discussing the Montgomery mill—he didn't give the name of that mill, but he has the name, and he would be glad to furnish that,

without putting it on the record, if they wish. He is speaking of the one mill.

Q. As I understand it Mr. True, in Montgomery you are dealing with one mill?

A. One mill at Montgomery, yes.

By Exam. Hoy:

Q. Your testimony as to the amount of movement before [fol. 1406] the reduced rates went into effect and the relative amount of movement afterwards is based on your inspection of the books of one company at Montgomery, is that so?

A. That is the only mill I have discussed yet. I have other mills to put into the record as to the extent of their movement, and what effect it has had on their business.

Exam. Hoy: Well, you go ahead Mr. Hillyer. (Tes. p. J-1484.)

Mr. Hillyer: Perhaps the statement may have been general, but he had this Montgomery mill in mind throughout this course of questions. When we get to the next mill I will make the necessary separation there, and ask him as to the particular mill.

A. (continued) When the rail rates were reduced, and the rail movement was increased, the mill was able to start up full-time operations, and has received sufficient supply for this purpose since the reduced rates went into effect.

Q. Describe similar conditions at mills in Memphis, Tennessee, and show when you pass from the statistics of one mill to those of another Mr. True.

A. The first mill in Memphis I called on had a capacity of about 30,000 feet per day, which has only gone into operation quite recently, and since the reduction in rates by rail on logs. This mill has an average carload weight of 73,300 pounds. The principal cut for this mill is oak logs, and all of its outbound lumber moved over the line of the inbound carrier, which was the Yazoo & Mississippi Valley Railroad. There was some truck movement into this mill formerly before it ceased operations, but the reduction in rail rates has enabled the mill to operate, whereas it could [fol. 1407] not operate under the former high rates on logs.

Mr. Gwathmey: I object to that statement.

Exam. Hoy: Any basis for this statement Mr. True? (Tes. p. J-1485.)

Mr. Hillyer: Take that out, Mr. True. Go back to the next page, you left out the loading of that car, the heavy car.

A. (continued) This heavy car, to show the extent of the heavy loading, I noticed on their books a car weighing 91,000 covered by Yazoo & Mississippi Valley expense bill No. 638, and Illinois Central car 207,075. The date of that expense bill was October 22, 1932. I didn't give the name of the Montgomery mill. I will be glad to do it. Manufactures hardwood lumber. (Tes. p. J-1486.) The Montgomery mill is C. M. Gooch Lumber Company. The first mill on whom I called at Memphis—the first one (Tes. p. J-1489) as to which I have testified, was the C. M. Gooch Lumber Company, the same company, with operations at Memphis. I am still on the Memphis mill of the C. M. Gooch Lumber Company.

By Mr. Hillyer:

Q. Mr. True, as you go along please refrain if you can as to putting in a statement as to the ability of the mill to operate or not operate under the rates.

A. This mill's supply of logs is received generally from the Tallahatchie and Lake Cormorant sections of Mississippi, the Yazoo & Mississippi Valley near the Mississippi River, where the country is swampy and low. Another mill at Memphis is the Wood Lumber Company, which cuts about 20,000 feet per day. Before the rate reduction its average loading of logs by rail was about 63,400 pounds, and since the reduction 73,500 pounds. I have figured [fol. 1408] these averages from the actual weights of shipments into this mill before and after the reduction. This mill loads as high as 90,700 pounds, which I notice on expense bill Yazoo & Mississippi Valley 814, I. C. car 215390, August 31, 1932. This car originated at Prichard, Mississippi, on the Yazoo & Mississippi Valley about 35 miles from Memphis. The transportation cost on this car from Prichard, using the 90,700 pounds, was $15.00. (Tes. p. J-1490.) For a movement for similar distance within the State of Florida over the Atlantic Coast Line Railroad, based on the Cummer scale, the transportation cost would

have been $15.51. If a similar shipment had moved within the State of Florida under the rates prescribed by the Interstate Commerce Commission the charges would have been $36.28. This mill uses principally oak and ash logs, and about 90 per cent. of the lumber moved outbound over the Illinois Central, which owns the Yazoo & Mississippi Valley. There was a truck movement into this mill prior to the reduction, and since then the rail movement has increased, and the truck movement has reduced. This mill has been operated intermittently both prior to and since the reduction. Another mill in Memphis was the Mississippi Valley Hardwood Company, which has an average loading of 71,400, which I figured myself from the actual weights, and I noted one car, Illinois Central 127006, shipped on October 7, 1932, from Lake Cormorant, Mississippi, on the Yazoo & Mississippi Valley expense bill 193, dated October 10, 1932, weighed 88,500 pounds, the freight charge being $12.00. On a shipment moving within the State of Florida on the Atlantic Coast Line Railroad for the same distance under the Cummer scale, the charges would have been $15.13. The distance was 20 miles. (Tes. p. J-1491.)

[fol. 1409] Another mill at Memphis, the Anderson-Tulley Lumber Company. This mill receives logs by truck, and by rail from points in Arkansas. One shipment from Brickeys, Arkansas, made on August 30, 1932, in Missouri Pacific 61777 weighed 83,900 pounds, as shown on expense bill No. 6027, dated September 3, 1932. Brickeys, Arkansas, is 38 miles from Memphis, and the freight charges were $15.00. For a haul within the State of Florida on the Atlantic Coast Line, under the Cummer scale, the charges would have been $14.35, and the charges on the scale prescribed by the Commission would have been $33.56. There is a large mill at Laurel, Mississippi, the E. L. Bruce Company, with a capacity of 70,000 feet per day, located on the Gulf, Mobile & Northern. Since the reduced rates went into effect it has received about 200 cars per month by rail, and the truck movement has been reduced about 50 per cent. to about 25 cars per month. Average weight of shipments into this mill before and since the reduction is about 70,000 pounds. Since the reduction in rates the loading has been heavier. For example, one car, Chicago, Burlington & Quincy, 181460, loaded at Burns, Mississippi, October 7, 1932, contained 122,000 pounds as

shown on Gulf, Mobile & Northern expense bill 8809, dated October 7, 1932. Burns, Mississippi, is 32 miles to Laurel. The charges on this shipment were $15.00. Based on the Cummer scale, the charges for a haul within Florida on the Atlantic Coast Line Railroad would have been $20.86, and based (Tes. p. J-1492) on the I. C. C. scale the charges would have been $48.80. Practically all of the lumber from this mill moves outbound over the line of inbound carrier to the Gulf ports for export, and to points in Kentucky and Indiana, and occasionally to Central territory. The truck [fol. 1410] competition developed under the former rates at this mill and the reduction in rail rates has caused an increase in rail movement and reduction in the truck movement. The mill is operated continuously. This mill uses stakes and chains on the majority of the shipments, and has an allowance of 500 pounds in weight for this material when used in connection with flat cars. The only difference in conditions in loading or unloading as between Jacksonville mills and Laurel is that the logs destined to the Laurel mill are usually loaded by derrick by the shippers instead of by skids. The countryside around Laurel is subject to soil slides. After the Gulf, Mobile & Northern was built they had continual slide slips of the soil along this line which caused heavy maintenance expense for right-of-way. I was in business in that section for quite a period, as to the general part of the country. I never lived in Laurel, but I have lived in New Orleans and Memphis, and I am familiar with that territory. The statement about the topography of the country is based on my own observation. (Tes. p. J-1493.) To make this examination I didn't go to Laurel. I made the examination from the office of E. L. Bruce in Memphis; the records were there. I didn't go to the mill at Laurel at all. The mill at Chattanooga, Williams & Vorhis Lumber Company, which has a capacity of about 25,000 feet per day, which has been running from two to three days per week for the past year. Prior to the reduction it received about 20 per cent. of its supply of logs by rail, and 80 per cent. by truck. The reduction has reversed this situation, so that now about 80 per cent. of the logs come in by rail since the summer of 1932, and 20 per cent. by truck. This mill only accepts cars which have [fol. 1411] a loading capacity of about 125,000 pounds, and its average loading since the rates were reduced ranges from 105,000 to 110,000 pounds.

By Mr. Gwathmey:

Q. May I interrupt to ask you right there—did you yourself check the books of this company to see what the average loading was, or did somebody tell you that was the average loading? (Tes. p. J-1494)

A. In this particular case, the Williams & Vorhis, I think those were checked for me, let's see. I didn't personally make the calculation of the average weights at that mill; no, sir. As to whether somebody told me that was the average loading, I suppose it would be put that way, except that I personally examined some of the freight bills to fix in my own mind if that were about correct, and that is verified by a shipment here that I will give you now. This car was shipped from Dunlap, Tennessee, September 26, 1932, to Chattanooga, a distance of 65 miles, contained 114,900 pounds as I noted from Nashville, Chattanooga & St. Louis expense bill No. 38839 dated at Chattanooga, September 27, 1932, car Nashville, Chattanooga & St. Louis 43208. The charges on that shipment $17.50; for a similar haul under the Cummer scale the charges would have been $26.43.

By Mr. Hillyer:

Q. Now Mr. True, in stating the fact that this average was obtained by some one else for you in the Chattanooga mill, you didn's mean by that that all of the averages you have shown were derived in that way, did you?

A. No; I didn't intend to convey that idea at all. As a matter of fact (Tes. p. J-1495) I generally made the calcu-
[fol. 1412] lations myself. I have the adding-machine slips with me in some cases, or pencil figures, if the machine was not available. The I. C. C. charge per car there on that last car was $57.45 for 65 miles. This shipment is indicative of the effect which the new reduced rates, made regardless of the weight of the car, are having upon the average loading of logs in Southern and Southwestern territories. While I have shown some average loadings up to this time at various mills subsequent to the reduced rates, it should be borne in mind that the full effect of the change in rates to a basis regardless of the weight of the car, is becoming more pronounced each month. The shippers now have become accustomed to the advantages of loading as heavily as pos-

sible under the new reduced rates made regardless of weight, and the (Tes. p. J-1496) actual average loading at this time under the recently developed heavier loading would show considerably heavier average than those which I have enumerated.

Exam. Hoy: That is speculative, is it not? That is, you think it would.

Mr. Adair: Your Honor, he has seen the books.

Exam. Hoy: He is talking now, since he has seen the books.

Mr. Adair: Beg your pardon, I don't think he intended to do so. He means that the latter part of this——

Exam. Hoy: Period that he is giving, that is all right.

[fol. 1413] Mr. Adair: The latter part, that the loadings have been heavier—that they have been getting steadily heavier all the time; and that the average during the last part of the period is higher than the total average to which he has testified.

By Exam. Hoy:

Q. Is that what you intended to testify?

A. Yes, sir; that is correct. There can be no doubt in my mind but what the newly reduced rates made regardless of weight have already made a very substantial increase in the average loading of logs which move under the new reduced rate scales. The average price of logs, f. o. b. the woods, shipped to this mill in the latter half of 1932 has been about $6.00 to $8.00 per 1000 and consist largely of oak logs. Most of the shipments into Chattanooga originate on branch and dead-end branch (Tes. p. J-1497) lines in a highly mountainous section where there are either heavy grades or sharp curves or both. The outbound shipments of lumber moved to the East and New England States principally. The reduced inbound rates to Chattanooga over the Nashville, Chattanooga & St. Louis apply locally without any transit arrangements, and the Southern Railway's reduced rates apply both locally and proportionally. On both lines they apply both interstate and intrastate. At Chattanooga the truck movement developed under the former rail rates, and the reduction in the rail rates has caused an increase in the rail movement, and a reduction in the truck movement together with an

increase in the loading of the rail cars. An "A" frame is used for loading cars shipped into Chattanooga. They use high side gondolas without stakes or chains. As to log conditions at various points I have mentioned:—The conditions under which logs are loaded onto railroad cars [fol. 1414] and transported into the mills at Jacksonville, Memphis, Montgomery, Laurel, and Chattanooga, are practically identical with the exception that the transportation conditions around Chattanooga are less favorable due to the topography of the country, and the fact that the logs originate mostly on dead-end branch lines, whereas most of the logs over the Coast Line into Jacksonville originate on the main line in level (Tes. p. J-1498) country where the operating conditions are quite favorable. As to the last statement there about shipments into Jacksonville, I have in mind the F. S. Buffum Company operating in Jacksonville. There is very little difference between the situation at Jacksonville and that at Montgomery, with the exception that the logs into Montgomery originate on dead-end branch lines also. To some extent this is true of Memphis, Tennessee, and Laurel, Mississippi. As to the territory along the Mississippi River in Arkansas, and Mississippi, the transportation conditions are generally less favorable than over the Coast Line into Jacksonville. As to whether there is any difference in the transportation service on the inbound movement of logs where the transit arrangements are in effect and where no transit arrangements are accorded, there is absolutely no difference in the physical operation of terminals or the handling of the logs whether transit is accorded or not. The only difference is that when local rates are charged inbound on logs and refunds made on the surrender of expense bills in connection with the outbound movements of lumber the carriers have the additional clerical expense in handling the transit billing. Transit is usually accorded on lumber under an arrangement whereby the joint through rate on lumber is applied from [fol. 1415] (Tes. p. J-1499) the original shipping point via transit point to the ultimate destination. For example on a shipment of poles inbound from point A to B for creosoting in transit at B, and reshipment to a northern destination, under the transit arrangement the joint through rate would be applied from point A to the northern destination plus a charge for the transit service at point B cov-

ering clerical expense and extra switching over and above the switching which would be required if the shipment had moved through from point A to the northern destination. Ordinarily the transit arrangements on logs merely have the effect of reducing the inbound charges on logs in the ratio of three pounds of logs to one pound of lumber without applying the joint through rate from the original shipping point of the logs to the ultimate destination of the lumber. Ordinarily the effect of transit arrangements on lumber is to make the charges the same as if the shipment had originated at the original point plus the transit charge, the combined charges being less than if the transaction were treated as two separate and distinct shipments subject to local rates both inbound and outbound. The Cummer scale into Jacksonville plus the lumber rates out would result in a greater revenue than a car of lumber shipped from the same point of origin to Jacksonville and creosoted in transit and shipped to a northern market. For example, let us take 150,000 pounds of logs from Gainesville, Florida, to Jacksonville (Tes. p. J-1500) over the Atlantic Coast Line, a distance of 85 miles. Under the Cummer scale at 2.3 cents per 100 pounds the inbound revenue on the two cars of logs would be $34.50. The outbound lumber rates from Jacksonville to New York is [fol. 1416] 41½ cents and on 50,000 pounds would yield $207.50 for the car of lumber. This added to the revenue on the logs would make $242,00. If a car of lumber were shipped from Gainesville for creosoting in transit at Jacksonville under the transit arrangements the shipper would ultimate- pay freight charges on basis of the joint through rate of 42½ cents from Gainesville to New York plus a transit charge of 2½ cents per 100 pounds, total 45 cents, on 50,000 pounds or a total of $225.00.

Mr. Gwathmey: If the Examiner please, I fail to see the relevancy of all this to the reopened case. Perhaps counsel will enlighten us as to what it has got to do with the case. But unless he does so, I will have to object to it.

Mr. Hillyer: Mr. Examiner, we assumed that the defendants would develop the point or stress the fact that some of these rates to other parts of the South and Southwest were transit rates; and the purpose of this testimony was to show that the Cummer scale on shipments moving into the Buffum mill, and into northern destinations would yield

more revenue than if the lumber originated at the original shipping point, or if a transit arrangement was in effect, such as in effect at other points. He merely wants to show that the aggregate revenue (Tes. p. J-1501) under the Cummer scale as it now exists would be greater than under a transit arrangement; making a comparison of rates there.

Exam. Hoy: It seems to me that is beyond the scope of this reopened hearing, Mr. Hillyer. It is not evidence [fol. 1417] dealing with any change in rate on logs, or the circumstances connected with or the conditions which occasioned such changes. I don't think under the limited reopening that that is admissible.

Mr. Gwathmey: In the light of counsel's statement I want to note a definite objection to it.

Mr. Alston: Including the fact that the question as asked is not within the scope of the reopened hearing (Tes. p. J-1502).

Exam. Hoy. The rest of the answer in my opinion is beyond the issues of the reopened proceeding, and the objection thereto will be sustained.

A. (continued) In my opinion the best method of publishing rates on logs is to make a flat inbound scale, in cents per car regardless of the weight of the shipment, such as the new reduced log rate scales which have been published generally throughout the South and Southwest in recent months. The Cummer scale itself is my idea of how a log scale should be constructed, and is, I think upon the proper level at this time to assist the railroads in getting log and lumber traffic, and to assist the cypress and hardwood industry in the South. As to what effect would the elimination of the Cummer scale and these newly reduced log scales have upon the carriers' revenues, in my opinion, it seems certain to my mind that the truck competition has come here to stay, and that the elimination of the Cummer scale, and the substitution therefor of the high scale prescribed by the Commission in this proceeding, and the cancellation of the new reduced log rate scales in other parts of the Southwest would mean a loss of substantial revenue on logs, and lumber, to the railroads; [fol. 1418] and would mean the stimulation of transportation (Tes. p. J-1503) by truck and water. The

industry has been aided and stimulated by these reduced rates.

Cross-examination:

The C. M. Gooch Lumber Company's mill at Montgomery is served by the Western Railway of Alabama and also by the Central of Georgia. They have joint facilities there. There is no switching (Tes. p. J-1504) assessed to their industry on business moving from points on the Central of Georgia Railway. The physical location of the same company's mill at Memphis is on the Union Belt at Memphis. The Union Belt is controlled by the Missouri Pacific. All lines have access to any industry on the Union Belt.

Q. On the same basis as the Missouri Pacific?

A. I am not sure about that Mr. Alston. There may be a switching charge in some instances. The Woods Lumber company plant at Memphis is served by the Illinois Central and the Louisville & Nashville, not on the Union Belt (Tes. p. J-1505). The Gooch Lumber Company at Memphis is not on any other road except the Union Belt. I know that it is positively served by the Union Belt, but I am not positive that it is served by other lines. C. L. Bruce Company's mill at Laurel, Mississippi is served by the Gulf, Mobile & Northern; and as I understand it it is also served by the Illinois Central and New Orleans and Eastern, three roads. The Williams & Vorhis plant at Chattanooga, is served by the belt line, which is controlled [fol. 1419] by the Southern Railway and by the Nashville, Chattanooga & St. Louis also. Those two roads then have immediate access to that Williams plant. The belt line is used by the Southern Railway (Tes. p. J-1506). Those are the only two roads there except the Tennessee, Alabama & Georgia. The best way of making rates on logs is by carloads, without regard to weight. I said the best way to make rates on logs was to make them per car, regardless of weight.

Q. Suppose there were two shippers at shipping point X, we will say, both shipping into the manufacturing or transit point we will call Y, in competition with each other. Suppose you furnish shipper No. 1 with a car of 60,000 pounds capacity, and shipper. No. 2 with a car of 40,000 pounds capacity, would there be any disadvantage to shipper No. 2 in that?

A. There would be a disadvantage. I would not think there would be a discrimination. The shipper could order any sized equipment he wanted, and get the heavier load per car.

Q. Well suppose he didn't—suppose that all the equipment was not uniform in capacity.

A. If I were that shipper I would wait until I could get highside gon; and load it to 125,000 pounds capacity (Tes. p. J-1507).

Q. Then under your plan we have no basis of regulating that defect.

Mr. Adair: We object to that. I think the law regulates that. The railroad companies have got to distribute their equipment with an even hand, or violate the law, and suffer the penalties of it.

Exam. Hoy: Yes, but he is questioning him on his basis or theory of making rates on logs. I think his cross-examination is proper.

[fol. 1420] Mr. Gutheim: But the distribution of cars is not fairly accomplished by a mere distribution of car by car with their varying capacities. The shipper is entitled to his share of the capacities. That is a legal proposition.

Q. I asked if your plan made any provision for protection—any means of preventing the defect which I have mentioned, on the part of the lack of equality which could be produced as between shippers?

A. I don't know that I could answer your question, Mr. Alston. In rate making it is proper for the carrier to have knowledge of the return which is received per ton mile or per car mile, on a given class of (Tes. p. J-1508) traffic, and on each class of traffic. As to whether my plan permits that, that all goes to the question of whether or not these are maximum reasonable rates. I don't know whether they are or not—if they are moving the business, that is what counts these days. My plan might be of value to meet some emergency; to meet the truck competition, if you call that an emergency.

Q. Now, are you familiar with the decision of the supreme court of this State in the case of Louisville & Nashville against Speet-Parker Company (137 Southern Reporter) in which the plan which you have mentioned were condemned?

A. No.

Mr. Adair: I object to that, your Honor. In the first place the statement is a misstatement of the contents of the case; and the second place, this man is not qualified. But principally I wish to say it is a misstatement of the effect of the case.

Q. Are you familiar with the case?

A. No, I am not familiar.

[fol. 1421] Q. Are you familiar with the fact that the Supreme Court of this State has disapproved your method —the method that you (Tes. p. J-1509) have proposed?

A. No, I don't know that I could answer your question.

Q. Mr. True, I am not very sure that I understood your evidence as to the transit privilege. Do you mean that the transit privilege as being applied is one which is applied according to the illustration which I will now make. Suppose point X is the point of origin, and point Y is the transit point, or the point of manufacture. Did I understand that your thought of a transit privilege was that the log should move from Point X to point Y on this rate —the low rate—and when the lumber is manufactured at Y it should move out of Y to destination on a rate applicable as though it had originated at X?

A. No, that is so-called "milling in transit" on lumber; that would not apply on logs. The transit where it is in effect on logs from X to Y, which is the point of manufacture, is a ratio of three to one. In other words, the high rate is assessed upon reshipment of the manufactured product, refund is made down to basis of three cars of logs in to one car of lumber out. Of course you understand Mr. Alston that while there are some transit rates on logs now in effect, most of them are the flat rates. They have gotten away from that (Tes. p. J-1510). By flat rate I mean the rate of say $12.00 per car regardless of weight would be charged, and there would be no necessity of going to the work of filing claims to get a refund. Those rates are in effect at Chattanooga—the people at [fol. 1422] Chattanooga, they would have this so-called transit rate first, and they were not satisfied with it.

Q. All right. We have gotten away from the question. I would like you to illustrate—taking the illustration which I have used—wait, I would like for you to apply the illustration which I have used—your conception of the transit rate. Well, begin please with the lot at X, please.

A. You have 150,000 pounds of log from X to Y, and when you ship 50,000 pounds of lumber, the 150,000 pounds of logs from X into Y would be reduced as far as the charges are concerned to the basis of these truck-made rates per car, regardless of weight. The shipment which moved out from Y, in order to get the advantage or reductions should move out over the line from X to Y (Tes. p. J-1511). Over the same railroad, yes. Over the same line that moved the logs from X to Y, if it is a transit rate.

By Mr. Gwathmey:

Q. Mr. True, if two shippers have cars of the same capacity, and one loads to 50,000 pounds and the other loads to 100,000, and both are charged the same amount, in your opinion does that create an advantage in favor of one shipper against the other?

A. I would not think it would be an advantage that the carriers would be responsible for. One would get his logs transported cheaper than the other, naturally. This investigation which I have made was made by me especially for the purposes of this case (Tes. p. J-1512). As to whether I have enumerated all of the mills which I visited, let me see. We called on other mills, but for reasons that these other mills were not operating we could not get the [fol. 1423] information we were seeking. Those mills that were not operating could not give us any authentic information as to what the condition is today as compared with the time prior to the reduction in the freight rates. For instance we called on the Fisher Lumber Corporation at Memphis, Mr. Keith Spurrier, called on James E. Stark at Memphis, and they were not operating. Mr. F. S. Buffum was with me. I personally investigated the ones that I have enumerated.

Q. Did anybody tell you in advance to make every effort you could to find out certain cars that were loaded above the average (Tes. p. J-1513)?

A. Well, my investigation was to determine what the lumber industry—to what extent the lumber industry was taking advantage of these rates that were published on a per car basis regardless of weight, and naturally I had to determine what the loading was to see what the cost of transportation to those people was on the loss.

Q. Well, you several times referred to the fact, as you expressed it, that you saw a certain car which weighed so much. Were you on the lookout to find cars of that sort?

A. I simply wanted something to put into the record to show that I knew what the conditions were there, so far as the loading and shipping are concerned.

Q. In your compilations of these averages which you have given, what period did you cover?

A. Well, I didn't try to determine on any period, I didn't, I simply took what cars were available and struck an average; sometimes I used 20 or 25 cars, and other times perhaps on account of the mill not operating to full [fol. 1424] capacity there were not over 10 or 15 cars on the average. I just took that 10, 15, or 25 cars as it happened to be and struck an average of those cars. As to an average loading for the C. M .Gooch (Tes. p. J-1514) Lumber Company at Montgomery, I don't think I did have any average of those. There was no reason why we should not have shown it that I know of.

Q. You mentioned one car which you say you saw at that plant which weighed 93,500 pounds, but you didn't undertake to give an average for that mill as you did for each of the others. Now why didn't you?

A. Well, I didn't make any figures on the average there; and I thought perhaps it would not be proper to take the average unless I had checked it up. It was an oversight on my part; I took their words for it; I was not there, it was authentic. I didn't find any of these cars that were overloaded, Mr. Alston. That is to say, if they were overloaded there was no excess charges.

Q. Well, there could not have been any excess charges. I mean loaded beyond the rated capacity. Suppose the railroad sent you at 60,000 pound car capacity. Did you find any cars where the rated capacity of 60,000 pounds were loaded beyond 60,000 pounds?

A. No, I didn't experience that at all. The loads seemed to be heavier the last people I called on. It is a new proposition (Tes. p. J-1515) to them, and they apparently were not aware of the fact that they could load the cars heavy. Now, you take the people at Chattanooga, they are only ordering the big high side gons that can be loaded to a load limit of approximately 125,000 pounds. That is the

loading limit, 120,000 — capacity cars, but you can load [fol. 1425] them to 125,000 pounds. That is the stenciled load limit; there is nothing wrong about that; the carriers want that done. The carriers stencil all of their cars. Originally it was the idea you could not load a 100,000 — capacity gon to 110,000, that is 10 per cent of its capacity, but now you can load it to its load limit, stenciled load limit of approximately 125,000 pounds. It is a safe-carrying load. Also, it all depends on your tariff provisions for overloaded cars. If the tariff provided for a penalty of so much per car for overloading, it might be 110,000 —, 10 per cent of the load limit, or it might be something less than that; the tariff would speak for itself.

By Mr. Adair:

Q. Ordinarily Mr. True you can overload 10 (Tes. p. J-1516) per cent, can you not, without penalty?

A. You can call it overloading.

Q. Beyond the stenciled figures, 10 per cent?

A. Heretofore you have been limited to loading a car in excess of 110 per cent of marked capacity, but that is not done today; you determine the load by getting the load limit, which is stenciled on the car.

By Exam. Hoy:

Q. Mr. True, in arriving at these average loadings, did you cover any uniform period of time?

A. No, I didn't, Mr. Hoy, because I could not do that, due to the fact that on account of conditions as exist today some mills would be operating 2 or 3 days per week, and other mills perhaps 4 or 5 days per week, and the only thing I did attempt to do was to pick out some cars and strike an average of the last week or two of the movement prior to reduction, and a week or two subsequent to reduction. The period of time was generally a week or two prior to the reduction and a week or two subsequent to the reduction.

[fol. 1426] By Mr. Alston:

Q. Mr. True, were there any other mills which you visited and which were operating for which you have not given statistics (Tes. p. J-1517)?

A. No, I think all of the mills we visited were operating. And in fact we didn't call on any mills that were not operating, because those figures would not do us any good. I have given the figures on all of the mills visited.

Redirect examination:

A. As to whether there were any mills operating in any of those cities, Montgomery, Chattanooga, and Memphis, at the time that I called there that I have failed to report upon here today, no, with one exception. Shannon Brothers of Memphis were operating, and we made three special trips out there to get in touch with him, and we had to leave that afternoon, Saturday afternoon, and we failed to get the information from him, but he promised to send it in, but for some reason it has not come yet. That was the only mill that we called on that we didn't (Tes. p. J-1518) get this data on. That is the only mill that we called on that didn't give us this information; that was operating, that we didn't get it from. These averages in the pre-reduction period, and the post-reduction period were compiled by me upon the operations of a week or two before the reduction, and a week or two after the reduction——

Q. Now, did you examine the records of the company during any other period of pre-reduction and the post-reduction period to see that those averages fairly represented the true averages under the different operating conditions?

A. We did to this extent, Mr. Adair. When we wanted [fol. 1427] to determine the heaviest load we could find on the book, we found invariably we would go to the last cars that were moving, and our heaviest load would indicate a more recent shipment than the averages made prior to that time. As to whether these averages that I have given here fairly represent the averages—average loadings during the two periods of operations, I think so, sir; I didn't try to pick out any cars; made no selection whatever. I simply went before the reduced rates were made and struck an average, and then took another batch (Tes. p. J-1519) and made an average of the cars moving since the reductions were made, and from my examination I am satisfied that the average loadings are increasing as the time goes on, and that the present average loadings are heavier than the figures that I have here given.

By Exam. Hoy:

Q. Mr. True, did you take the week or two weeks as the case might be just before the reduction, and the first week or two weeks after the reduction in each case?

A. I could not say exactly that I did that Mr. Hoy, because with some of the mills they would not be operating for a week or two weeks perhaps before the reduction.

Q. I mean the last cars. Did you take the last cars before the reduction for the period back, and the first cars after the reduction?

A. That is it, sir. In speaking of the 125,000 capacity cars, I had in mind the new stenciled capacity of those cars (Tes. p. J-1520).

Q. Taking the Chattanooga cars for example, where you showed one car of 114,000 pounds, and stated those [fol. 1428] shippers were asking for cars of 125,000 capacity. Did you mean that car was overloaded 100,000, or below the 125,000?

A. I mean it was below the stenciled light limit of the car. I would say that 114,000 pounds of logs on a gondola car of that capacity would be a thoroughly heavy load, but it would not be overloaded by any means. I didn't mean then that the shippers were loading the cars in excess of the railroad requirements, they were not doing that.

Q. Now, when you were explaining the Chattanooga situation you were not permitted to finish your answer. I would like for you to follow that out, and explain the effect of the new rate at Chattanooga. You gave an illustration of a shipment on which certain charges were paid at Chattanooga.

A. Those were the flat rates into Chattanooga; they were not the transit rates. If that shipment stopped there and was made into lumber, and was disposed of locally, there would have been no difference whatsoever in the inbound charge (Tes. p. J-1521). When I said the inbound log rates ought to be made on flat basis per car, that is what I had in mind, and not tied up with any transit arrangements. Now, in the case of that shipment at Chattanooga, the logs which were cut into lumber—if that lumber moved on out to Cincinnati, that would not affect in any way the inbound charge to Chattanooga, none whatever; flat rates would apply on it.

F. S. BUFFUM, called as a witness, being duly sworn, testified as follows:

Direct examination:

A. F. S. Buffum, 234 Ives Street, Jacksonville, Florida. I am President of F. S. Buffum Company, Incorporated. [fol. 1429] This company is engaged in the business of purchasing logs at interior Florida points; bringing the logs to our plant at Jacksonville, manufacturing the logs into lumber of various kinds, and shipping the lumber products to various sections of (Tes. p. J-1522) the country. At times we have also been engaged in cutting logs for other hardwood lumber companies at our Jacksonville mill. While we lease the plant the investment in the mill is approximately $90,000.00, exclusive of the value of the land upon which the mill is located. Approximately $3,000.00 taxes are paid annually by the company on its Florida operations. About 100 persons are employed, on the average, at this mill during the past year, and about 150 persons engaged in logging operations which serve the mill have been given employment by others as a direct result of the operations of our mill, when our mill has been in operation. The average monthly cut of this mill during the past year has been 700,000 feet. The mill is situated in the western industrial section of the city of Jacksonville at 234 Ives street, and is on McCoy's creek, a small stream of water which empties into the St. Johns River at Jacksonville. The mill owns its own industrial railroad tracks which are adjacent to and served exclusively by the Atlantic Coast Line Railroad (Tes. p. J-1523). We have used hardwood logs, including ash, gum, oak, and cypress. In recent months the greater portion of our shipments have consisted of cypress logs. We have cut a considerable quantity of hardwood logs, other than cypress, for others, in the past, but, at the present time this cut has been discontinued, and most of our logs are now cypress. However, in the future we expect to cut ash, gum, oak, and hickory logs as they may be available from time to time. We do not cut pine logs. The [fol. 1430] Jacksonville mill began cutting cypress and hardwood logs in the month of June, 1930. This was during the period between February 9, 1929, and April 10,

1931, when the Cummer scale of rates was not in effect, when our logs were coming in mostly by truck.

Mr. Hillyer: We offer in evidence as Witness Buffum's Exhibit No. 141 a statement of "Inbound Shipments of logs."

Exam. Hoy: The exhibit will be received and marked No. 141.

A: This statement was prepared under my direction from the books of this company in order to show the inbound movement of (Tes. p. J-1524) logs received at our mill from the time when the mill began operations through the month of October, 1932, month by month, with a separation between the inbound shipments by railroad, by truck and by water. For this purpose the monthly receipts of logs in feet, board measure, were converted into the approximate number of cars by truck, and by water. The numbers of cars by rail are the actual number, and the number cars by truck and by water are only approximate. In reducing feet, board measure, to equivalent cars by truck and water I have used 4231 feet as the divisor into the feet, board measure, that being the average of the board measure per railroad car actually received at my plant. During the entire period of our operations, through October of this year, we have received the equivalent of 3178.6 cars. Of this total 1092 moved in by rail, 1935.3 by truck, and 151.3 by water. Although the Cummer scale was restored on April 10, 1931, it took some time to rearrange our contracts, and the rail movement over the Atlantic Coast Line really began in June, 1931. During the period June, 1931, to December, 1931, [fol. 1431] inclusive, business was scarce, due to trade conditions, and during the months of October to December 15th we were not operating, due to lack of orders. This middle period then is not indicative of the current year, 1932, when a much different condition existed (Tes. p. J-1525). The exhibit shows that during the first year of our operations 275 cars were received by rail, and 788.8 by truck and water. It will be noted that during this period cars came in over the Atlantic Coast Line, Seaboard Air Line, Southern, and Florida East Coast, when the Cummer scale was not in effect. These shipments were in large part from nearby points. The total receipt

of logs were too small to warrant us in operating other than intermittently during our first year. During the period June to December, 1931, when the Cummer scale was in effect, it will be noted that shipments inbound over lines other than the Atlantic Coast Line ceased, and there were 134 cars over the Atlantic Coast Line, 383 carloads by truck, and 2.1 by water. In the first period the Atlantic Coast Line movement was only 20 per cent. of the truck movement. In the second bracket, the Atlantic Coast Line movement under the Cummer scale was 35 per cent. of the truck movement. The third bracket shows the movement for the first 10 months of the current year. Thus, under the Cummer scale, the Atlantic Coast Line shipments increased to 655 cars or 65.5 cars per month, which is 77 per cent. of the truck movement of 848.5 cars during the same period. During the first year 1930 the Atlantic Coast Line shipments averaged about 12 cars per month (Tes. p. J-1526). That is 1930; the first year of our operation. We started operation in June. I am repeating—during the first year the Atlantic Coast Line shipments averaged about 12 cars per month, and during the year [fol. 1432] 1932 the Atlantic Coast Line shipments averaged about 65.5 cars per month. In the month of May the Atlantic Coast Line shipments, 107 cars, exceeded the truck movement, 99.3 cars. The loggers in the woods expected the Cummer scale to be again cancelled on September 15, 1932, pursuant to the order of the Interstate Commerce Commission, and they stopped cutting about that date. After the Federal court, on September 14, 1932, enjoined the order of the Commission, the loggers began operations again. This made a drop in our receipts, which is reflected in the September and October figures. During the first part of October, due to this temporary stoppage in the cutting of logs, our supply of logs at the mill was depleted, and we had to stop operations from October 4, 1932, until October 10, 1932, when our supply was again renewed (Tes. p. J-1527). Eliminating the months of September and October, there were 558 cars inbound over the Atlantic Coast Line under the Cummer scale, or an average of about 70 cars for the 8 months period of the current year. During the same 8 months there were 689.6 cars in by truck, or an average of 86.2 cars per month. The inbound water movement has never been substantial in vol-

ume, or regular. It is only occasionally that we can get logs inbound by water. The truck movement, as will be seen from this exhibit, is a serious competitor of the railroads. The restoration of the Cummer scale enabled us to bring in a large additional supply of logs over the Atlantic Coast Line, and it was only after the restoration of that scale that we were able to draw from longer distant points, thus supplementing our truck and water supply, and thereby receive sufficient total supply to enable us to operate our plant continuously. Unless the Cummer scale or [fol. 1433] its equivalent is continued in effect we cannot bring in any logs by rail, other than an occasional car from nearby points.

Mr. Hillyer: Mr. Examiner, we ask that this exhibit be received in evidence.

Exam. Hoy: It will be received as No. 142 (Tes. p. J-1528).

Mr. Hillyer: We now offer exhibit showing "Outbound Movement of Lumber," to be marked for identification as Mr. Buffum's Exhibit No. 143.

Exam. Hoy: That will be 143—identified as such.

Mr. Gwathmey: Now, I wish to object to this Exhibit, Mr. Examiner, upon the ground that neither the outbound rates nor the outbound movement are at issue here; nor do they have any hearing upon the subjects upon which this case was reopened.

Mr. Norman: Mr. Examiner, I say that it is apparently claimed here by the Atlantic Coast Line Railroad that there is some difference growing out of the tying up of the outbound tonnage with the inbound tonnage, and the purpose of this exhibit is apparent on its face, and is to show that the Atlantic Coast Line Railroad has gotten from this shipper, without that tying up, more than the regular proportion of one pound of outbound lumber for three pounds of inbound logs; and I think it is competent as bearing on this so-called transit proposition.

Exam. Hoy: Well, I feel that I will have to sustain the objection. I do not believe the outbound movement of lumber is within the scope of the reopened hearing. It is not a change in the rate on logs, and neither can I see where it is evidence showing the circumstances connected with and the conditions which occasioned any change in the rates on logs.

Mr. Adair: May I or not inquire, your Honor. Then am [fol. 1434] I to (Tes. p. J-1529) understand that your Honor has ruled that whether or not these tariffs are transit rates or local rates makes no difference in the level of the rate, and the propriety of that level?

Exam. Hoy: I am not making any ruling as to that. You are putting in your evidence as to changes in the rates on logs, and circumstances and conditions which occasioned those changes, and then evidence as to whether such circumstances and conditions, or any of them, are present in respect to the Florida intrastate rates on logs.

Mr. Adair: The purpose of this proof which we now proffer is to show *that in practical* operation and in effect the Cummer scale as applied in Florida is tantamount to a transit scale, is substantially in this particular instance, which we say is typical, that all that the Atlantic Coast Line Railroad Company gets substantially is the entire product of the mill to which the logs are moved.

Exam. Hoy: My ruling will have to be that that evidence is not admissible under the order reopening the case.

Mr. Adair: We make the proffer, your Honor, and understand that your ruling is against us, and we now except to that ruling.

Exam. Hoy: The record will note the exception.

Mr. Hillyer: Mr. Examiner, may I say a word on that point which has not been covered. We have before us here a new (Tes. p. J-1530) condition, under which in the South and the Southwest there are various new tariffs published—some are transit rates, some are net rates, and some are strictly local rates. Now, since we are going first [fol. 1435] in this proceeding, we necessarily have to anticipate some defenses which might be made. One of those defenses we assumed would be that these rates put in in other places were at least in some instances transit rates, and therefore the Cummer scale has no relation to a transit rate published somewhere else. Now, the purpose of this evidence was to show by Mr. True, for example, that the inbound log rates are made differently from the ordinary transit. And we want to show here from that, even if a transit arrangement were in effect in connection with the Cummer scale at Jacksonville the Atlantic Coast Line Railroad would not get any more tonnage than it does now, because at the present time the outbound products are mov-

ing over the Coast Line in greater proportion than the inbound movement. We also want to show this relationship between the truck operations and the rail operations, not only with respect to inbound movement, but outbound. We feel that that has a distinct bearing on this situation; we don't think Mr. Buffum's showing would be complete without it. We are not undertaking to burden the record here, but we thought at one point even in this regard we should cover the complete situation as to both inbound and outbound shipments, and to let the showing include the shipments by truck as well as by rail (Tes. p. J-1531).

Exam. Hoy: Mr. Hillyer, I am limited by the order of the Commission reopening, and as I interpret that order it is limited with respect to the rates on logs; the changes in rates on logs, and the conditions and the circumstances which occasioned changes in rates on logs, and I have got to confine the evidence to that to the best of my ability. I will have to reaffirm the former ruling, that evidence as [fol. 1436] to shipments of lumber outbound are not within the issues of the reopened proceeding, and exception has been noted on the record. Exception for Mr. Adair.

Mr. Hillyer: Mr. Adair has made the exception. Now I would like to say that the Buffum Company also asks to note an exception on its separate account.

Exam. Hoy: The record will so indicate, Mr. Hillyer.

Mr. Hillyer: Now Mr. Examiner, I want to recast this testimony in accordance with your Honor's ruling. Now I want to ask this question, not as evidence under your Honor's ruling, but as information. Now we had intended to show that the shipments inbound on logs to Jacksonville to Mr. Buffum's mill were similar to the conditions at the mills in Montgomery, Chattanooga, and other points; also that the lumber was shipped out to the same competitive markets in the East, and principally by railroad; and we wanted to show the destinations of the lumber in general from the other producing points; and also to Jacksonville, but as we understand your ruling now it would be (Tes. p. J-1532) necessary to eliminate any further reference to outbound shipments of lumber. Is that correct?

Exam. Hoy: That is correct.

Mr. Gwathmey: Counsel's last statement to my mind emphasizes the propriety of the ruling.

Mr. Gutheim: I understand that you are also eliminating any reference to balancing of outbound lumber and inbound logs?

Exam. Hoy: That is true.

[fol. 1437] Mr. Gutheim: That is correct?

Exam. Hoy: Yes.

By Mr. Hillyer:

Q. If the Cummer scale should be cancelled again, leaving in effect the higher rates prescribed by the Commission, what effect, in your opinion, would that have upon the carriers' revenues, on the logs and lumber to and from your mill?

A. The cancellation of the Cummer scale would undoubtedly cause an almost immediate and almost total elimination of railroad movement of logs into our mill. It is my opinion that the Atlantic Coast Line, which serves our mill, would experience a loss of practically all of the revenue which it is now receiving on our log traffic which comes from an area of about 150 miles from interior Florida points, and this line, and its connections would also lose considerable revenue on outbound shipments of lumber to far-distant markets. As to the comparative price level of logs this year as compared with last year and prior years (Tes. p. J-1533). The value of pine and cypress logs is about the same, and both are very low valued commodities. The ash logs range in value about 20 per cent more than pine and cypress, and the oak logs about twenty per cent less than pine and cypress. During the year 1932 there has been a serious drop in the already depressed price of logs. Last year the price of cypress logs for example was about $22.00 per 1,000 feet, whereas the average price in 1932, the current year, has been about $15.00 per 1,000. The price level of the log market and the lumber market has reached a pre-war stage, and the log and lumber industries have been compelled to operate on the price level which existed many years ago. This is [fol. 1438] price delivered f. o. b. mill, Jacksonville. As to the method of loading logs for shipment over the Atlantic Coast Line to our plant, most of the cars furnished us by the Atlantic Coast Line for logs are low-sided gondolas, having capacity of 100,000 pounds. The cars are placed at the loading tracks owned by the shipper, off of the rail-

road right-of-way, and are loaded by the use of skids. The loading is performed by the shipper, without expense to the carrier. These low-sided gondolas will only carry from 50,000 to 60,000 pounds, so loaded, unless stakes are so placed in the cars, (Tes. p. J-1534) alongside the sides of the cars, so that the logs can be stacked up higher than the sides of the gondolas would otherwise permit. By the use of stakes, which involves no great difficulty and very little expense, we can load these cars very heavily, up to 100,000 pounds. Due to the fact that the Cummer rate applies in cars of 50,000 pounds, excess in proportion, there has been no incentive to the shipper to go to the expense of placing stakes in the cars so as to load them more heavily. The average loading of logs has increased greatly during the past summer in the South and Southwest, due to the fact that the new log rate scales in these territories usually apply per car regardless of the weight of the car. This fact has changed conditions so that generally the shipper will insist on having cars placed which will carry the very heavy loads. In this way the shippers are getting the advantage of heavier loading, and it is found that such rates assist the railroads in recapturing traffic in logs which has been lost to the trucks. An illustration of a heavily loaded car, shipped to our plant recently is Car Atlantic Coast Line No. 91720 received at [fol. 1439] our mill on November 8, 1932, was loaded with 101,500 pounds of cypress logs. The freight bill on this car is Pro. No. 51969 dated November 10, 1932. It came in over the Atlantic Coast Line Railroad. As to how cars are unloaded at our plant (Tes. p. J-1535) the unloading is performed by a skidder or derrick, or crane, by the shipper, at the shipper's expense. A skidder is an overhead cable with bicycle that lifts the logs in the car and transports them to the log pile. At our own expense, and on the shipper's own tracks and land, off of the carrier right-of-way. Cars are unloaded promptly, and there is little if any delay in releasing the cars at our mill. The Cummer scale provides that the shippers must unload the cars off of the carrier's right-of-way, and we do this in all cases. In this way the carrier has no investment in terminal facilities for unloading the logs. I have been in the

lumber business since a boy, for 35 years. I have traveled over the southern lumber region off and on throughout the past 30 years, and have had experience in various phases of the lumber business throughout the South. I have some knowledge of conditions of the lumber industry in the Southwest. This experience has been gained through personal travel over the area, the woods, highways, and at mill points. As to the changes in the transportation of logs in the South in recent months, the most impressive change in the transportation of logs, (Tes. p. J-1536) to my mind, has been the rapid decline in railroad movement, and the rapid increase in motor truck movement, and the increased length of haul of the truck movements of logs. For years it appeared that the trucks would not become a serious competitor of the railroads for low-grade heavy articles, such as logs, but the development of [fol. 1440] numerous highways throughout the South, and the increased efficiency and speed of the trucks has changed this condition, and the changed condition has now become realized. For example, when we began the operation of our mill at Jacksonville, while the Cummer scale was out of effect, we knew that we had to depend principally upon the trucks for our supply of logs because we could not use the railroads to any considerable extent, for the hauls of any considerable length, under the high rates prescribed by the Commission. Nevertheless, we had sufficient confidence in the truck situation to begin the operation of this mill, and we are still using the trucks as much as is convenient and economical even after the Cummer scale has been restored. We would prefer to use the railroad, if the Cummer scale, or some lower basis of rates, is kept in effect, but we cannot use the railroads and must use the trucks and water almost entirely if the Cummer scale is replaced by a higher scale of log rates. Another important change, growing out of such conditions as I have described, is the attitude of the railroads, as shown by the establishment, during the past summer, of generally (Tes. p. J-1537) reduced scales of log rates throughout the South and Southwest lumber regions. To my mind these reductions amount to a recognition by the railroads that the truck competition is a very important and acute factor in the struggle of the various carriers to gain increased traffic and revenue, and my opinion is that this condition

has come to stay. I think the attitude of the railroads in making these reductions is sound, and necessary for their salvation. Hardwood mills are in operation at such points [fol. 1441] at Montgomery, Alabama, Memphis, Tennessee, Laurel, Mississippi, Chattanooga, Tennesse, and elsewhere. I know this of my own knowledge. I travel considerably, and I have visited operating mills in the cities, which I have just named, within the past two months, in addition to my general knowledge of business conditions in the lumber industry which is gained by contact with the trade through travel. The method of loading and unloading logs, shipped by railroad, is practically identical throughout the South and Southwest. I do not think of any substantial difference anywhere, with the exception, which I explained before, that at most (Tes. p. J-1538) other cities and mill points the receivers are insisting on the use of the high capacity gondolas, especially since the new reduced rates went into effect, so that the average loading throughout the South has been materially increased. The shippers recognize the advantage of loading the cars to the maximum limit, where the rates are made so much per car regardless of weight. As to the general topography of the country through which the log shipments are made to the cities which I have named, the country around Montgomery is somewhat rolling, and hilly, and in this respect is somewhat different than the country in interior Florida up to Jacksonville, where the country is even and quite flat especially along the main line of the Atlantic Coast Line west of the St. Johns River, between Orlando, Florida and Jacksonville. There would naturally be more curves, cuts, and fills in the Montgomery section than in this Florida section served by the Coast Line. Around Laurel, Mississippi, there are more hills than around Montgomery. That is, the hills are, perhaps not higher, but are more abrupt, and it is more like the Montgomery section than the Florida section. Around Memphis some of the logs come in across the Mississippi [fol. 1442] River bridge from Arkansas, where the land is low and swampy. South of Memphis, near the river, where most of the hardwood (Tes. p. J-1539) logs come from at present, the area is low and swampy also, with some rolling country. Over towards Corinth, Mississippi, there are more hills and the country is like that around

Montgomery and Laurel. Around Chattanooga, Tennessee, the logging area is mountainous with either heavy grades, or sharp curves to avoid heavy grades. Most of the shipping points from which we receive log shipments over the Atlantic Coast Line come directly from the main lines. A few points are on some secondary lines, such as the line going up to Jasper, Florida. In the Montgomery section most of the logs come from areas where branch line movements are necessary, and the same is true at Chattanooga. The Mississippi logs coming into Memphis originate largely upon the branch, or secondary main line of the Yazoo & Mississippi Valley, which runs along near the Mississippi River. On the whole I would say that there is more main line operation in log movements to Jacksonville, and less branch-line movement, whereas at Montgomery, Memphis, and Chattanooga, there is more branch-line movement, and less main-line movement (Tes. p. J-1540). I was with the Kingston Lumber Company at Laurel for about two years; they operated on what was then the Memphis, Jackson & Kansas City, now the Gulf, Mobile & Northern. Also at Loosedale, Mississippi, on the same lines. Also at Mt. Vernon, Alabama, on the Southern Railway, between Mobile and Selma.

By Mr. Alston:

Q. Are you referring to mills or forests?

A. Saw mills, where we cut the timber and sawed it up into logs. I heard the testimony of Mr. True this morn-
[fol. 1443] ing, most of it, I heard the part of it with respect to the slides encountered in that operating condition around the Laurel section. I have been familiar with that situation of my own knowledge. The Mobile, Jackson & Kansas City—the line north of Laurel, was a logging railroad, and originally our logging road. Of the Kingston Lumber Company, as our company; and from about 40 miles north of Laurel up to Philadelphia there were sometimes anywhere from 4 or 5 days to 10 days that trains could not operate on account of the slides when that roadway was put through (Tes. p. J-1541). Mr. True mentioned the fact that he had taken this trip with me recently to these cities. Now on that trip we took occasion to look into the matter of the trucks which were competing with the railroads, as to the size of those trucks. I saw

trucks delivering at all of the points that we stopped at, and every truck on the road or at the mill were Fords and Chevrolets. Their average load is about 800 feet of logs. Those logs will weigh about 13 or 14 pounds to the foot; say about 10 to 11 thousand pounds. The same type of truck used in Florida in operating into our mill, practically all the trucks that are hauling logs into our mill are of that type. We have one logger, or two loggers that have several trucks that carry more than that, and these trucks—the trucks used (Tes. p. J-1542) there handled all short logs. As to whether there is any substantial difference in the volume of the log traffic into any of these other Southern mill points than into Jacksonville at the present time, while there may be some difference in the inbound movements to these various mill points, I am sure that there is not a great deal of difference, and I think that they are substantially the same in volume at the different cities. [fol. 1444] Hardwood and cypress logs are cut, as they are reached, just alike in each of these sections, or logging areas, and I do not think there is any trainload movement of hardwood logs to any of these mills in the South or Southwest. I would say that the volume of movement is substantially similar throughout the entire Southern region, depending only upon the varying capacity of the respective mills. As to whether there is any substantial difference in the value of the logs f. o. b. logging point near Jacksonville and near Montgomery, Laurel, Memphis, and Chattanooga, there is very little variation in the price of logs at this time, taking logs of the same character and of the same specie-. Of course, in each area the prices differ according to the diameter, and the grade of the particular log. On the whole I would say that the average prices for logs of like kind and grade are very much alike th-oughout the South and Southwest (Tes. p. J-1543). The States which constitute the principal lumber-producing section of the Southwest are Arkansas, Louisiana, Mississippi, Eastern Texas. As to Missouri, that is a section I am not familiar with.

[fol. 1445] Cross-examination.

By Mr. Alston:

Q. Mr. Buffum, let us take your exhibit No. 141. Begin with June, which is the first month, as I understand it,

of the operation of your mill in Jacksonville? What you call the interstate rate was in effect at that time?

A. Yes, sir (Tes. p. J-1544). We were getting our logs principally by truck about Jacksonville, within a radius of 30 miles. That is not the maximum radius. I could not answer that; I don't recall just from what points, how far away we were getting them at that time. They were adjacent to the highways. Some out of these swamps, they may be adjacent to rail; we are not bringing in any by rail at that time, so I would have no occasion to know. Most of our logs come from swampy sections; I could not say whether those were adjacent to water or not; we do get them adjacent to water. Some were near the St. Johns River. The majority that we got during that period this first period—from June through to December (Tes. p. J-1545) inclusive of the 30th were not from territory adjacent to the St. Johns River. Those are cars, figured 4200 feet to the car—4200, it is our average—4231 feet to the car. As to how many, what percentage of them were adjacent to the railroads, that I could not tell you, I don't know.

Q. At that time or during the period beginning with June 30th through May, the 31st, which makes your first year of operation, you got 142 cars by the Atlantic Coast Line, and 107 cars by the Seaboard Air Line, 2 by the Southern, and 24 by the Florida East Coast. Please state whether or not the charges during that period by the Seaboard Air Line and the Southern and the Florida East Coast were not about equal to what we call the interstate rate, that is the [fol. 1446] rates fixed by the Interstate Commerce Commission?

A. Well, I am not qualified to answer that. I don't know what the rates were. The tariff should show that, whatever the tariffs were; if they are the same, why we paid the same. We didn't pay the freight ourselves (Tes. p. J-1546) except for the account of the shipper. During that first year, the end of our operations, the interstate rates were in effect until April 10th. I believe that is the date; yes.

Q. 1931. But it didn't become practically operative until June 1931. Is that a fair statement of what you said?

A. Yes, sir.

Q. During that period—by that period I mean the first year—you received 275 cars by railroad, you received 703

cars—703.8 cars by truck, and you received 85 cars by water. Now in the next month which followed, June, July, August, September, October, November and December, you have testified as I have understood you, that you were not operating in November?

A. Yes, sir. October to December 15th we were shut down, and prior to that date we were not operating full time (Tes. p. J-1547). As to where did we get our logs at that time, Well, we had one—we had a contract with one logger that delivered us—had a contract to deliver one million and a half feet by truck, that came from about 16 miles out the Lem Turner road, sixteen miles from our mill, yes, sir; about half a mile from here. This contract was made prior to April 10, 1931, and we had agreed to take from sixty to 75,000 feet a week from this shipper, and regardless of what the rates might be we had to take care of our obligation with them on that contract, and he continued delivering those logs until either July or August, 1931, or just about the time we shut down in September. We were taking the logs that we had contracted for by truck. [fol. 1447] It is pretty near, say about 16 miles. Our other logs, they came from every direction around Jacksonville. Well, we were getting logs from around on the St. Augustine road, about 25 miles; and I think they call it the 12-mile swamp, it is between here, a little over half way, from here to St. Augustine; getting some logs around McClenny, that is (Tes. p. J-1548) out around between here and Lake City. The St. Augustine—the logs between here and St. Augustine is on the Florida East Coast; the logs at McClenny, this particular point is adjacent to the Seaboard and the Atlantic Coast Line where they come into the main highway is about, well possibly two miles beyond Baldwin, between Baldwin and McClenny. As to how far from Jacksonville where these logs come, about 30 miles. In this second bracket of our exhibit, beginning with June, 1931, ending with December, we had a total of 385.1 cars of logs moved in by truck and water, nearly all of which are truck, 383 cars. That was something less than half of what we had done in the first period. By rail during that period we had exactly the same number—no we had about 134 cars, as against 275, for the first period, now about half (Tes. p. J-1549). In the third period, which is the year 1932 through October, we had 683 cars by rail. They came from

points such as Orlando, Deland, Fort White, Carbur and other points on that line. They are all the points that I have described on the Atlantic Coast Line. All of the logs which we got by railroad were not from points on the Atlantic Coast Line in that period. 28 cars came over the Seaboard. Except for that these—the logs which we got by rail, were from points on the Atlantic Coast Line. As to the 28 cars which moved over the Seaboard Air Line, I could not tell you what rate was paid.

[fol. 1448] Q. I don't mean in dollars, but I mean the rate, whether it (Tes. p. J-1550) was or was not practically the rate fixed by the Interstate Commerce Commission for the Atlantic Coast Line?

A. They were the published rate, whatever the rate is, I don't know what the rate may be, because I don't know the destinations, but we can say they were all short hauls. During that period, we had 848.5 cars by truck, which is more than twice the amount which we received by truck during the corresponding period from June through December 1931. By truck and water we received during the 1932 period, that is through October, 912.7 cars. (Tes. J-1551) The logs hauled in by truck during the 1932 period were from points adjacent to Jacksonville, ranging in distance from 5 to 55 miles. I should say our average distance would be 25 miles. 25 to 30 miles. Under a rate which I have described or referred to per car without regard to weight limits, the tendency of the shipper is to demand more and more weight—that is for transit rate. That is what I was speaking of. (Tes. p. 1552) I think the rate that I was talking about was the rate that the shippers in the Southwest—moving to the Southwest.

Q. Would that not be the tendency of shippers anywhere as to any commodity, to increase the loading where the rate is made by the car, without regard to the weight of the loading?

A. Obviously. (Tes. p. 1553)

Q. What plan would that schedule of rates provide for the protection of the railroads' revenue for that kind of service, whether it be calculated on either a car mile or a ton mile?

A. I know, but we are combatting truck competition, and [fol. 1449] I may be a little outside of the point, but of course there will be as I stated, as far as we are concerned,

unless some such rate is put into effect all of our logs will be received either by truck or water.

Exam. Hoy: That does not answer the question Mr. Buffum.

The Witness: I cannot answer it, because I don't think I understand it. Our offices are right here in Jacksonville.

Q. Would you be willing during the course of this hearing to take your exhibit No. 141, and show us specifically to each one of the groups or movements that you show on here by truck (Tes. p. 1554) and by railroad respectively, the actual loading points, the distances from Jacksonville, and the number of cars loaded at each point, so that it will be possible to figure out from that information the weighted average haul to Jacksonville. Can you do that without much difficulty? Will you undertake to do that for us. You see what I am getting at. You said to Mr. Alston, that these logs in 1932 which moved into Jacksonville by truck came from distances ranging from 5 to 55 miles. What I would like to be able to find out particularly for the record is what the average weighted distance is, of trucks, and also railroads.

A. I think for trucks it would be rather difficult, as we don't keep a very accurate record of just where these logs come from. We buy them from a man who may bring in one or two trucks a week, and out in one swamp one place one week, and another swamp another week; I don't think we could get the trucks very easily. I know some of our principal truckers, but we have a ticket showing that John Brown brought in logs, we give him a slip for those logs, and on Saturday night we pay him off (Tes. p. 1555) and [fol. 1450] that is the end of it. We don't know where they originate; we cannot tell except from week to week possibly.

Q. Well, do you know how many of these cars originated within the 5-mile limit, and how many originated in the 55-mile limit; or how many rather moved as far as 50 miles? Or can you testify as to that?

A. I could not testify, but I can testify that some of them did move for that distance, because I know where they come from.

Q. Now can you from your books tell us what the average length of the movement of these cars was? I don't mean the average of the points, I mean the average of the cars.

A. We know where the cars come from; we have freight bills on all of the cars. As to the average of the trucks, I cannot. Not any too accurately; I would not want to go on the—it would only be more or less an estimate on my part. We don't do any logging operations. That accounts for the fact that we don't have any record of where the logs might have originated. We only know from hearsay, or from just talking with the (Tes. p. 1556) trucker, that he brings it from a certain place. Our company owns no timber at all. When we buy timber from somebody out in the woods, or from some timber man, we know where he is going to cut those logs, at the time, yes, but I cannot go back two years and tell you from a ticket just what swamp certain timber came out of, but at the time we know.

Q. Can you tell us where these logs came from that moved in here by truck in 1932?

A. I rather doubt it, but if we can I will go over my records and see how complete they are in that respect.

Q. Well, where did these 28 cars that came in over the Seaboard come in from?

A. I would have to look that up; I could not tell you off [fol. 1451] hand. Nearby points though I know.

By Exam. Hoy:

Q. Then Mr. Buffum, you don't know whether any of these 848.5 cars that came in by truck could have moved in by railroad in 1932, do you? That is, whether they were located on rail lines?

A. Well, the rail lines are parallelled by the highways; I presume they could have been moved in by rail lines. There is (Tes. p. 1557) not a highway out of Jacksonville—there is not a railway out of Jacksonville, that is not parallelled by a highway, but there may be some highways that are not parallelled by railways.

Q. If it came in over a highway, it would not necessarily mean that they would be readily available for rail transportation. Would not necessarily follow. It might follow, and it might not. I was wondering what portion of that 848.5, if any, could have just as easily moved by rail as by truck, or whether some of it, or a large portion of it, it was not feasible to move it by rail, because possibly not adjacent to a railroad.

A. Well, I could not answer that question.

By Mr. Norman:

Q. Well, that particular log might not have been moved by a railroad, but a log just like it could have moved by railroad, could it not?

A. Well, most of our logs can be moved by railroad.

By Mr. Alston:

Q. Mr. Buffum, let me ask you this. Can you give me any idea as to how many of these logs which you have said come to you by truck over a distance which you have averaged by estimate being 25 miles, would have to move from the forest to the railroad, and how far would that movement be from the forest to the railroad if they had moved by railroad? (Tes. p. 1558)

[fol. 1452] A. Well I suppose an average of—well, for instance out of the Lake City Road, possibly three or four miles. As to how far would the total haul be on that truck movement if it had come into our plant from the forest, I suppose about three or four miles, if it came by rail to the railroad. That truck haul if the truck had come on into our plant with the logs would be an average of 25 to 30 miles; that is what I said. Take this swamp out between McClenny and Baldwin, it is 20 miles to Baldwin, and the haul to Baldwin would be about 5 miles, or McClenny. Our average truck carries about 800 feet—that is for an ordinary Ford, or Chevrolet truck. That is about ten to eleven thousand pounds. (Tes. p. 1559) We estimated the car; at 4231 feet.

By Mr. Gwathmey:

Q. Mr. Buffum, to get back to what I was asking you about, am I to understand now that you say that you have no records in your office from which could be determined the origin of these various shipments that moved in here during 1932 by truck.

A. I don't believe we do. I will undertake to investigate and find out, and let you know before this hearing is over, whether we can from our records show where those cars originated and how many originated at each point, and how many of those could have been shipped by railroad. (Tes. p. 1560) Since I operated in the Southwest it has been about 20 years since I was actually operating saw mills there, but I have visited that section several times a year during that time.

Redirect examination:

A. The maximum length truck haul which I can recall just now of logs coming into our mill is about 55 miles.

[fol. 1453] Q. I had a recollection that you told me that you remembered something as long as 73 miles.

A. No, sir; I think 55 miles; that is down below St. Augustine about. While I am looking up this truck movement if I find a longer haul than that I will make a note of it.

Recross-examination:

I testified our plant is on a creek (Tes. p. 1562). That creek is connected with the St. Johns River, and that creek is navigable for logs but not for boats.

[fol. 1454] J. O. GILL, called as a witness, being duly sworn, testified as follows:

Direct examination:

My name is J. O. Gill. I am general freight agent of the Gulf, Mobile & Northern Railroad, and I live in Mobile, Alabama. Our main line extends from Mobile, Alabama, in a generally northern direction to Paducah, Kentucky, with branch line extending into Meridian, and a line extending into Jackson, Mississippi (Tes. p. 1563), from Union, a distance of 74 miles. There is in our system approximately 800 miles. We found, just prior to making these reductions, that logs were moving into our manufacturing points by trucks. We also found that logs were not moving freely, and we made inquiry of the buyers and shippers of logs as to what we could do to regain the traffic from the trucks and prevent further trucking, and to stimulate the rail movement into the manufacturing points of the logs, and the shipment of products manufactured from the logs outbound from the terminal points.

Mr. Adair: Wait a minute, your Honor, I think we, at the instance of our charming adversaries here, have had quite a discussion between ourselves as to the pertinency of the outbound movement into this inquiry, and we do now object to this witness conducting his testimony any

further along the lines, which at their instance, at the instance of our adversaries, has been ruled out.

A. I hope the gentleman is not referring to me as an adversary. I was asked to explain why we made these reductions (Tes. p. 1564). Exam. Hoy: In accordance with my former ruling there will be no evidence received [fol. 1455] as to the outbound movement of lumber. The evidence will have to be confined to the order reopening the case. Now, of course I don't think he has transgressed so far, or very far yet. He can give fully his reasons for making the changes in his log rates. That is within the scope of the hearing. The purpose of receiving evidence respecting any change in the rates on logs; the circumstances connected with, and the conditions which occasioned such changes, and whether such circumstances and conditions, or any of them, are present with respect to the Florida intra-state log rates of defendant.

Mr. Norman: So that if he testifies anything about outbound movements in connection with the circumstances and conditions surrounding his log rates, we have a right to show whether the same circumstances and conditions are similar to the ones that exist in Florida?

Exam. Hoy: Whatever he shows as a reason, as a circumstance (Tes. p. 1565), a condition for reducing his log rate, then you can show similar circumstances and conditions with respect to the intra-state rates on logs of the defendant in Florida. It seems to me that one is tied up with the other.

Mr. Gwathmey: I call your attention to the fact that, since our friends on the other side are getting highly technical here, the objection to the previous witness' testimony was that he was testifying about the inbound rates on lumber from——

Mr. Norman: Not showing rates at all. Outbound movements.

Mr. Gwathmey: Figured how much it cost him to ship inbound and outbound.

Mr. Alston: Wait a minute, let me ask the witness a question.

Mr. Norman: Ask him not to answer the question until [fol. 1456] I can make the objection.

Exam. Hoy: Wait a second. You ask the question and the witness need not answer it immediately.

By Mr. Alston:

Q. Mr. Gill, please state whether or not your road made and fairly recently made some rates, and new rates on the transportation of logs, and if so, please state whether those rates were local or transit rates?

A. They were applied locally into manufacturing points with the understanding that the manufactured product would be reshipped in proportion of the manufactured product in weight to the gross (Tes. p. 1566) weight of the shipments in, and on the rate from the manufacturing point proper, and that they would be shipped out over our line. There was a tariff provision to that effect, the tariff that Mr. Green introduced in evidence this morning. Those rates stay in effect by the terms of the tariff until May 9, 1933. They were put in as experimental rates in reference to meeting truck competition.

Q. After those rates were put into effect give us some illustrations as to the effect on truck competition, that is, what was the effect in removing truck competition, if it did remove it, the extent to removing it, or something as to the mileage haul within which truck competition was affected?

A. I cannot exactly answer your question, but I think I can throw some light upon the subject by reading to you the results from an analysis we made. I am disappointed at the results (Tes. p. 1567) although unquestionably we have regained some business from the trucks. I cannot say how much. However, our records show that for the short distances, that is, distances under 25 miles, by comparison, using 3-month period prior to the establishment of the truck competitive rates, and a three month period [fol. 1457] since the establishment of the rates, that at Jackson, Mississippi, we handled two cars on the truck competitive rates for distances under 25 miles as against none prior to the establishment of these truck competitive rates. Into Jackson, Tennessee, using the same period and the same distance, we handled two cars prior to the establishment of these rates, and none during the period since the effective date of the rates. Into Laurel, Mississippi, for the three-months period prior to the establishment of the truck competitive rates for distances under 25 miles, we handled 10 cars as against 7 during the period since the effective date.

Going back to Jackson, Mississippi, we had an increase of 18 cars for distances 50 miles and over 25; and at Jackson, Tennessee, we had 39 cars as compared to 25 cars prior to the effective date. Laurel, Mississippi, shows up better. We had a movement of 355 cars as compared to 31 for distances 50 miles and over 25. For distances 75 miles and over 50 into Jackson, Mississippi, we had an increase of 5 cars; Jackson, Tennessee, 25 cars; Laurel, Mississippi, 21 cars.

For distances 100 miles and over 75 miles, we had an increase (Tes. p. 1568) into Jackson, Mississippi, of 5 cars or in other words, we handled 5 cars against none. In Jackson, Tennessee, we had a decrease of 3 cars, handling six as against 9 for the three month period prior to the effective date of the competitive rate, and at Laurel, we had an increase of 4 cars as compared to 8.

The average loading for the same periods into Jackson, Mississippi, was 65,470 pounds as compared to 69,000 [fol. 1458] pounds since the effective date of the changes. Into Jackson, Tennessee, the average loading for the same periods were 55,090, and 65,900; into Laurel, Mississippi, 68,069 and 77,000.

The rates as published by us apply on logs, short or long, and bolts, billets and blocks, and in the Jackson, Tennessee, area there is a considerable movement of this, and there is some moving into Jackson, Mississippi, of these commodities,—that is, blocks and bolts for the manufacture of staves and heading.

Now I should like to go a little further with that answer; so that, as we see it, for the short distances we have not regained the traffic from the trucks, nor have we regained it to any appreciable extent for the long distances. I am not able to say exactly how much we have regained for the distances 50 miles and over 25, but as I have already stated, that was (Tes. p. 1569) one reason we established all of these rates, and I can only assume that it has had some effect. We do know that they are still trucking logs to some extent.

I have been in the railroad traffic business since 1910. I was in the operating and traffic departments of the Illinois Central and the 'Frisco, and in 1913 I went with the present Company and have been with them practically ever since, that is excepting during the war period of about

two and a half years. I was in the traffic department of our company and have had charge of the rates since 1913.

It is the tendency of the shipper to demand the heaviest possible loading on equipment furnished, when the schedule of rates is on the plan of so much per car, without re- [fol. 1459] gard to weight. I do not recall anything else that is carried on that basis; I do not regard that as a sound basis of rate-making. As I say, we put those rates in as an experiment, with a provision of expiration in May, 1933 (Tes. p. 1570).

Cross-examination:

Our rates are from 25 miles and under $12.50 per car,—not $12.00 as stated by Mr. Green, who testified this morning. For the next block, that is 50 miles and over 25, $15.00; the next block $17.50, and for the distance 75 miles and over 50; For the distance of 100 miles and over 75, $22.50 and not $20.00. Those rates apply between points on the Gulf, Mobile & Northern Railroad, any point, or all points. That is to say, whether it is a local point, competitive point, junction point, or any other kind of point, the rates apply, they are effective in interstate commerce May 8, 1932 (Tes. p. 1571). Intra-state, Mississippi, they were effective May 8,—March 29, 1932. Those rates are of course on file with the Interstate Commerce Commission. For interstate application under those rates we hold ourselves out to haul logs to as high a weight as can be loaded on the car, so long as it is not overloaded, and we hope to get them at those rates. I think that would be fine business for experimentation.

Redirect examination:

They are effective (Tes. p. 1572) only to points of manufacture—to any point that wanted to manufacture; they are effective any place. It is the scale that would apply. Let's see if I find the tariff there. At stations on the Gulf, Mobile & Northern named herein they are conditioned upon lumber being shipped out; they would not apply to any [fol. 1460] point at which lumber is not shipped out. Mr. Green has introduced the tariff provision and has explained the application this morning, sir. I have no criticism of his explanation; I agree with Mr. Green, except as to the rates themselves. I mean by saying as an experimenta-

tion (Tes. p. 1573), to see whether or not it will pay us to maintain such a system of experimental rates, if we get the business we want the business under those rates.

Q. And if you get the business away from the trucks, your experiment is a success?

A. I would not say that; there may be other matters affecting it; I don't know what might come of it. I want to make one more observation before I leave the stand. The Legislature of Mississippi has enacted laws regarding the regulation of trucks. I am not fully qualified as to just what it is, but I made inquiry of one of our more important agents, that is Jackson, Mississippi, as to the effect that it might have upon these rates. I have that letter from him and would be glad to read from it. You are probably a better judge than I am if that would be competent evidence. Our judgment is that after the first of (Tes. p. 1574) the year, when the law really becomes effective, that it will have a decided effect upon the movement of this and other commodities by truck. We have been looking forward to the enactment of it with a great deal of comfort. That law was enacted after we had published these experimental rates.

Cross-examination:

The tariff that Mr. Green introduced was I. C. C. 1137. I don't think Mr. Green intended to say that our rates were [fol. 1461] $12.00 for 25 miles and under. Generally he testified that that was the rate. Ours is 50 cents higher than the general applicable scale, and for the distance 75 miles and 100 miles and over 75 miles $22.50 instead of $20.00.

Q. Yes, that is correct as shown by the photostatic copy. He shows $22.50. You said $20.00, didn't you?

A. No, Twenty-two and a half.

Exam. Hoy: He said that Mr. Green said Twenty.

The Witness: I stand corrected on that. I didn't understand him that way (Tes. p. 1575).

Q. Mr. Gill, did you make any investigation as to the inbound movement of truck to determine whether or not there had been a decrease in the truck movement since you inaugurated these new reduced rates?

A. I did make some investigation, but I was not able to get any conclusive information as to whether or not that was a fact.

Q. You would not dispute the testimony of Mr. True then, that the decrease was 25 per cent into Laurel—the decrease in the truck movement?

A. Well, I practically think Mr. True is correct as to Laurel, but I think I should go a little farther and say that that is not for the short distances, because the business has not increased there, and I believe the trucks are still getting it.

Mr. Buffum testified something about having been at Laurel, and with the Kingston Lumber Company, and the Gulf, Mobile and Northern—was the Kingston Lumber Company, and about some operating conditions due to slides, etc.; and Mr. True said something about a bad op-
[fol. 1462] eration condition due to slides. I don't want the impression to get out that we are the Kingston Lumber Company railroad. We took that line over. When I first came with the property in 1913 they were having difficulty with this slide about 42 miles north of Laurel, which extended over a distance of about (Tes. p. 1576) 6 miles, and there is no unusual operating condition surrounding that particular section now.

Q. You have had something to say about this truck law that has gone into effect in Mississippi on the first of January, 1933. Do you know what the maximum weight limits are for the trucks?

A. I understand that for a Ford or Chevrolet truck it is seven, or approximately seven tons. That is the weight limit under the new law; that is 14,000 pounds. I don't want to leave it with the statement that January first is the effective date. It has been passed, and as I now understand it is now in effect, but due to the fact that the trucks had bought their license already, it seemed almost impossible to check up on them until January 1st, so the practical effective date is January 1st. As to what is the load limit for other trucks, I don't know. The Ford and Chevrolets, and their load (Tes. p. 1577) limit is seven tons, as I understand it, but I don't state that as a fact.

JOHN ROLAND, called as a witness, being duly sworn, testified as follows:

Direct examination:

John Roland, Perry, Florida, Secretary and Assistant Treasurer of Wilson Lumber Company of Florida. I have [fol. 1463] been with Wilson Lumber Company of Florida since 1928, when the Wilson Lumber Company of Florida first started in business. As a part of my duties I am in touch with the circumstances of transportation of logs to our mill, and the weight thereof, and the rates paid thereon. Wilson Lumber Company of Florida first began to ship logs over the Atlantic Coast Line Railroad in Florida (Tes. p. 1578) in 1928, just a few months before the Cummer scale was superseded by the scale prescribed by the Interstate Commerce Commission. When the mill of the Wilson Lumber Company of Florida was built I did not have any information about the proposal to change the rates. Had we had any information that the rates on logs would be more than doubled we would not have built the mill. The Railroads that serve our mill are the Atlantic Coast Line Railroad, the Live Oak, Perry & Gulf Railroad have tracks into our mill, and the South Georgia Railroad serves Perry and reaches our mill by paying a switching charge either over the Atlantic Coast Line or the Live Oak, Perry & Gulf; either one of them will bring them in. Our logs come in mostly by rail. As to what proportion comes over each of the three roads I have mentioned, very few over the South Georgia, and about 50 per cent over the Atlantic Coast Line, and about 50 per cent over the Live Oak, Perry & Gulf, although I do not have the exact figures. As to what rates we pay on logs received via the Live Oak, Perry & Gulf (Tes. p. 1579), the logs that we get over the Live Oak, Perry & Gulf are purchased by us from the Brooks-Scanlon Corporation, and the Burton-Swartz Cypress Company of Florida, and are bought delivered to our mill. The Brooks-Scanlon Corporation delivers them under some [fol. 1464] trackage arrangement with the Live Oak, Perry & Gulf. We have received very few logs by truck. We prefer to use the railroads and we do so if the rates are such as will permit our doing so. As to whether conditions are such that we could receive logs by truck, that is, conditions of the roads in our vicinity and available tracks,

yes. We have had repeated propositions from trucks to deliver our logs to us. We have now a proposition to purchase some fourteen million feet of timber a distance of seventeen miles by the Atlantic Coast Line Railroad from our mill. A hard-surfaced road parallels the Atlantic Coast Line. Under the Cummer scale the Atlantic Coast Line rate for this haul would be 1.71 cents per 100 pounds. The logs weigh 12,000 pounds per thousand feet. Therefore the charge of the Atlantic Coast Line under the Cummer scale would be 2.05 cents per thousand feet. In view of the uncertainty of whether the Cummer scale will continue in effect we have obtained bids for (Tes. p. 1580) trucking these logs under contract, because it would be out of the question for us to pay the Interstate Commerce Commission scale of 3 cents per 100 pounds, or 3.60 per thousand feet. The lowest bid which we received from the trucks was $2.00 per thousand feet. That bid was from a responsible party. That was quoted to carry out the contract; yes sir, he can carry it out in every way. Would it be all right to just read his bid?

"I wish to submit bid $2.00 per thousand feet, Doyle scale, on a tract of logs from Carbur, Florida, to your mill at Perry. In submitting this bid I expect a minimum of [fol. 1465] 25,000 feet per day, or I am in position to handle up to 75,000 feet per day if your need reached such requirements. Yours very truly, J. R. Terrill." Dated November 12.

We have other bids (Tes. p. 1581). If the Cummer scale remains in effect we will handle these logs over the Atlantic Coast Line Railroad as there is very little difference in the cost to us, only 5 cents per 1,000 feet, and we would continue to use the railroad. The revenues of the Atlantic Coast Line Railroad under the Cummer scale on this movement of logs, which I have described, would be around $30,000.00.

As to whether it is feasible to draw logs by trucks other than the logs to which I have been referring on the 14 million feet tract, hard surfaced roads radiate from Perry in three directions, north, south and east, and under the prevailing trucking charges we would draw logs over these hard-surfaced roads for distances certainly up to 75 miles and up to perhaps 100 miles. Assuming that our rates were published per carload to apply irrespective of weight,

I could and would load whatever the load limit of the car might be; if I were furnished with a gondola car having low sides but a capacity of 100,000 pounds I could load it to the load limit (Tes. p. 1582). I would put stakes on it. I have recently loaded such cars. On November 14, 1932, we loaded two cars at Cross City, Florida, and shipped them to our mill at Perry. I have here the expense bills of these two cars. One of them was Atlantic Coast Line 91700, having a market capacity of 100,000 pounds, but a load limit of 120,000 pounds. On this car we loaded 115,200 pounds and the freight charges were $24.19. Had we the [fol. 1466] per car rate that is carried by many other railroads we would have paid for this same transportation $15.00, or $9.19 less than we paid under the Cummer scale. Had we been compelled to pay the scale prescribed by the Interstate Commerce Commission, we would have paid $51.84, or three and one-half times the charges for the same transportation under the per car rates.

The other car was Atlantic Coast Line 91018, also having a load limit of 120,000 pounds. This car was loaded to 117,200 pounds, and we paid freight charges for the transportation from Cross City to Perry under the Cummer scale of $24.61. Had we the per car loads that now apply in a large part of the Southern and Southwestern territories, we would have paid for the same transportation service $15.00, or $9.61 less than under the Cummer scale, and if we had been charged the Interstate Commerce Commission scale we would have paid $52.74 (Tes. p. 1583).

I have in the past loaded cars to 70,000 pounds and over when there was no incentive insofar as the rate charged was concerned to load heavily. It appears from the claim that we filed for restitution on shipments during the period in which the high rates were in effect, that 223 cars were loaded to from 70,000 pounds io 92,100 pounds. I file as my exhibit a list of these cars, and I have here with me the expense bills from which the list can be checked if it is desired.

Exam. Hoy: Exhibit 142 received in evidence.

A. If I could secure the per car rates that have been shown here as being applied by other railroads, I would be willing to operate on them under a transit arrangement with the Atlantic Coast Line Railroad similar to the ar-

rangements which have been described here as being oper-
[fol. 1467] ated by other railroads. There would be no trouble about this because the Atlantic Coast Line gets more traffic from us than the logs which they receive from us would require under a transit arrangement. Most of this traffic they receive, however, at Live Oak, inasmuch as it goes out of our plant on the Live Oak, Perry & Gulf, and is turned over to the Atlantic Coast Line at (Tes. p. 1584) Live Oak. However, there would be no difficulty in giving this traffic to the Atlantic Coast Line at Perry if they desired to receive it there rather than at Live Oak. The reason why the Atlantic Coast Line might prefer to continue to get the traffic at Live Oak as it now does, is because the physical situation of our plant is such that it is much easier for the Live Oak, Perry & Gulf to switch this outbound lumber, and the Atlantic Coast Line would probably prefer to receive it at Live Oak rather than overcome the difficulties it would have in switching the outbound movement. The situation is such that this difficulty does not apply to switching inbound logs.

I have the weights adopted by the Southern Weighing & Inspection Bureau, a representative of the carriers in the South, to be used when the cars of logs are not actually weighed. White Oak weighs 14 pounds to the foot; ash, 10 pounds per foot; magnolia, 13 pounds per foot; maple, 10 pounds per foot; bay, 13 pounds per foot; gum 12 pounds per foot; elm 11 pounds per foot; tupelo 12 pounds per foot; pine 11 pounds per foot (Tes. p. 1585); basswood 10 pounds per foot; poplar 11 pounds per foot; cherry 12 pounds per foot; hackberry 10 pounds per foot; [fol. 1468] hickory 14 pounds per foot; beech 12 pounds per foot; cypress, green, 12 pounds per foot; and cypress, girdled, 10 pounds per foot, log scale. Doyle log scale. The average weight of the various species of woods which we receive, ours are hardwoods and those weights range from 10 to 14 pounds, and we figure an average of 12 pounds of the species that I have just given, except we don't get very much pine or cypress either, mostly tupelo and gum.

A foot by the Doyle scale is—well I will give you for instance a log 16 foot—well, log scale. We will take a log 16 feet long, and 16 inches in diameter contains 144 feet—that is an example. That is by the Doyle scale (Tes. p.

1586) and that is the scale by which these weights are arrived at that I have just given. You take 16 inches, I think, and you take off about 4 inches off the diameter and that will give you 12.

Exam. Hoy: I want to know the difference if I can, the difference between board foot and log foot. This is a log foot that you are talking about.

Mr. Norman: We can tell you Mr. Examiner, what that difference is, though I cannot tell you just how, mathematically they arrive at the feet; but a board scale is what the board measures, an inch thick, by its width and length. Now a log scale is supposed to give you what the log will cut out in board feet. The logs of course will have more feet in them, but there is of course a good deal of waste in it. The log scale is supposed to allow for that waste.

A. (continued) Well, from the diameter of a log you subfract 4 inches. After you subtract 4 inches, divide it, [fol. 1469] take one-fourth of it. When you get one-fourth, square your result, and multiply it by the length. That is the theory of the Doyle Scale. As to which end of the log, big end or little end (Tes. p. 1587) Doyle scale, small end and narrow way, on the inside of the bark.

Cross-examination:

A. The mill of the Wilson Lumber Company is located on the Atlantic Coast Line at South Perry, about a quarter of a mile outside of the city limits at the end of the "Y". It is on also the Live Oak, Perry & Gulf, which comes from the other side of standing timber. We own some small tracts around our mills (Tes. p. 1588), some of them about 30 miles, the nearest is about 17 miles. As to how many feet of standing timber our company has, I could not tell you the exact feetage we have. We have ourselves about 14 million at Carbur, what we have bought, and what we have under option. We have several tracts including that owned, and under option. As to what we had elsewhere—several small tracts; what I call small tracts, numbered in acreage, is from 40 acres up to a section of 640. As to how much standing timber I estimate is in those tracts, including the tract at Carbur, well, I guess we should have around 15 million feet. I spoke of buying some timber:

we have got some of it bought now, and the other is under option (Tes. p. 1589).

Q. I mean buying the cut timber that you get in over the Live Oak, Perry & Gulf. I thought you indicated that you had bought that timber?

A. That comes in under contracts with Brooks-Scanlon Corporation for manufacture in our mills. They own it in fee simple, and sell us; they log the timber and sell us the logs.

[fol. 1470] We are buying the logs from the Brooks-Scanlon Corporation and Burton-Swartz Cypress Company of Florida. As to the amount of our manufacture now, we haven't run but—we run in the month of January of this year, and we are trying to run about one-half time right now, but we haven't got straightened out yet, along about the first of November. We run one day in February and run about maybe two days in (Tes. p. 1590) October of this year.

As to whether we have had any market for our lumber, we reduced our stock as much as we could. As to how much we have on hand now as compared with what we had on the first of January; we have about one-eighth. I have given a list of a number of cars which loaded over 70,000 pounds. I don't mean to say that these are the only cars which were shipped to Perry, to our mill during that period—during the period covered by this exhibit Number 142. As to what percentage of the cars that is, I could not tell. I would not attempt to tell because we have 977 sheets of these cars and we just picked these out. There are here all of the cars contained in our claim for restitution in the Federal Court in Atlanta, Georgia, which were loaded to 70,000 pounds or over.

As to how far would the truck haul be under the bid to which I have referred (Tes. p. 1591), seventeen miles. The bid is made by Mr. J. R. Terrill. As to how many trucks he now owns, I don't know how many, but he is financially responsible. I don't know whether he has any at all now or not. Mr. Terrill has no connection with our company. What I mean by being financially responsible is that he loans money around. I see where the county or some of them are paying him around $20,000 at a time, several times.

[fol. 1471] As to how many trucks it would take to supply our mill, depends on how many logs they wanted from that

particular place, that is, covering only from one particular supply. As to how much we have been getting from that supply when we are running normally, the Brooks-Scanlon wants logs down there and they just let us have the timber as they cut it (Tes. p. 1592). This that I was talking about, that I had bid from the truck, that is not Brooks-Scanlon. He asked how much when we got logs from down there; that has been years ago.

By Mr. Alston:

Q. I want to know how much logs do you get when you are running normally, from that tract from which trucking will be made under this bid which you have mentioned here? I want to know how much you have been getting; your habit to get from that tract?

A. We are not in the habit of getting any. We haven't started. We have gotten some ash off of it at one time; we have gotten that, but we havn't gone out on this contract. From the farthest part of that tract to the Coast Line at Carbur it is about 15 miles. As to how far would a log have to be moved from the forest (Tes. p. 1593) to get to the railroad, fifteen miles; that was the farthest. There were some shorter distances, maybe a quarter of a mile, the first one. It might not be over a quarter of a mile where some of that would start out from. As to how far from where we would get into our main timbers,—hardwood is scattered, so it would be about in different forties. We are not after any pine; it is hardwood; it would be scattered over that tract.

As to whether we can get those logs out of the woods [fol. 1472] very well except by truck,—build railroads, or get them out by trucks, either one. If we built the railroad, in view of the scattered condition we would not have to get them to our road in trucks but use skidders (Tes. p. 1594) and pull them up to the road by power, either gasoline or steam. As to how far we could pull them that way; different skidders have different capacities. Some of them will log a quarter of a mile on over-head skidder on each side of them, and some go out a half mile. The extreme dimensions of our track are 15 miles through the narrow way; that is going to the back side, and if you went to the back side why it would not be over 15 right through there, but you see you have to branch off on both sides of

your main line railroad when you go after it. No road except the Atlantic Coast Line runs in proximity to it. On this our exhibit 142 (Tes. p. 1595)—as to how these distances are from our mill: Miccoukee is 54.2 miles; Williston 98.3; Hildreth 105.2; Homosassa 130 miles; Lamont 22.4 miles; Carbur 17 miles; Cross City 44.2; Hines 34 miles.

I have in my hands a list of a great many stations, not all of them are the points from which we get logs; they are points within 170 miles of Perry on the Atlantic Coast Line.

Q. Then you have gotten logs from many other points than those I have mentioned to you—and I have mentioned all now that are on your schedule, Exhibit 142?

A. Yes, sir, we have gotten logs from other places, many other places, lots of them (Tes. p. 1596), the farthest away from which we have gotten the logs, under any scale, we have gone up to about the limit on that, but I could not tell [fol. 1473] exactly those places; it has been since 1928. We have been operating up until January of this year. As to how far away have we been getting our logs in recents months of operation: right recently, the farthest away we have gotten logs was from Fort White, 99.2 miles.

By Mr. Hillyer:

Q. Mr. Roland, will you describe what a skidder is, with a little more particularity. Is it not a fact that a cable is suspended right through a dense forest where there is no road-way back into the woods where the timber is?

A. That would be an over-head skidder, you would call that (Tes. p-1597), when the log is cut there in the dense timber there is a kind of tong that goes in there and picks up that log, a bicycle that goes out there on a line and fastens on that log and pulls it in; fastens on the log and pulls it, with one end of the log dragging on the ground; one if them usually on the ground and the other one partly suspended in the air, they haul that out of the dense woods up to the highway or railroad on that suspended cable. That is one kind of a skid. Then they have ground skidders; you have to pull those out by hand or by a horse or mule. It is just a cable attached to the log back in the woods, and the other end attached to the engine or skidder or drum.

As to whether we have got any logs from Mount Plym-

outh; yes sir, Wilson Land & Timber Company; I remember that they (Tes. p. 1598) got some one time, but they were sawn down here around Deland. I cannot recall whether we ever got any in Perry or not. Mount Plymouth is about 170 miles from Perry.

[fol. 1474] As to whether we would get logs out of the woods the same way, whether they were going to be moved from Carbur by truck or by rail, we would get them out the same way, there would be no difference in our operations, the majority of them would probably come out there, to Carbur. If we were loading them on the railroad they all would come to Carbur. If we didn't load on a railroad those would get on the highway at different places south of Carbur and north of Carbur; we would bring them to the highway whether they were going on the railroad or on the truck, we would get them out of the woods; we would get them out of the woods the same way.

As to whether Carbur is the nearest place in the tract to the mill, when I say Carbur, there has been a railroad built out from there years ago and that is where Brooks-Scanlon were logging at, and they delivered them to the Coast Line at Carbur. Well, if we built a railroad in there, why we would build a railroad, would not be strong enough to hold these Coast Line cars, and we would haul them up to Carbur on our railroad, our logging road.

Q. And you would do that whether you were going to ship them by truck or by rail?

A. Well by rail, we would get to Carbur, and we would build our own railroad, and probably log most of them; if we didn't build a railroad and had a truck to get them out of the swamp, why the majority of them would come to Carbur (Tes. p-1600).

[fol. 1475] J. E. Preston, called as a witness, being duly sworn, testified as follows:

Direct Examination:

My name is J. E. Preston, I reside in Palatka, Florida, and I am an accountant in charge of all books of Wilson Cypress Company. I have prepared an exhibit in connection with this hearing. The Wilson Cypress Company filed in the United States District Court for the Northern District of

Georgia a claim for restitution in connection with shipments of logs made by that company during the period in 1929, 1930, and the first part of 1931, when the rate prescribed by the Interstate Commerce Commission was in effect. That claim showed the car numbers, the date of shipments, the origin and destination and the weight of the cars so shipped (Tes. p. 1601) during that period. It also showed other information with respect to those shipments. That claim was checked by the Atlantic Coast Line Railroad Company, and the exhibit which I have here relates to the claim as so checked. I have picked out of that claim the cars which were loaded to the extent of 70,000 pounds or more. There were 927 cars included within that claim. My exhibit shows the date of shipment, car number, point of origin, and weight of these cars. This shows the large number of cars which exceeded 70,000 pounds in weight which moved during this period, and the extent to which they exceeded that loading. In this connection it would be noted that there was no inducement to load the cars to any greater extent than 40,000 pounds; that is, the minimum weight required was 40,000 pounds, and the excess was paid for in proportion. These [fol. 1476] loads were carried on cars with a marked capacity of 60,000 and 80,000 pounds. Whenever the load on a car of 60,000 pounds capacity exceeded 66,000 pounds, twice the normal rate was charged for all such excess poundage. The same thing is true when the load on a car of 80,000 pounds capacity exceeds 88,000 pounds. In spite of this fact, and in spite of the fact that there was no inducement for heavy loading, a large amount of excess charge was made and paid by the Wilson Cypress Company on such of these loads as exceeded the capacity of the car, plus 10 per cent.

Mr. Adair: I offer in evidence the exhibit which the witness (Tes. p-1602) has just been testifying about

Exa. Hoy: It will be received as Exhibit No. 143.

A. I have picked out of the same restitution claim of Wilson Cypress Company all of the shipments of logs during the month of November, 1929, from Hines, Florida, to Cross City, Florida. These are all pine logs shipped by the Wilson Cypress Company to the Putnam Lumber Company. This exhibit shows that there were 51 cars during that month. The average weight of these cars was 76,991.37 pounds, and the sum of $109.14 was paid for excess charges on account of the weight exceeding the capacity of the car,

plus 10 per cent. This movement of pine logs from Wilson Cypress Company to Putnam Lumber Company only lasted a few months, and this month shown by this exhibit was typical of the movement. I have here the paid expense bills covering all shipments weighing over 70,000 pounds shown on both of my exhibits.

[fol. 1477] Mr. Adair: If the Examiner please I have here the expense bills which may be measured by the yard rather than by the numbers, and if any party wants to examine them we shall be happy to have them do so, but unless required by somebody I will not encumber the record with them (Tes. p. 1603).

A. There were included in the restitution claim of Wilson Cypress Company 7,200 and some odd cars, I don't have the exact number. As to what proportion of them weighed over 70,000 pounds, the claim covers 207 pages, 80 pages, or about two-fifths of the claim, is made up of estimated weights of 58,500 and 63,500 pounds; thus about three-fifths of the cars, or 4,350 cars, were actually weighed. I have shown that 927 cars of those which were actually weighed were over 70,000 pounds in weight; thus more than one out of every five cars shipped actually weighed over 70,000 pounds in weight. When I say two-fifths of the number of cars in the claim were shipped on estimated weights I mean that under arrangements with the Southern Weighing & Inspection Bureau there were test weights made occasionally, and no actual weighing of the cars constituting the trains during a part of that period; the billing was made on those estimated weights (Tes. p. 1604) which were at one time 58,000 and at another time 63,500.

Mr. Adair: Now, if it please your Honor, we offer to prove by this witness that in the practical operation and effect the Cummer scale in Florida has been, and in the future will be, in substance tantamount to a transit scale, in that substantially all of the manufactured product from the inbound log rates over the Atlantic Coast Line Rail-
[fol. 1478] road passes out over the lines of that company.

Exam. Hoy: Under the order of the Commission reopening the case for further hearing you can show anything respecting any changes in the rates on logs since the close of the last hearing, and the circumstances connected with,

and the conditions which occasioned such changes. Any other testimony as I see it must be excluded.

(Discussion off the record.)

Exam. Hoy: You will have the record note an exception to my last ruling.

Mr. Adair: Which is, I take it, you have excluded the proffer of it?

Exam. Hoy: Yes.

(Discussion off the record.)

Mr. Adair: I offer in evidence this second exhibit, which will be No. 144.

Exam. Hoy: It will be received as No. 144 (Tes. p. 1605).

Cross-examination.

By Mr. Alston:

Q. Mr. Preston, your exhibit No. 143 shows a long list of cars which had weights in excess of the minimum. You said of 40,000 pounds. Was not the minimum 50,000 pounds?

Mr Adair: I think we may save time. I think the record shows that the original order of the Commission which prescribed intrastate rates, prescribed them on a basis of 40,000 pounds, whereas the Cummer scale was 50,000 pounds.

Mr. Alston: You mean the one that went into effect in 1929?

Mr. Adair: Yes, prescribed a minimum of 40,000 pounds.

[fol. 1479] A. On that excess weight the Wilson Cypress Company paid freight on the basis of the rates then in effect.

Q. If a schedule of rates had been in effect during that time on the basis of cars, without regard to weight, the Atlantic (Tes. p. 1606) Coast Line would not have gotten what it did get or any other amount on the basis of the excess weights. Is that right?

A. Well, I don't know as I could tell you that. I would have to go into those figures and check it up and see.

Q. Well, it is not a question of figures right now. The fact, what I am asking is, that if operating on a schedule

of rates which was so much per car without regard to weight, the Atlantic Coast Line would have gotten nothing for that excess weight, for hauling excess weight. Is that not so?

A. I don't see how they could have gotten anything.

Q. 927 cars shown on your Exhibit 143. Have you figured out what the application of any of the tariffs introduced in evidence here today from other roads, if applied to these weights rather than to carloads, would have produced?

A. I haven't figured anything like that; exhibit No. 144 deals with a number of cars where the railroad had collected certain penalties aggregating $109.14 because of the load on the cars exceeding the allowable amounts (Tes. p. 1607). The facts shown in these exhibits of the carrying of excess weights was so, although there was no incentive to the Wilson Cypress Company to do so, because it paid for the excess weight.

Q. If the rate had been by car without regard to weight, [fol. 1480] is it not likely that every one of the cars would have carried as much as could have been put upon it?

A. Well, that is something I could not readily answer. I have nothing to do with the loading of the cars.

Redirect examination.

By Mr. Adair:

Q. Mr. Preston, there is one thing I am not sure that I understood you about that Mr. Alston was asking you. This excess on your No. 144 is charged excess weight. Your direct testimony showed I believe was twice the normal rate that was chargeable for the transportation of the car?

A. For the excess (Tes. p. 1608).

Mr. Adair: Well, the excess is what was over twice the published rate.

Exam. Hoy: Let the witness explain just what he means by the excess on exhibit 144. It may be repetition, but let's have it in there clearly.

Q. I understood you to say Mr. Preston, that for all over the allowable weight in the car that twice the normal rate was charged?

A. Yes sir; that is to say, if the Interstate Commerce rate then prevailing from Hines to Palatka was 6½ cents

per pound if under the stencilled weight of the car, that any amount in weight which the actual logs on the car weighed over and above the stencilled weight plus 10 per cent was charged at the rate of 13 cents per 100 pounds. All of the cars in exhibit 144 are included in exhibit 143 (Tes. p. 1609); 143 included only cars over 70,000, 144 includes some cars that are less than 70,000, every one of [fol. 1481] them, but some few that are not. Exhibit 143 shows that all of these cars originated at Hines, Florida; it undertakes to show that the destination of each one was to Palatka, Florida.

As to what is the distance from Hines to Cross City, I don't know as I can give you the exact distance. I think it is about 12 miles.

Exam. Hoy: Just to clear up this point: are not these two lists entirely separate one for Palatka, and 144 to Cross City, is it not? The caption indicates that. All of 143 went to Palatka, and all of 144 to Cross City?

Mr. Norman: 143 is all cars included in claim for restitution suit weighing over 70,000 pounds wherever it was.

Exam. Hoy: The heading of each sheet shows "Received by (Tes. p. 1610) the Wilson Cypress Company at Palatka". The heading of each sheet—143 that is—I have thumbed through a half dozen——

Mr. Adair: Your Honor, I will have to determine that and either correct the caption or make a statement about it in the morning.

R. C. Baptiste, called as a witness, being duly sworn, testified as follows:

Direct examination:

My name is R. C. Baptiste, and I live at Hines, Florida, Logging Superintendent for the Wilson Cypress Company, employed by the Wilson Cypress Company for the past seven years, at Hines, the logging operation (Tes. p. 1611). [fol. 1482] I have had charge of the logging operation at Hines for the past five years, the logging of the timber of the Wilson Cypress Company in that vicinity during the past five years, and the loading of it upon cars for transportation has been under my charge. The business

of the logging operations of the Wilson Cypress Company are chiefly cypress logging operations; we have in the past cut pine or hardwood. Yes sir, we have cut some on some of the properties we have owned, the pine and hardwood, and when we come to these properties we cleaned it all up. It is just an incident to the cypress logging.

Q. Mr. Baptiste, the testimony given at the former hearings in this proceeding before the Interstate Commerce Commission shows that there are a number of cars of the Atlantic Coast Line Railroad Company which have been equipped by the Wilson Cypress Company for the transportation of logs. Will you please state for the record approximately how many of those cars have this special equipment, what kind of cars they are, that is to say, what type of cars, and how many of them there (Tes. p. 1612) are.

Mr. Alston: May it please the Examiner, we object to that evidence as being without the scope of this hearing. I don't see in just what category it would fall.

Exam. Hoy: You may answer the question.

A. There is 125 of the 80,000 capacity flat cars in our service between Hines and Palatka, and they are equipped with what we call a Phœnix drop top on the side, and we use an 8 foot stanchion. The stencilled capacity of the cars is Eighty Thousand. I would not say they have been [fol. 1483] restencilled in recent years with us. They have at times gone into the repair shops and come out. We are allowed to overload those cars ten per cent. I had charge of the loading of these cars during the period in which the high rate was in effect; the rate prescribed by the Interstate Commerce Commission (Tes. p. 1613).

If we had in effect in Florida a rate which permitted the loading of these particular log cars to capacity, that is to say to 80,000 pounds, and not more than 88,000 pounds, we could load those cars on the average to their capacity.

I have heard some testimony here today about the so-called 100,000 pound capacity gondola of the Atlantic Coast Line Railroad Company. I am familiar with those cars. We have loaded them. Assuming that we had a flat rate in Florida regardless of weights I could load those 100,000

pound capacity gondolas to capacity weight, on the average; there would be no additional expense to loading them that way rather than loading them lighter (Tes. 1614). The only thing that you have to do with a gondola is to put the stanchions in them. We could cut stanchions in the woods, stick them up inside the car, and load the logs.

Cross-examination:

When I said I could load them to capacity I meant the 100,000 pound stencilled capacity or to the capacity above that, the full limit of what would be allowed; we are allowed 10 per cent over weight on the stencilled capacity. That is the limit of the overweight. As to whether they sometimes take an additional overweight subject to the penalty, as is shown in Exhibit No. 144, why if a car gets [fol. 1484] over that it is just something that happens. If we had a rate per car without regard to weight at all, we could load it either 50,000 pounds (Tes. p. 1615) or 100,000 pounds, when the stencilled weight was 100,000 pounds. I could load to the full capacity of the stencilled weight, which in the instance you mentioned, would be 110,000 pounds, and if it were loaded with one weight or the other it would move at the same rate. I cannot testify as to the rate.

W. J. Bryson, called as a witness, being duly sworn, testified as follows:

Direct examination (Tes. p. 1616):

W. J. Bryson, 1704 Avondale, City of Jacksonville. My business, or one of them, is saw-milling. I operate a saw-mill under the name of W. J. Bryson Lumber Company, 27 West Beaver Street—I think 2746 West Beaver, Jacksonville, upon the tracks of the Seaboard. I have a switching connection with the Atlantic Coast Line Railroad Company. The cost to switch a carload of logs from the Coast-line Tracks to the Seaboard tracks is $2.25. I have been operating our mill at that point (Tes. p. 1617), started there in March, 1931. The capacity of the mill is about 25,000 feet a day, but we cut anywhere from 75,000 to 120,000 a week. I have been cutting at that rate since March, 1931. We are closed down now—two weeks ago. I expect

to be closed until about the first of the year and expect to reopen then and operate again if lumber gets better; that is our intention.

As to what proportion of our logs have been moved by truck, and what proportion, if any, have been moving by [fol. 1485] rail, I think we have gotten 27 or 28 cars by rail, and the rest of them by trucks, since March 1931, up to now. Twelve of them come from Dukes, Florida (Tes. p. 1618), a few miles below Lake Butler on the Coast Line; the balance of them are from Cross City, up near Cross City, up there, from point of origin on the Coast Line.

As to what source have our truck logs come generally,—well, from every direction you could mention, and from most any distance from 10 miles to 68 miles. I have hauled substantial quantity of them at more than 50 miles; we have hauled over half a million feet right around 60 to 70 miles; we just got through when we shut down hauling from there, on Penny-Gwinn's property, down next to Green Cove Springs. I will name some few other places: well, off from Bryceville, upon I don't know what railroad that is, of course we haul them by truck from Bryceville, and Baldwin, from south of Macclenny, hauled out from Callahan, off from St. Augustine, Moultrie, Florida, almost any direction (Tes. p. 1619) most.

As to why we haul by truck rather than by rail; we figure it is cheaper at the present freight rates. We cut pine logs. If we were to have in Florida a rate which would permit us to transport at current rates at the level of the current rates as heavy a load of logs as we could load on board cars, to the full capacity of the car, at the present rate, at the price that it costs us at present to transport the minimum car we could afford to operate that way very well, and we would do so.

Cross-examination (Tes. p. 1620):

[fol. 1486] The minimum car I think now is 3,500 feet on the Seaboard, and I think the Coast Line is either 40,000 or 50,000 capacity at the present time. The Seaboard has 3,500 feet, I think that is it.

As to how many pounds we count that, it depends on the scale that you use. If using the Doyle scale, it runs about 11 pounds; if using the Scribben's scale—runs about 10 pounds. If you use the Doyle scale, about 11 pounds—

about 10 per cent difference in the two scales. The Seaboard Air Line minimum, 35,000 pounds, 3,500 feet I believe it is, use 11 pounds; about 38,500 pounds. And the minimum on the Atlantic Coast Line is 50,000 pounds.

As to what I mean then, translated into pounds, the capacity of the car is around 100,000, 110,000 or 120,000 pounds; if we could load the car to the same capacity for the same amount of money of course we could afford to do it; it would pay us to load the logs on the cars and ship them in rather than truck them in. It would be to our interest and of course inclination to (Tes. p. 1621) load the car to the maximum allowed weight because we would be saving so much money on them.

As to the distance for those trucks, I said some might run as high as 70 miles; the last speedometer measurement we taken is 68 miles; of course logging out in the woods on 160 or a section of land it would vary a mile or two one way or the other. I judge the average distance of the average logs would run around 50 miles, by truck. We buy the timber in some instances, and they cut it (Tes. p. 1622) [fol. 1487] and load it on trucks and bring it in; in some cases they furnish the timber, cut it, and bring it in; both ways.

As to whether we buy more where the owner of the timber has cut and brought it in than we do buy f. o. b. our lot, I guess possibly about 50-50. We are shut down now. Our maximum capacity has been 120, I believe, or 122,000 a week. As to how many carloads that is; if you were just loading right now it would run 120, would be about 20 some cars, wouldn't it? Depending on which road you get on, whether Coast Line or Seaboard; it would be about 22 cars, wouldn't it? 24 cars, wouldn't it? We shut down two weeks ago Saturday, for the lack of business orders; just shut down until the lumber got better. Our mill has been operating (Tes. p. 1623) since March, 1931.

As to whether we operate our own trucks, or who owns the trucks that we are using, the men that operate most of the men—you see we buy all of the timber brought in; if we buy the timber we contract with the men to cut it and bring it in to us anyway; we don't operate our own trucks; we buy the timber and they cut the logs and bring them in to us. They contract to get the logs and bring them in to us. The entire expense of the movement into our mill, I pay; they charge so much for the logs, for the cutting, and

so much for the hauling, and delivering to the mill. We have only had one truck I believe, come out of the Okeefenokee swamp (Tes. p. 1624). It is right out of Callahan. We only got the logs from this end of the swamp. The man that was hauling them, I think said it was 42 miles that he hauled them. Geiger was the man who was hauling the [fol. 1488] logs. 42 Miles is what I think he said the distance was. As to how far that timber in the swamp is from the railroad, I don't know; I do not know whether or not it is located with respect to the railroad in such a way that if a man cut the timber and put it on a truck he could better afford to bring it down here than he could to take it to a railroad and load it on the railroad.

About the Penny Farms; we have gotten a good many off from that tract. As to how far that is from Jacksonville (Tes. p. 1625), it depends on what end of the land you are speaking of; there are 124,000 acres, so you see that would run several miles; if you hit one end of it, it would be so much closer to Jacksonville than the other; and we have cut up and down the swamps running up and down.

Q. Is it not a fact that the logs that you have obtained from this Penny Tract have generally moved not over 30 miles?

A. Well, I don't think you could touch any of the land within 30 miles; I don't think that you could touch any of the logs on the Penny Tract under 40 miles. We have got a good many logs from a swamp below Bayard. To Jacksonville I think they claim that is 35 miles where they turn off to go to the woods below Bayard.

As to whether I am personally familiar with the location of that movement—yes sir; know all about it; can tell you whose land cut on; tell you where they turn off; anything that you want to know about it (Tes. p. 1626). As to how far those logs actually move into Jacksonville from Bayard; [fol. 1489] cross the railroad at the 35-mile post to get at the logs; and they were cut on Mr. Williams' land; that is where you cross the Florida East Coast Railroad, in 300 feet of the 35-mile post, go across the railroad and go out in the woods to get them, and went out in the woods about anywhere from a quarter of a mile to three miles.

As to how many logs, approximately, I have gotten from that section, I guess possibly 250,000 feet; divide it by 5 and you would get about 50 cars.

Hilliard is located north of town. I think Hilliard is about 25 miles. I believe it is something like that. As to how many cars I have brought in from Hilliard (Tes. p. 1627), I guess I have gotten at least 100,000 feet there, bought from Mr. Braddock up there. I have not obtained any logs from Baldwin, from Baldwin district, but from different ways of Baldwin; we have gotten a few out there in that big swamp, the Baldwin Bay, they call it. They moved, I judge, about 25 miles. Baldwin from here, I think from the mill—about—I think it is about 17 miles from our mill.

As to whether I have gotten any logs in the neighborhood of Yulee; I think we got a few, a very few from up there; I don't think the logs we got up there would amount to anything. I judge Yulee is about 19 miles, if I am not mistaken (Tes. p. 1628).

H. J. FLACK, called as a witness, being duly sworn, testified as follows:

Direct examination:

My name is H. J. Flack. I reside in Jacksonville, Florida, and I operate a traffic bureau in that city. I am the same [fol. 1490] H. J. Flack who has previously testified in this proceeding. I was employed by the Florida interests to make an investigation of the transportation of logs over six feet long to mills in Florida. Within the last month in my investigation of such transportation of such logs I found a very substantial movement by truck (Tes. p. 1629). The Gem City Builders Supply Company at Palatka, Florida, has a capacity of 20,000 feet per day. It is located on the Atlantic Coast Line Railroad. I looked at the daily book records and talked with the Secretary of the Company. The Company began operations in December, 1931, and since that time has been cutting about fifteen thousand feet a day. It has received all of its logs by truck. It is now in operation and I saw the trucks delivering logs.

The Browning Lumber Company at East Palatka has a capacity of 30,000 feet per day. I saw the daily book records and talked with the Secretary of the Company. During 1930 it handled approximately 3,000,000 feet of logs,

which came from territory reached by the Atlantic Coast Line Railroad Company. It has done very little business during 1931 and 1932. During the three years I refer to, about 95 per cent of the logs have been hauled by truck.

The Southern Veneer Company is also located in Palatka, operating a crate factory. It therefore handles short logs, and I made no particular investigation of mills handling short logs. However, it is located on the Atlantic Coast Line and is receiving logs by truck. Unless otherwise noted, the mills I refer to are all mills handling logs over [fol. 1491] six feet in length.

Conner Lumber Company at Connersville, has a capacity of 20,000 feet a day. It is on the Atlantic Coast Line Railroad (Tes. 1630). It has been in operation since March, 1932, cutting about 10,000 feet of pine a day. I examined the daily book record. All logs are received by truck. I saw the trucks bringing in logs.

The Conrad Naval Stores Company at Barberville is located on the Atlantic Coast Line Railroad, and has a capacity of 12,000 feet a day. It has been operating fairly steadily for 5 years, averaging a cut of about 7,500 feet a day on a 5 day week. I saw Mr. A. L. McKay, the manager, and also the log books showing receipts of logs and other records. It cuts pine logs. It has cut an average of 2,000,000 feet a year. All logs are received by trucks.

The McCormick Lumber Company at DeLand has a capacity of 10,000 feet a day, and is located on the Atlantic Coast Line Railroad. For the last several years it has received an average of 5,000 feet a day, all by truck. I talked to Mr. Willis McCormick, the owner of the mill, and saw the records, including the slips given at the mill with each load of logs delivered, and I saw the trucks.

The Pine Castle Lumber Company at Pine Castle has a capacity of 10,000 feet a day. It operated at about 75 per cent capacity in 1929, 1930, and 1931, and about 25 per cent of capacity so far during 1932. It is located on the Atlantic Coast Line Railroad, but received all of its logs by truck. I saw the daily book record of this mill (Tes. p. 1631).

[fol. 1492] The Green Lumber & Supply Company at Gainesville has a capacity of 10,000 feet a day, and handles about 90 per cent pine and 10 per cent cypress. In 1929 it handled about 5,000 feet a day, and did not operate in 1930 or

1931. This year it has averaged about 40,000 feet a week. Gainesville is on both the Atlantic Coast Line and the Seaboard Air Line Railway. I talk- to Mr. Gray, the manager, and also looked at the daily book records, and saw the trucks delivering logs. Such logs as they get are adjacent to the Atlantic Coast Line Railroad tracks.

The Hall and Turner Lumber Company is located at Putnam Hall on the Georgia, Southern & Florida Railway, and has a capacity of 10,000 feet a day. During the past four years it has operated steadily at the rate of approximately 40,000 feet a week; all of its logs have been received by trucks. I saw the trucks.

The Macclenny Lumber Company at Macclenny, Florida, has a capacity of 8,000 feet a day. It has been in operation for about two years, and handles pine logs. During this time it has operated to approximately its capacity. It is located on the Seaboard Air Line Railway, but has received all of its logs by truck. I talked to Mr. Elliott, the manager, and saw the daily book records of the Company, and saw the trucks delivering logs.

The Tal Young Lumber Company at Lake City has a capacity of (Tes. p. 1632) 10,000 feet a day. It cuts pine logs, and has been handling about 5,000 feet a day for the past two years. It is located on the Seaboard Air Line Railway. I saw the daily book records, and the trucks de- [fol. 1493] livering logs. The logs are all hauled by truck.

The G. R. Hughes Lumber Company at Monticello, located on the Seaboard Air Line Railway has a capacity of 10,000 feet a day. It has been running at half capacity for the last two years. All logs are hauled by truck.

The J. M. Henry Lumber Company at Monticello, Florida, cuts pine logs, and has a capacity of 20,000 feet a day. It is located on the Seaboard Air Line and has been operating at half capacity for the past two years. All of the logs are received by truck. I saw the daily book records and talked with the manager, and saw the trucks delivering logs.

The Tallahassee Lumber Company at Tallahassee, has a capacity of 25,000 feet a day, cutting pine and cypress. It is on the Seaboard Air Line Railroad. This mill handled about one-half million feet in 1930, the same amount in 1931, and about one million feet so far in 1932. All its logs are received by truck.

The Elberta Crate Company at Tallahassee is now cutting logs for lumber. It has a capacity of 25,000 feet a day and has been in operation about six months. It is on the Seaboard Air Line Railroad. All logs were received by truck. (Tes. p. 1633).

By Mr. Gwathmey:

Q. Mr. Flack, I don't want to interrupt you, but if you don't mind I will ask you a question right there while you are on that particular mill. Is it not a fact that mill uses short-length logs altogether? It is in the business of manufacturing crates, is it not?

[fol. 1494] A. They have recently gone into the lumber business as a side line.

The Prine Lumber & Manufacturing Company at Quincy, Florida, is located on the Seaboard Air Line Railway, and has a capacity of 25,000 feet a day. It has been operating since 1929, cutting hardwood and pine. In 1929 and 1930 it operated at capacity, and was then shut down until October, 1931, and has been running about half capacity since that date. All logs were received in the company's own trucks. I saw the daily book records, and the trucks, and talked to the manager of the Company.

The Thomas-Little Lumber Company at Quincy, Florida, has a capacity of 100,000 feet a day. It is located on the Seaboard Air Line Railway, and handles pine and hardwood lumber. During 1931 it handled approximately forty or forty-five thousand feet a day, and in 1932, 25,000 feet a day. All logs were received in its own trucks, and I saw the daily log records, as well as talked to the Manager. I likewise saw the trucks.

The Granger Brothers Lumber Company at Branford, Florida, has a capacity of 35,000 feet a day. It is located on the Atlantic (Tes. p. 1634) Coast Line Railroad and has been operating since October, 1931, at about half capacity. All of its logs have been received by contract trucks or its own trucks. I saw the log receiving records and talked to the manager.

M. W. Mann at Lake Butler, Florida, is operating a mill of 10,000 feet a day capacity. Lake Butler is on the At-

[fol. 1495] lantic Coast Line Railroad. This mill has been operating for the last two years, cutting from 35,000 to 40,000 feet a week. I saw the daily book records, and the

trucks delivering logs. All logs have been received by trucks owned by the Company.

The McCoy Lumber Company at Alachua has a capacity of 10,000 feet a day. It has been handling about 40,000 feet of logs a week for the last three years, cutting pine and cypress. It is located on both the Atlantic Coast Line and the Seaboard Air Line. All logs received by it have been hauled by truck. I saw the trucks delivering logs.

The Dykes Lumber Company is likewise located at Alachua, on both the Atlantic Coast Line and the Seaboard Air Line. It has a capacity of 10,000 feet a day, and cuts pine logs. For the last three years it has been operating at about half capacity. It received all of its logs by trucks. I saw the trucks.

The Baker Lumber Company at Mayo has a capacity of 35,000 feet a day. It is located on the Live Oak, Perry & Gulf Railway, and has been operating about three years at half capacity. It handles pine logs, all of which have been received by truck (Tes. p. 1635). I saw the daily log receiving records, and also the trucks.

L. M. Hamilton at Jasper, Florida, operates a mill of the capacity of 10,000 feet a day. It has been operating for some time at about half capacity. It is located on the Atlantic Coast Line Railroad and the Southern Railroad. It cuts mostly pine, but some cypress. All of its logs have been received by trucks. I saw the original records of the logs and also the trucks.

[fol. 1496] R. J. Rivers Lumber Company at Jacksonville has a capacity of 20,000 feet a day. It is located on the Seaboard Air Line Railroad. It began operations in October of this year, and received 32,000 feet of log in that month. All these logs were received by truck. I saw the log receiving records and the trucks.

I have not included in my report any mills that are in the timber. I found logs moving for distances up to approximately 70 miles. Most of the mills could and did secure their logs within a shorter range. The tendency is for the trucks to go farther out as the timber in the vicinity of the mills is exhausted (Tes. p. 1636).

Cross-examination:

I was employed by the Wilson Lumber Company, and others interested in the case, the Wilson Cypress Com-

pany. As to where the Gem City Builders' Supply Company at Palatka gets its logs, I could not answer that. It gets them within around Palatka there. The logs are brought in by truck. I don't know who they get them from. I don't know whether the Gem Company owns the standing timber or not. I am not sure in this case whether this mill have their own trucks or whether it was done by contract (Tes. p. 1637). I do not know how far it is from a railroad that the logs are loaded on to the truck; all I know is that this mill receives its logs by truck from some timber, I don't know where the timber is, nor who owns it, nor who owns the trucks, nor how far it is away, I didn't ask for that information.

[fol. 1497] The Browning Lumber Company in East Palatka: I don't know exactly what point it secures its logs, but was informed that they secured their logs from points adjacent to the Atlantic Coast Line Railroad. That is information from Mr. C. M. Hyde, secretary of the Browning Lumber Company. As to who owned the trucks that bring in the logs, (Tes. p. 1638) I am unable to state in respect to the Browning Lumber Company; I do not know who owns the standing timber; I don't know how far they must go into the forests to get the cut logs. They must go until they locate the particular tree they want to cut down.

The next one was the Southern Veneer Company at Palatka—that was short logs.

The next one is the Conner Lumber Company at Connersville, just north of Barberville; in other words you leave Connersville, and come to Barberville; (Tes. p. 1639) it is beyond—between Palatka and DeLand. As to whether it owns its timber, I don't know: as to whether it owns its trucks, I am not informed on that in respect to the Conner Lumber Company. As to how far the standing timber is—from which they get their logs, they haul from 10 to 20 miles.

The Conrad Naval Stores Company of Barberville, I think it is Volusia County, I am not sure; it is beyond Connersville. The Conrad Naval Stores Company does not own the timber from which it gets its logs. I don't know who owns it. It owns its trucks, and contracts some of its hauling. (Tes. p. 1640). It hauls the logs up to 12 miles. The trucks go into the woods to get the logs up to 12 miles. As to how far do they go into the forest to get the logs, I

don't know. The McCormick Lumber Company of De- [fol. 1498] Land: DeLand is about the middle peninsular part of the State; it is down there in Volusia County. Their logs are hauled by contract trucks a distance up to 25 miles. As to who owns the standing timber from which the logs come, I am unable to answer you. I am not able to answer how far into the forest those trucks must go. (Tes. p. 1641).

Q. Now I have a list Mr. Flack, of each of the places which you named. I should like for you to go down your list and answer as to each the following questions: First, what county is this place located in? If you know who owns the standing timber as to any of the other companies named by you, please pick out that company.

A. It is hard to give you that specifically, because not reporting on any particular mill as located in the timber.

Q. I want you to make whatever answer you ought to make to that question, if you want the question asked in that form. If you know, I would like to have you state it, and if you don't know, I would like to have you say that—whatever answer is fair. (Tes. p. 1642.)

A. Why, I maintain that the answer I gave is the answer that applies.

Q. I construe that as meaning that you don't know the ownership of the standing timber from which any of these mills get their lumber?

A. That is correct.

Q. Now, as to any of these companies, state if you know who owns the trucks?

A. Pine Castle, Orange County; it does not own its standing timber; it owns its trucks. As to how many has it got, (Tes. p. 1643) I don't know. As to how far the mill is from the timber, maximum 25 miles, the average—five to 25 miles. I don't know how far does it go into the forest for the logs. [fol. 1499] Green Lumber & Supply Company, at Gainesville, Alachua County. Unable to say who owns the timber from which it gets logs. The lumber company own- their own trucks. I don't know how many. The timber is 25 miles from the mill; the average haul—five to 25 miles. I don't know how far they go into the forest to get the cut logs. (Tes. p. 1644). Macclenny Lumber Company:

By Exam. Hoy:

Q. Excuse me—what do you mean when you say "average haul 5 to 25 miles"?

A. Well, his average, that is his operation, 5 to 25 miles. Previously he asked how far it was to the timber and I said 25 miles; that is his maximum. He could figure the average. The haul is from more than one parcel of timber, different tracts. What I meant in replying that it is 25 miles to the timber, that that is its farthest haul from any particular timber has been 25 miles. I do not know what his average haul is. I know what his nearest point is, and his maximum (Tes. p. 1645), his farthest point. I don't know what his average point is. When I say that his average is from 5 to 25, I mean his range is from 5 to 25 miles. Hall & Turner Lumber Company, Putnam County: I don't know who owns that standing timber from which it gets its logs. The lumber company owns the trucks used by it. I don't know how many. I am not informed who owns the timber from which it gets its logs. The trucks that go into the forest to get the cut logs haul from up to a distance of 40 miles. The range is from 5 to 40 miles. Macclenny Lumber Company (Tes. p. 1646), at Macclenny, Baker County, Florida: I have no information as to who owns the timber from which they get logs. The lumber company owns the trucks. They haul 5 miles. Tal Young Company, Columbia County, Lake City, Florida: I don't [fol. 1500] know who owns the standing timber from which they get their logs. As to who owns the trucks, I haven't any information. I don't know how many trucks they use. Their haul is a distance of 10 to 20 miles. G. R. Hughes, Monticello: I don't know who owns the standing timber from which it gets its logs. As to who owns the trucks it uses (Tes. p. 1647), I cannot give you that. I don't know how many trucks it uses. It hauls twenty miles: all of his logs are hauled for a distance of 20 miles. I don't know how far it goes into the forest for its logs. J. M. Henry Lumber Company, Monticello: I do not know who owns the standing timber from which it gets its logs. As to who owns the trucks used by it, I haven't that information. I don't know how many trucks it uses. It hauls 20 miles. Its total haulage there was 20 miles. I don't know how far does it go into the timber. The Tallahassee Lumber Company (Tes. p. 1648): I don't know who owns its standing timber. As to who owns its trucks, or the trucks used to bring in its logs, I am not clear on that. As to how many trucks they use I have no report. The haul there

ranges from 10 to 40 miles. I don't want to give you an average. Elberta Crate Company, Tallahassee: I don't know who owns the standing timber from which it gets its logs. I don't know who owns the trucks that bring in its logs. I don't know how many trucks are used. Its haul (Tes. p. 1649) is forty miles; for the average, I don't know. As to how far it goes into the forest for its logs, I don't know. The Prine Lumber & Manufacturing Company, Quincy: I don't know who owns its standing timber. The lumber company owns the trucks that bring in its logs. I don't know how many trucks. It hauls from 5 to 35 miles. I don't know what the average is (Tes. p. 1650). [fol. 1501] I don't know how far do the trucks go into the forest. Thomas-Little Lumber Company, Quincy: I don't know who owns the standing timber from which it gets its logs. The lumber company owns the trucks that bring in these logs. As to how many trucks does it own and use, I don't know; quite a number, however. I don't know exactly how many. Its haul is from 5 to 28 miles. I don't know the average. I don't know how far the trucks go into the timber—or into the forest for the cut logs. The Granger Brothers Company, Branford. As to what County that is in, I don't know. I don't know who owns the standing timber from which it gets its logs (Tes. p. 1651). The lumber company owns the trucks which bring in its logs. I don't know how many trucks does the lumber company own. Its haul is 25 to 30 miles. I don't know what the average is. I don't know how far the trucks go into the forest for the cut logs.

By Mr. Adair:

Q. Mr. Flack, do you know that they go into, any of these trucks go into the forests at all for cut logs, or whether they bring them out on the road, or what?

A. No, I don't know their plan of operations there. M. W. Mann, Lake Butler. That is on the Atlantic Coast Line, in Union County. I don't know who owns the standing timber from which it gets its logs. The lumber company owns the trucks used to bring out the logs. I don't know how many trucks does it own and use (Tes. p. 1652). It hauls all of the distance ranges from 4 to 20 miles. I don't know what the average is; I don't know how far the trucks go into the timber for the logs. McCoy Lumber

Company, Alachua, Florida; that is on both the Atlantic Coast Line and Seaboard Air Line. I don't know who owns [fol. 1502] the standing timber from which it gets its logs. The lumber company owns the trucks used in bringing out the logs; I don't know how many. It hauls its logs ten miles. I don't know how far the trucks go into the timber. Dukes Lumber Company, Alachua, Florida, on the Atlantic Coast Line and on the Seaboard (Tes. p 1653), I don't know who owns the standing timber. The lumber company owns the trucks used in getting out these logs. I don't know how many trucks it owns and uses for that purpose. It hauls ten to 15 miles. I don't know the average. I could not say how far the trucks go into the timber. The Baker Lumber Company at Mayo on the Live Oak, Perry & Gulf. I am not sure who owns the standing timber from which that company gets its logs. The lumber company owns the trucks used in bringing out the logs. I don't know how many trucks it owns and uses for that purpose. Its haul is 10 miles. As to how far the trucks go into the timber (Tes. p 1654) I don't know. L. M. Hampton at Jasper, Florida, on the Atlantic Coast Line and Southern: I don't know who owns the standing timber from which it gets its logs. The lumber company owns the trucks used for that purpose. I don't know how many trucks. It hauls twenty-five miles on the average. I don't know how far the trucks go into the timber. R. J. Rivers Lumber Company in Jacksonville, on the Seaboard Air Line: I don't know who owns the standing timber from which it gets its logs. The lumber company owns the trucks used by it in bringing in the logs. I don't know how many trucks it owns and uses for that purpose. As to how far it hauls (Tes. p 1655)—40 to 45 miles, I don't know what the average is. I don't know how far the trucks go into the timber. These mills are very widely scattered over this [fol. 1503] State, from Tallahassee down into the latitude of about the middle of the state, middle of the peninsula. The extreme distance from the farthest of these points would be not over 300 miles. These mills that I have reported on are all more or less active mills at this time. As to what percentage they represent of all the mills in Florida, I don't know what percentage. It does not represent all of them.

Q. Now Mr. Flack, it is perfectly clear that some of this lumber—some of these logs are going to be hauled by trucks under any circumstances. Do you not think that is so?

A. Well, it is possible that some of it, yes, not all of it (Tes. p. 1656).

Q. But is it not certain that some of it is going to be hauled by truck under any circumstances that you can reasonably imagine?

A. I imagine so. The operators have equipped themselves with these trucks, they are not going to junk the trucks you know.

Q. But even if they are not going to buy new trucks, the economic condition will always require hauling some of these logs in trucks?

A. That is more convenient.

Redirect examination:

A. Some of these logs here to which Mr. Alston has here referred will be hauled in trucks under any circumstances.

Q. Now, what do you think will happen if this Cummer scale of rates is kicked up to twice its present level, will that be inclined to increase or decrease the number of hauls in trucks?

Mr. Alston: We object to that.

Exam. Hoy: Go ahead and answer the question.

A. I think it will substantially increase the truck movement (Tes. p. 1657).

[fol. 1504] Jacksonville, Florida, November 22, 1932.

T. M. True, recalled as a witness having been previously sworn, testified as follows:

Direct examination:

I am Secretray of the Southern Cypress Manufacturers Association. The Putnam Lumber Company is a member of that association. Mr. Fleishel is president of that company, of the Putnam Lumber Company.

Q. Did you have anything to do with the preparation of restitution claim of the Putnam Lumber Company arising out of alleged sums to be due for the difference in the rate applied and the Cummer scale during the period of the Interstate Commerce Commission prescribed rate in 1929, 1930, and a part of 1931?

A. Yes, sir; I prepared that claim for them, the Putnam Lumber (Tes. p. 1659) Company, because the Putnam Lumber Company is a member of our association, and that is one of my duties. I handle matters of that kind. It was done as a part of the service performed to the membership.

This statement is entitled "Shipments of 70,000 pounds to Putnam Lumber Company (Cross City, Florida)". This exhibit represents shipments weighing over 70,000 pounds shipped from various origin points to Putnam Lumber Company at Cross City, Florida; and this exhibit shows the date of shipment, origin, car number, and the weight of all of the cars included in my claim for restitution weighing 70,000 pounds or over. There were 107 cars from Carbur out of a total movement of 589 cars that weighed over 70,000 pounds. That was during the period of the high rate, when the (Tes. p. 1650) minimum car was 40,000 [fol. 1505] pounds, excess in proportion, and when there was no particular reason for loading beyond 40,000 pounds. I can look at those car numbers and tell what the capacity of those cars were. Most of them were 80,000 capacity cars. Down towards the last are a few cars that were loaded beyond 88,000 pounds, the last six cars in the statement. Those were 80,000 capacity cars, and the tariff requirement is that a car that is loaded in excess of ten per cent of the marked capacity, that excess shall be cleared at double the going rate. That is true in Florida; it is not true elsewhere. It is not true everywhere else. I do not know anything about the capacity of the cars that were not loaded up to or over 70,000 pounds that were used in the shipments of 589 cars referred to in the statement (Tes. p. 1661).

Exam. Hoy: It will be received as Exhibit 145.

A. Those were cypress logs.

Cross-examination:

A. The minimum weight at the time these shipments moved were made, was 40,000 pounds, based on the rate prescribed by the Commission. Under the order of the Commission it is 40,000 pounds, the present scale. The

Cummer scale is 50,000 pounds (Tes. p. 1662). If we had a flat car rate without limit to weights at the time these cars moved, of course the Atlantic Coast Line would not have received pay for hauling any of this weight above the minimum—would not get any more money.

Q. Have you figured out on this exhibit 145 how much the Atlantic Coast Line would have lost on that kind of a [fol. 1506] rate applied to the cars listed in exhibit 145 (Tes. p. 1663), the difference in rate.

A. No, I have not. As to motor truck regulation in Florida, I am not well-informed on truck regulation (Tes. p. 1664).

Mr. Allair: I have here the expense bills covering those cars if anyone would like to examine them.

Mr. Gutheim: If your Honor please, in respect to conditions under which logs are transported in Florida, and in this other Southern and Southwestern territory, we desire to put in evidence certain road maps. I may say in that connection we endeavored to obtain official government road maps, and the Bureau of Public Roads of the Department of Agriculture advises us that there are none such. Under the circumstances we have here, and now offer copies of the standard American Automobile Association road maps, certified to be such by its secretary under the seal of the American Automobile Association for the State of Florida; for the Southeastern territory, as they describe it, which is approximately what we call Southern territory; and for South Central territory, as they describe it (Tes. p. 1665) which embodies what we know as Southwestern territory, from St. Louis to the Southwest. Three exhibits, two copies of each of the three. Mark them 146, 147 and 148. The Florida 146, the Southeast territory 147 and the South Central 148.

Exam. Hoy: Received in evidence.

H. P. Norden, called as a witness, being duly sworn testified as follows: (Tes. p. 1666)

Direct examination:

My name is H. P. Norden; I am assistant general freight agent for the St. Louis-San Francisco Railway, located in

[fol. 1507] St. Louis, Missouri. I have been in the railroad traffic business for approximately 26 years. I am now working for the receiver of the Frisco road. Prior to the publication of these rates on a per car basis the Frisco Railroad along with other West Side (Tes. p. 1667) lines had in transit rates on logs and rough material on a per hundred pounds basis; and as a matter of fact those rates on per 100 pounds basis still remain in effect. They alternate with the per car rates.

In March of this year the Southwestern lines had a joint conference with the logging interests of Arkansas, including two representatives of the Southern Hardwood Traffic Association located in Memphis, Tennessee, and this situation was gone into very thoroughly.

The carriers had found that their log traffic, particularly the short hauls, had been lost to them; so in this joint conference the scale of rates was discussed which might bring the traffic back to the rail lines. Now, the log interests at that time stated that regardless of what rate was published for distances 25 miles and under it would be practically impossible to get that traffic. However, for over 25 miles a scale was suggested, and which the log interests felt would return the traffic to the rail lines.

As to whether there was anything stated in that conference as to the experimental nature of the tariffs, yes. The proceedings of the meeting as written up provided, and was agreed to by the shipping interests they represented, that these per car rates were to be subject to the usual transit requirements. In other words——

Mr. Adair: Your Honor, we are trying to be liberal about (Tes. p. 1668) this thing, but it is not shown that any of our people were parties to that conference there, and the tariffs [fol. 1508] here speak for themselves. Some of them are transit arrangements; some are not transit arrangements. If he is going to testify about what are in those tariffs, let him look at the tariffs and testify about them, if your Honor please, rather than testify about what they said was going to be in the tariffs.

The Witness: I will do that too.

Mr. Alston: Your Honor, in reference to the fact of the presence or absence of the intervenors, the circumstances under inquiry are the circumstances which brought about the change in the rates, and we are not undertaking to bind

them, but we are undertaking to prove what those circumstances were, if we may do so.

Exam. Hoy: I think the question certainly is proper so far, so far as I can see at this time. You may continue.

Q. Mr. Norden, would your railroad have put in the rates referred to except on a transit basis?

Mr. Adair: We object, your Honor, what they would have done. The point is, what did they do.

Mr. Alston: We will show what they did do.

Mr. Adair: I know, what they would have done is not material here. The point is what they did do.

A. These rates were put in on a (Tes. p. 1669) transit basis over our road. The terms of the transit are defined in the tariffs. And in connection therewith I might state Mr. Alston that Mr. Green in his testimony stated that all of the 'Frisco issues outlined in Exhibit 134, of his exhibit, were local in their nature, which is absolutely incorrect.

As to what has been the effect of these tariffs on truck [fol. 1509] competition, we haven't made a complete examination at all points, but we have as to certain points, and we find that while it has brought back to the rail lines some of the short-haul traffic, it has not brought back as much as we anticipated. Our tariffs apply up to 100 miles. I mean by the short distance traffic, I would say from 25 to 75 miles. That is in connection with my answer that it has brought back to the rail lines some of the short-haul traffic. I mean traffic between 25 and 75 miles, but not as much as we expected (Tes. p. 1670). As to the result as to traffic up to 25 miles with the exception of a few cars we have not received any of that traffic, which bears out the statement made by the shipping interests at our joint conference. Those tariffs carry an expiration date, and with the further provision that they may be sooner cancelled, changed or extended.

Q. Mr. Norden, a little while back you made some statement in reference to the understanding with the shippers as to the nature of this rate. If you have a memorandum on that, will you please read the memorandum itself.

A. I have the proceedings; yes.

Mr. Norman: If the Examiner please, he has a memorandum prepared by the railroads, which is certainly a self-serving document, and it does not seem to me under any theory it is proper.

The Witness: Mr. Examiner, it is not prepared by the railroads. This memorandum of conference was prepared and signed by C. A. New, assistant secretary manager of the Southern Hardwood Traffic Association. It is a statement of what took place at the (Tes. p. 1671) meeting, signed by Mr. New with the Southern Hardwood Traffic wherein he makes this statement as to what was agreed to, and addresses it to all parties that were represented at that meet- [fol. 1510] ing. That was accepted by the railroads as a correct statement. I was personally present at the conference.

Exam. Hoy: I think the memorandum is proper.

Mr. Adair: Note our exception to that ruling, your Honor.

Exam. Hoy: The record will show the exception.

A. (continued:) It states in part the carriers agreed to establish and shippers agreed to accept the following rates on logs, bolts, billets, rough staves, and heading, for single-line application, subject to usual rough material rules and shipping requirements.

The rates are to be issued by the carriers experimentally in an effort to meet highway competition, and will be published at the earliest possible uniform date; also to expire by (Tes. p. 1672) limitation December 31, 1932. Shippers agree not to litigate withdrawal of those rates at that time if carriers decide to let same expire. Shippers will undertake to give the rail lines all business possible in order to justify them in operating these rates. As a member present at that conference that is a correct statement of my opinion of what was agreed upon. There is not a thing in there other than the lines mentioned.

Mr. Adair: We are willing to have copies made of this and submitted as an exhibit.

A. The statement shows who attended that conference (Tes. p. 1673).

The Frisco Railroad operates both east and west of the Mississippi River. Now, as to west of the River we don't come in competition with the Illinois Central, Mobile & Ohio, or the Gulf, Mobile and Northern. East of the River we do come in competition with those railroads in the state [fol. 1511] of Mississippi and also in Alabama. Our railroad gets down into Florida. We operate east of the River from Memphis to Birmingham, a distance of 251 miles, and

then a line running from Amory, Mississippi, to Pensacola, Florida. Our mileage, however, in Florida is very slight, about 50 miles. There is some local traffic in there, but not much. It is in to Pensacola (Tes. p. 1674). The rates which I have mentioned are applicable generally over the lines of the Frisco. That is you are talking about now in Mississippi and Alabama? They are not applicable generally over the entire system. They are only applicable within Arkansas, within Missouri, and interstate to points in those states from the other states. In other words, they are not applicable on traffic originating at points in Oklahoma, and distant points in Oklahoma; nor are they applicable on traffic originating in Oklahoma, and moving interstate to points in other States; nor are they applicable in the State of Kansas. We operate in Texas. Logs move in those States which I have referred to not being covered by these tariffs. They move in quantities and are continuing to move. As a railroad man experienced in these transactions I do not regard this truck situation as (Tes. p. 1675) a settled one, or as the regulation thereof as settled. By that I mean the conditions under which we are operating today, or as to truck movements, are somewhat different than as to which we expect to be confronted with in the future. In other words, we expect certain regulation which will have an effect upon the truck movement. Our railroad east of the Mississippi has close competition with the Illinois Central, and the Gulf, Mobile & Northern, and other roads. We have so-called "cross country" competition. We did, as a matter of fact while I believe I stated—no, I didn't either, I didn't state it; while we put [fol. 1512] these per car rates into effect west of the River on June 10th of this year, we didn't publish them east of the River until I believe it was August 23rd, and then only published them east of the Mississippi River, because of the competition with the other lines who had put in that scale or rates approximately the same at points in Mississippi, Tennessee, and Alabama. In other words, we found that traffic was being trucked from our rails to cross-country points on the Illinois Central and other lines that had established this scale. By "cross-country" competition I mean the timber as a rule is located between two railroads (Tes. p. 1676). The traffic, or the log traffic must be trucked to some railroad, it can as a rule move either way, and it will move to the point that has the lowest rate.

except of course road conditions may have somewhat to do with it, except for extraordinary circumstances. The lower rate will of course move the traffic. Those conditions of competition have influenced the Frisco in putting on those rates. They did east of the River, as we had fully made up our mind as we were not going to extend these per car rates beyond the states of Arkansas and Missouri.

Cross-examination:

By Mr. Guthelm:

Q. Mr. Norden respecting your disagreement with Mr. Green as to the character of these rates—take for instance your Frisco Supplement 28 to I. C. C. No. 9195—the same document, Supplement No. 1 to I. C. C. 9639. Will you say what there is, starting with the cover page, to indicate whether the rates in question are local or proportional rates or transit rates.

A. Yes, sir; the title page itself says "When for dressing, stacking, or further manufacture and reshipment, as shown in Item 15", and then referring to Item 5 of the tariff it reads (Tes. p. 1677): "Rough material rates [fol. 1513] named herein are conditioned upon the finished products being reshipped via this line, and may be used only subject to the following conditions." That is Item 5. The tariff states the conditions upon which these rates may be used. That is Item 5. As to whether that Item 5 is referred to on the cover page, the lumber tariff procedure is not necessary. Does not, but it refers to Item 15. Item 15 is articles upon which rates apply. I don't want to read the entire item, because it is pretty lengthy. It is a list of commodity descriptions. Commodity descriptions in paragraph B of the item says "Rates named herein in column 1 apply only on articles named for stacking, dressing, creosoting, kiln-drying, or to be (Tes. p. 1678) manufactured into lumber, or articles specified on pages 10 to 12 inclusive, and forwarded via the St. L. F. S. Railway at full published rate applicable from transit point". That is not in the Item 5; that is not referred to on the cover page. That is on Item 15, referred to on the cover page.

Q. Now, refer to Supplement 1, and to that section which shows the rates that are here in question on logs, and will

you say what there is there that lays down any transit restrictions other than those, whatever they may be, that you have already referred to, as contained in this tariff.

A. There is not a thing, and any tariff man knows it is not necessary. I have answered the question.

Q. Well, is there anything in this Supplement 1 on this second page, page 2, where the rates are specifically named, that lays down any transit restrictions other than what you have heretofore referred to as contained in this tariff, such as they are?

[fol. 1514] A. I think the question is ridiculous, myself.

Q. Answer it.

A. No, not in that Supplement 1; no, sir.

Q. Not so ridiculous when we get the answer.

A. Those rates are in the tariff, and the Commission has ruled, (Tes. p. 1679) and we all know it, that all the conditions are applicable thereto. All of the rules as published in that tariff are applicable to the rates published therein.

Q. Now, are there any other rules in that tariff with respect to these rates in issue that in any way further conditioned them with respect to transmit regulations other than what you have now referred to?

A. Item 5, with all the other rules contained in the tariff, govern these rough material per car rates.

Q. And Item 5 is the one that is not referred to on the cover page?

A. No, sir. Now, as a matter of fact Item 65 is not referred to on the cover page. Other items shown in the tariff which govern these rates are not referred to in the title page. In other words, Item 65 is the item that outlines the percentage requirements outbound versus the inbound tonnage.

Q. Now, other than the explanation that you have made with respect to this particular tariff No. 9195, and No. 9639, are there any other provisions in any of the other Frisco tariffs referred to by Mr. Green which lay down any other transit conditions beyond what you have referred to with respect to this tariff?

A. All of our transit tariffs, and I think you will find that they are all exact or practically the same in Item 5, [fol. 1515] which is the first item of each and every tariff, carries the provision (Tes. p. 1680) that I read in the rec-

ord before. As to the value of that provision, if any, to the Frisco railroad, that item specifically provides that the rates named herein are conditioned upon the finished products being reshipped via this line, and may be used only subject to the following conditions. Under that provision, logs that originate in our local territory and move into mill points under these very low rates, is manufactured, and we can then control the movement outbound. In other words, on that outbound traffic we receive our local rate from the mill points. The value of it is to guarantee to the Frisco outbound revenue that it might not otherwise get. That is the intention of the tariff, and hooks up this inbound movement, which in and of itself would not be attractive to the inbound line, but when that revenue is hooked up with the outbound revenue that is another story. And to the extent that the Frisco railroad would not get that outbound revenue, the revenue on the shipment, if the (Tes. p. 1681) shipment were made, would then possibly accrue to some other railroad. It is more than posible if the shipment is made and we don't get it, that some other railroad gets the revenue. That is true, but we would not have these rates in if we were not sure of that. Our local log rates are materially higher than this scale. As to what is the method of procedure under which this transit rule that I have described is operated with respect to the in-and-out traffic, I presume you have reference to contract arrangements and bond, and that sort of thing. A shipper that will file or sign a contract to reship via the Frisco railroad, the percentage proportions as required under the tariff, and within the period as shown therein, his inbound logs, bolts, or billets will be [fol. 1516] billed at the rates shown in the tariff. However, if he does not sign this contract and file bond, the inbound material is billed at the local log rates, and then when he surrenders tonnage, upon an evidence of reshipment, we will through claim channels refund him the difference between the local log rates and these low rough material rates. If he signs the contract, the inbound shipment of logs is (Tes. p. 1682) originally billed at the lower rate; if he signs a contract, and furnishes bond; yes. If he does not sign the contract and furnish the bond, the higher rate is charged, but on submission of certain evidence of shipments it may be adjusted to the lower rate.

Q. Now, take the first case of the shipper who signs the contract and the bond. Is there any transit accounting at the milling point of showing the balance of the inbound log tonnage against the outbound lumber tonnage kept?

A. In so far as the records of the railroad are concerned, no. The tariff provides that—and the contract—that we have the privilege of checking up the records of the mill at certain periods, and this is done by the Western Weighing & Inspection Bureau. Now, as to the second case, when the shipment is originally billed in—the log shipment—at the higher rate, and refund is made then to the lower rate upon the submission of certain evidence, that is in the ordinary claim channels.

Q. On this same tariff Mr. Norden, 9195, as supplement 28, and No. 9639, supplement 1, is it correct to read the title (Tes. p. 1683) page as indicating that that supplement carries first local joint and proportional rates on certain [fol. 1517] materials or commodities described in Item 15-A, and also carries distance rates applying between points in Arkansas, Mississippi, Missouri, and Tennessee on the St. Louis-San Francisco Railway and Memphis, Tennessee, which latter rates are not shown on the cover page to be in any way tied up with Item 15-A?

A. I don't know just what you are driving at; I don't fully understand your question, but the title page carries in a general way what is carried in the tariff. Now, all of the provisions and restrictions as carried in a tariff cannot and are not shown specifically on the title page, if that is what you mean.

Q. What I want is, whether the last item on the cover page entitled also "Distance Rates" is tied up there in any way with that item 15-A?

A. Not according to the title page, no, but the provisions of the tariff in the tariff cover all of the rates as shown in the tariff. In other words, Item 5 specifically provides "Rough Material rates named herein".

Q. Will you tell me what is the reason for differentiating (Tes. p. 1684) between rates that are subject to 15-A and rates that are not shown as subject to 15-A?

A. I don't know as there is any use to argue the application of the tariff, Mr. Examiner. The tariff is on file with the Commission.

By Exam. Hoy:

Q. On the question as to the title page.

A. The title page, as I say, does not carry all of the restrictions.

Exam. Hoy: Now, the question is, was there any particular reason for so differentiating on the title page. Isn't that it Mr. Gutheim?

Mr. Gutheim: Yes.

[fol. 1518] A. I cannot see that there is any differentiation on the title page.

Exam. Hoy: All you have to do is to answer that question as to the title page.

Mr. Alston: Your Honor, let me make this suggestion here. I don't read this title page as Mr. Gutheim reads it. With reference——

By Mr. Gutheim:

Q. Now, after the last item on the cover page of this tariff, which reads "When for dressing, stacking, or further manufacture and reshipment, as shown in Item 15-B" the (Tes. p. 1685) remaining language is also distance rates applying between points in Arkansas, Mississippi, Missouri, and Tennessee on the St. Louis-San Francisco Railway and Memphis, Tennessee—there is nothing on this cover page that in any way ties that particular provision up to 15-A, or 15-B, is there?

A. No, sir. Go to page 2 on this supplement, under the title "Miscellaneous rates" are there shown mileage rates to Memphis, Tennessee. As to whether there is anything in that section naming mileage rates to Memphis, Tennessee, that in any way ties those rates up to 15-A or 15-B in this supplement, in this particular item. This item 136, there is no reference in that item itself that hooks it up with anything in the tariff.

Exam. ——: Well that answers the question. (Tes. p. 1686).

A. These arrangements, according to my description of them, are of rough materials, arrangements tying up the rough material inbound with the outbound lumber, they are not in the true sense transit rates, where the through rate

from original point of origin to final destination applies plus a transit tariff for stoppage. There has been a large [fol. 1519] falling off in log traffic in the past 6 or 8 months of all kinds, whether it moves by truck or by railroad. Undoubtedly. That is not the last six months—in the last two years. I don't know as it is any more so than it has been for the past year, that is prior to the last six months.

Q. Now, what investigation did you make to determine whether you were getting a larger proportion of the log traffic that was actually moving since you put in these per car rates.

A. I testified that we were getting some more than we did before. (Tes. p. 1687) As to whether I know anything about whether that is a very considerable larger percentage or not is moving that we were getting before; as to the percentage proportion of the traffic that we are now receiving is to the whole, I don't know. But I say this, that what we have received has not been what we expected. What anybody has received in the last 6 or 8 months has not been what they expected. We could cancel these tariffs at any time we wanted to. We haven't done so. The traffic committee of the West Side lines has decided to extend those tariffs for another year from their present expiration date.

Q. So your experiment with them at least has not proved as yet to be a failure, according to your own conclusion?

A. No, we are still experimenting; we are hoping that we will get this short-haul traffic back. (Tes. p. 1688) We want to get all the business under these tariffs that we can get. We operate these rates in the State of Florida. As to the particular competition that we meet in the state of Florida hat has necessitated our establishment of these rates, as I stated before, we have a very short mileage, and when we published these rates we applied them over our [fol. 1520] entire line, that is east of the River. Now, as to competition in Florida, we run from Atmore, Alabama, just north of the Florida line to Pensacola, and we are in competition with the Louisville & Nashville in that territory only. The Louisville & Nashville being one of the Atlantic Coast Line family don't carry these rates. Therefore we don't have to do it in order to meet any Louisville & Nashville competition. But there is no reason as we saw it—we had them in down to the Alabama-Florida State line—why for this additional few miles we should provide for confining the application.

Q. You don't think it would put any burden on interstate commerce (Tes. p. 1689) in Florida, that it didn't put anywhere else. In other words, you didn't think it put a burden on interstate commerce to operate them in the State of Florida any different from what it might or would if you operated it anywhere else?

A. If you were to call it a burden, I would say no.

Mr. Norman: Well I agree that it is not a burden—that is all.

Redirect examination:

A. We have very little revenue from the logs which we haul on the mileage between the Alabama line and Pensacola, which I have testified is the only mileage we have in the State. It is an inconsequential thing. Let us go back to these tariffs, the front page of this tariff No. I. C. C. 9639, it applies on certain things, including wooden bolts, and lots "as described in Item 15-A". There are bolts, logs and various other items.

Q. Yes, sir. Then a little further on it states that "when for dressing, stacking, or further manufacture" a requirement (Tes. p. 1690) as shown, Item 15-B—please turn to Item 15-B, and see if that refers to the articles mentioned [fol. 1521] above in 15-A, and when for stacking, dressing, creosoting, kiln-drying, or to be manufactured into lumber, etc.?

Exam. Hoy: Mr. Alston, is it necessary to go into what these tariffs mean any further?

Mr. Alston: I hope it is not.

Exam. Hoy: The Commission in the final analysis is going to read these tariffs, and say what they mean. Now Mr. Norden has already stated fully on the record what he thinks they mean. I don't think you are going to get anything further than that.

Mr. Alston: Mr. Examiner, I accept your position about that.

A. These tariffs are being applied now in accordance with my interpretation of them, as I have given them in this record. The committee of railroads had decided to extend this tariff for another period. That extension was with the concurrent right of cancellation at any time that it appeared to be proper. It carries that provision and the tariff so states.

That understanding was an understanding of the West Side lines only (Tes. p. 1691).

E. R. GARDNER, called as a witness, being duly sworn, testified as follows:

Direct examination:

E. R. Gardner, Freight Traffic Manager of the Mobile & Ohio Railroad Company, St. Louis, Missouri. I have been in the traffic department of the Mobile & Ohio Railroad since the first of the year. However, prior to that time, I was connected with the Southern Railway System lines for some 25 or 26 years in the traffic department of the Southern Railway companies. In my capacity of an official of the Southern [fol. 1522] Railway, I have occasion to familiarize myself at all times in a general way with the traffic and the (Tes. p. 1692) rates of the Mobile & Ohio Railroad. I am familiar with tariff making and filing, fairly so. The Mobile & Ohio Railroad extends from its northern terminus at East St. Louis, Illinois, to the Gulf of Mexico at Mobile, Alabama, 643 miles. It has a branch line from Artesia, Mississippi, into Montgomery, Alabama. It is paralleled a great part of the way by the Gulf, Mobile & Northern Railroad, and also the Illinois Central Railroad, and the Alabama, Tennessee, and Northern Railroad. The Mobile & Ohio Railroad established on August 1, 1932, manufacturing or transit rates on logs, billets, bolts, and handle material to the important manufacturing points on its line such as Columbus, Mississippi, Corinth, Mississippi, Humboldt, Tennessee, Jackson, Tennessee, Meridian, Mississippi (Tes. p. 1693), Mobile, Alabama, Whistler, Alabama, and to Cairo, Illinois. Now those rates were from points on the Mobile & Ohio, a distance of 100 miles from any of the manufacturing points which I have named. The rates beginning with $12.00 per car for the first 25 miles, $15.00 for distance 50 miles and over 25 miles $17.50 per car regardless of weights for distance of 75 miles and over 50. The rate of $20.00 per car for distances 100 miles and over 75 miles.

There were two particular reasons that prompted the Mobile & Ohio railroad to make effective those rates; first, to meet a condition created by our neighbors, thus to permit

the Mobile & Ohio to participate in the handling of the manufactured product from these manufacturing points which I have named; all of these points practically are common points served not only by the Mobile & Ohio Railroad, but also by our neighbors. There was also a second rea- [fol. 1523] son, and that was the matter of much concern to us, the loss of this particular traffic to the unregulated trucks. We thought that with experimental rates of this nature we might be able to recover some of the tonnage which had been lost to these unregulated transportation agencies. Of course there is no question as to the application of the rates of the Mobile & Ohio railroad, they being published in a transit tariff, so indicates on the (Tes. p. 1694) face of the tariff, and contains very complete transit rules. Now, in that connection I may also mention Mr. Alston, that we have also established similar rates, only $2.50 per car higher, from points on the Mobile & Ohio Railroad 100 miles from Montgomery, Alabama, into Montgomery. We were able to establish a higher level of rates into Montgomery, due to the rates maintained by our neighbors at Montgomery. I have reference primarily in the Valley territory to the Illinois Central Yazoo & Mississippi Valley, The Gulf, Mobile & Northern Railroad—those lines establishing these rates somewhat ahead of the Mobile & Ohio Railroad; and we found that we were losing considerable tonnage of the manufactured product because their rates were predicated on the line bringing the raw material into the manufacturing point receiving the outbound haul on the manufactured product. We also found, as I previously stated, the Gulf, Mobile & Northern parallels the Mobile & Ohio Railroad from Jackson, Tennessee, clean into the Gulf. We found that cross-country competition—that is competition between two lines of railroads for the forest product tonnage lying in the territory between the two railroads, and under the lower rates of the Gulf, Mobile & Northern the traffic was being diverted to that line, notwithstanding (Tes. p. 1695) that the timber was closer to the rails of the Mobile & Ohio Railroad than [fol. 1524] to our competitors; and the establishment of these rates has brought the tariff back to our line; traffic which we considered belongs to us legitimately. We have cross-country competition. For example, there is quite an important tract of land where these short logs—and incidentally, the preponderance of the log tonnage on the Mobile

& Ohio Railroad is short logs going into the stave and heading manufacturing plants. Now, just south of Middleton, Tennessee, on the Gulf, Mobile & Northern and south of Corinth, Mississippi, on the Mobile & Ohio, is a very important tract of land lying between the Mobile & Ohio road and the Gulf, Mobile & Northern Railroad. It is approximately three and a half miles from the Mobile & Ohio Railroad, and eight miles from the Gulf, Mobile & Northern, and with the lower rates via the Gulf, Mobile & Northern Railroad that traffic was being handled by the Gulf, Mobile & Northern, and diverted from the Mobile & Ohio Railroad. That is what I refer to as cross-country competition. These rates are applicable over the Mobile & Ohio only to the manufacturing points I have mentioned (Tes. p. 1696). I do not call them local rates at all. They are transit rates; rough material transit rates. The terms of the transit are defined within the tariff. As to what has been the effect on the truck competition, the use of these rates, Since August 1, 1932, the total log tonnage and forest products tonnage on the Mobile & Ohio has fallen off substantially, but we do know that we have gained some of the tonnage that was known to be handled by truck. We also know that we would not have handled as much tonnage as we did handle had we not made these rates effective. As to within what ranges of truck [fol. 1525] distances we have broken into the truck hauls, up to about 50 or 60 miles. We have been able to recover some of the tonnage handled by trucks for distances within 25 miles. Of course that has been very small as compared with the total. In the lower brackets of distances from 5, 10, 15, 20 and 25 miles (Tes. p. 1697) I don't think there is much opportunity to secure that traffic from the trucks, particularly because the haul to the railroad station usually is not much shorter than the hauls to the mills themselves, and they will continue to transport that traffic. That is my judgment. We find that especially true where the logs must be loaded on trucks in the forest to be brought out of the forests themselves. The disposition then is to continue on to destination. We have very little hopes of recovering—I say recovering—we didn't handle that class of traffic initially, and I don't think there is much hopes of handling much of it in the future even under these low rates. As to where the substantial recovery would begin, at what distance, something over 25 miles. I think on the Mobile & Ohio railroad that the recovery has been between 20 and

40 miles. We did not have truck competition prior to that time above 50 miles to any degree or quantity. I have been giving thought and attention to the development of the truck regulations, the laws being enacted in the several states (Tes. P. 1698). I have been keeping up with that pretty thoroughly. I do not look upon the present truck status regulation as a permanent one. We are in hope of legislation, both Federal and State, that will produce equal opportunity for the rail lines with the truck lines, and we think that we will be able to hold our own, and of course that will change this situation entirely. Our road is in the hands of a receiver. In my judgment the general existing depression in business, and the wide extent of unemployment has [fol. 1526] tended to intensify the truck competition. There is no doubt about that. As a matter of fact even our shopmen that we have been forced to lay off temporarily during this depression have gone into the trucking business, and actually soliciting traffic away from us. I (Tes. p. 1699) think that will be stopped of course when conditions are better. There is a great deal of what is commonly referred to as "fly by night" truck competition at the present time. Nevertheless it is tonnage that is lost, for which we suffer from the loss of revenues, as we have been unable to handle it.

Cross-examination:

As to whether we had rather carry the revenue under these circumstances for our railroad than to lose it under the new rates, considering the outbound haul on the manufactured product I think it was a wise experiment. As a matter of fact I don't think there has been sufficient time to determine whether the experiment is successful or unsuccessful. If I was called upon now to pass judgment upon it I would say it was, since August, it has been unsuccessful, but I am in hopes I will be able to change that in a short period after we have had more time to experiment with them. We want to get as much out of it as we can under these circumstances. I don't want this adjustment disturbed at all in the Mississippi Valley. We have an understanding with our (Tes. p. 1700) manufacturers over there, you understand. You see the manufacturers mostly that use these rates are stave and heading manu-

facturers; that is particularly true at the West Tennessee territory. We have an understanding with them, that if we find these rates burdensome that we will be able to cancel them on short notice. As to whether it cost any more [fol. 1527] to transport a car of long logs than it does a car of short logs of equal weight, I know of no conditions that would make it more expensive to transport the one than the other. Of course that is presuming they are loaded the same weight, and on the same class of equipment. I just don't want to be misunderstood on that. I live in St. Louis. We have quite a lot of trackage in Alabama. We have our Montgomery division. There has been a truck law passed lately in Alabama, and I am sorry to say it is not being enforced (Tes. p. 1701) the way I think it should be. I do not recall what the maximum weight there is prescribed in that law for the operation—of trucks. I would hesitate to tell you. Ten tons? I don't believe it is that much; I don't recall. I don't think it is 20,000 pounds. Twenty-two bales of cotton, that gives you about ten or twelve thousand pounds. I don't recall, no. I heard Mr. Green testify that Mobile & Ohio Tariff No. 860 is a proportional tariff, applying inbound only when the lumber products are reshipped outbound (Tes. p. 1702), by the Mobile & Ohio Railroad. That is a correct description of that tariff. It is a raw material tariff, containing transit rates.

As to the nature of the operation under the transit rates, the rules in the Mobile & Ohio tariffs are very clear, I don't think there is any possible chance for a misconstruction of their application. I have no objections however to telling you exactly how these raw material situations are handled on the Mobile & Ohio Railroad. As a matter of fact we started out with the alternative plan of permitting the shippers to either file claims for their refund down to the base or the lower rates or to furnish (Tes. p. 1703) us with bond or sufficient surety to guarantee that they [fol. 1528] would comply with the provisions of the tariff. We finally found that keeping the shippers out of their money representing the difference between the manufacturing or transit rates and the normal rates worked a hardship against them, so we finally authorized by our tariffs the filing of a bond acceptable to our treasurer and financial people, which would permit the protection of these

transit rates on the inbound tonnage. However, we also require that transit records be kept, so that the matter may be checked from time to time by our inspectors. The shipper's records are checked from time to time by the inspectors, and we do find discrepancies; and are forced to go back on the shippers to collect the local rate, when they had failed to comply with the provisions of our transit tariff. If the shipper files contract and bond we assess the lower rates on the logs inbound. If the bond is acceptable to our financial officer we do, yes, and the purpose of that is to save—I don't mind telling you candidly, that the shippers—Our practice is the same as testified to by Mr. Norden here a few minutes ago, substantially so, except that we don't have the claim payment plan (Tes. p. 1704). I agree with Mr. Norden that the value of such an arrangement is to secure to the Mobile & Ohio, if it brings in the logs, the outbound tonnage. Absolutely. We have depressed inbound rates predicated upon receiving the outbound tonnage of the manufactured articles. We have these timber or lumber requirements at manufacturing points where we compete with the Frisco. And under tariffs of that sort we are sure of the outbound business and revenue to ourselves as against the Frisco on the logs that we bring in. And vice versa the Frisco assures against us to itself the revenue on the logs that it brings in.

By Mr. Norman:

Q. Mr. Gardner, I was just a little curious to know who [fol. 1529] was the first railroad east of the Mississippi who had the judgment and the courage to install these rates. Everybody that has gotten on here has said they have done it to meet competition with some other railroad. Now, who was the bell-wether in this thing?

Mr. Alston: Your Honor, I object to that question. In the first place it has quite a great deal of recitation in it (Tes. p. 1705), which is not according to the record in the case. And if he wants to know who was the first railroad who put in the tariffs all right and good; I have no objection at all to an answer to that.

Mr. Norman: What do you object to?

Mr. Alston: The objection is that they have all gone into this business who had the courage and all that kind of thing.

Mr. Norman: You don't think it took courage, do you?

Exam. Hoy: Wait a minute Mr. Norman. We are not going to have any arguments on that. The question is, do you know what road first established these low rates.

Mr. Norman: East of the Mississippi River.

A. (continued:) Illinois Central. Of course that means the Yazoo & Mississippi Valley at the same time, and then along came the Gulf, Mobile & Northern, and then we followed along behind.

Q. Now, do you mean to say but for the action of the Illinois Central, the Yazoo & Mississippi Valley, and the Gulf Mobile & Northern, that you would not maintain these rates?

A. I didn't say that (Tes. p. 1706).

Q. Well, would you say that?

A. Well, I don't know what I would have done if they hadn't established them. That is a matter of conditions. I am going to make whatever rates in my judgment are proper. Absolutely I cannot tell what I would have done. [fol. 1530] Q. Let me ask you this; if they take theirs out, would you take yours out?

A. I don't know that.

Mr. Alston: Mr. Examiner, we have copy of the memorandum identified by Mr. Norden relating to the meeting held on March 30, 1932, and which was described by him, and I now offer that as an exhibit.

Exam. Hoy: It will be received as Exhibit 149 (Tes. p. 1707).

M. W. Thomas, called as a witness, being duly sworn, testified as follows:

Direct examination:

My name is M. W. Thomas; I live in Savannah, Georgia; and I am employed by the Central of Georgia Railway Company as Assistant General Freight Agent. I have been in the traffic department of that or other railroads twenty-five years altogether, twenty-two years with the Central of Georgia Railway.

Q. The subject matter under inquiry has to do with the logs and the rates on them, especially the rates which were put in by certain railroads in recent months, and I will

be obliged if you will state what you have to state as to the Central of Georgia's action.

A. I want to be as brief as possible, but in order to explain our publication of rates which have been referred to by tariff number in these proceedings, I want to make a few brief remarks about our industry as a whole, and I have made some exhibits which I will discuss as I go along, and I will distribute (Tes. p. 1708) them now.

Now logs, lumber and other forest products has been one of the principal sources of revenue of our company for many years. In 1927 the total tons of revenue on these products to the total of all commodities handled was as to [fol. 1531] tons 21.6 per cent and as to revenue 18.3 per cent. In 1931 the relation was as to tons 10.9 per cent and as to revenue 9.5 per cent. This has reference to timber, and not resin, turpentine, and other similar materials derived from the forest. The ratio of logs to all commodities in 1927 was as to tons 4.8 per cent, and as to revenue 1.9 per cent, in 1931 as to tons 1.5 per cent, and revenue 7/10 of 1 per cent.

As exhibit No. 150 I submit statement of the movement of logs, lumber and other forest products on the Central of Georgia Railway for the years 1927 to 1931 inclusive. I have omitted from this statement fuel wood, pulp wood, and veneer or built-up wood.

During the period from 1927 to date there has been a general decline in all traffic, largely due to the depression, but to a more serious extent to truck and other unregulated competition. This competition was particularly *a*ffective on log traffic. For example, in 1927, the Central of Georgia Railway handled 15,209 cars of logs an average distance of 45 miles for an average per car revenue of $21.27. In 1931 we handled 3,168 cars an average distance of 96 miles for an average per (Tes. p. 1709) car revenue of $27.61. The increased average haul indicates very clearly that we have lost short-haul traffic to a large extent.

Lumber is not as susceptible to truck haulage as logs. In 1927 we handled 53,420 cars of lumber an average distance of 204 miles for an average per car revenue of $47.40. In 1931 we handled 20,161 cars of lumber an average distance of 212 miles for an average per car revenue of $50.76. From 1927 to 1931 lumber decreased 62 per cent, and logs

78 per cent which further indicates that log traffic has gone to other means of transportation.

[fol. 1532] In order to recover some of this lost traffic we have been conducting investigations to ascertain at what points we can meet truck competition without establishing rates that would prove unremunerative, and, therefore burdensome to other traffic. We found at Montgomery, Alabama, a half to three quarters million hardwood logs were moving in monthly of which 80 per cent were by truck. All of these logs were consigned to mills located on lines of carriers other than the Central of Georgia Railway, and to a large extent they were brought out of our local territory in Southeast Alabama, and we were neither hauling the logs into Montgomery nor the lumber made therefrom out of Montgomery. We ascertained what the trucks were charging by a thorough investigation through our agents and traffic representatives, and arranged the establishment of rates which (Tes. p. 1710) would equal the truck charges, and by publishing such rates as proportional or transit rates assure ourselves of outbound hauls on the lumber. We do not hope by this means to recapitulate all of the logs which have been moving by truck, but we do hope to recover a large share of them.

We published effective intrastate August 15, 1932, and interstate September 13, 1932, a schedule of transit rates of $14.50 per car for 25 miles and under; $17.50 for 50 miles and over 25; $20.00 for 75 miles and over 50; and $22.50 for 100 miles and over 75. These rates are published in our I. C. C. No. 2848 copy which is submitted as Exhibit No. 151.

On the title page of this exhibit it will be noted at the top that these rates are issued to meet truck competition, and at the bottom, that they are published to expire with September 12, 1933, unless sooner cancelled, changed, or [fol. 1533] extended. The rates are by no means maximum reasonable rates, but were, as indicated, published to meet truck competition, and as an experiment, therefore the expiration date.

On page 2 will be found the application of the tariff, which provides that the rates apply only on shipments moving from points of origin to Montgomery when the movement is solely via the Central of Georgia Railway, and will only apply when outbound shipments of lumber

from Montgomery are forwarded via the Central of Georgia Railway to destinations on its line, and via Central of Georgia Railway and connections to destinations (Tes. p. 1711) beyond its line. The lowest rate on lumber to any destination from Montgomery is 2½ cents per 100 pounds, which is the statutory mileage scale in Alabama for seven miles and under. The average rate per 100 pounds which we may expect to receive on the outbound lumber is much greater than this figure as I will later show. We found that logs were being trucked from certain stations, and that the trucks were hauling them for about $3.50 and $4.20 per truck load of 14,000 pounds. We estimated 5 truck loads to a car, and published rates on a per car basis that would about equal the truck charge. For two weeks ending July 23rd and July 10th, 1932, we checked 255 trucks of hardwood logs moving from stations on the Central of Georgia Railway in Southeast Alabama to Montgomery. This is equivalent to 51 carloads of 70,000 pounds each.

As exhibit No. 152 I submit statement of revenue per car of 70,000 pounds on logs at transit rates from Central of Georgia Railway stations in Alabama to Montgomery compared with revenue assessed by the trucks for the same tonnage from the vicinity of these stations to Montgomery. [fol. 1534] This statement also shows miles to railroad stations and rail mile from these stations to Montgomery. The distances over the highway from railroad stations named to Montgomery are about the same as the rail distances except from Ezell, Hurtsboro, Troy, Seale, and Brantley, Alabama, from these stations the highways are shorter than via rail (Tes. p. 1712).

Exhibit No. 153 is a statement of transit and normal rates on logs, carload, from Central of Georgia Railway stations to Montgomery, showing the per car revenue at minimum weight of 40,000 pounds, and for average loading on the Central of Georgia Railway for a 5-year period, 1927 to 1931, inclusive. The exhibit also shows percentage that per car revenues at transit rates bears to per car revenues at local rates. As I have before stated, we have figured on a 70,000 pound loading or the equivalent of five truck loads, but for the purpose of this showing I have used both the minimum weight and the average loading of 45,999 cars for a period of five years. In this connection I want to

drawn attention to my first exhibit which shows the average revenue per car for this period was $23.98, which is only slightly in excess of the maximum per car rates which was established to meet truck competition, and as transit rates to secure outbound lumber traffic.

My next exhibit No. 154 is a statement showing the per car revenue on logs at transit rates from Central of Georgia Railway stations in Alabama to Montgomery compared with per car revenue in Georgia for single-line hauls, showing percentage per car revenue at transit rates bears to per car revenue at local rates. Georgia rates for single-line hauls are less than Alabama rates for single-line hauls. [fol. 1535] In this exhibit I have made comparison of the minimum weight charges, also charges based on average loading (Tes. p. 1713).

The rates which will be assessed on this log traffic to Montgomery will be the local rates prescribed by the Alabama Public Service Commission, and which are the same as these in Florida, however, if the lumber is shipped from Montgomery, Alabama, within 12 calendar months after date of paid freight bills covering inbound movement of logs we will refund the transit user charges assessed for the transportation of the logs into Montgomery in excess of charges based on the proportional or transit rates published in our I. C. C. No. 2848, Exhibit 151. That is, for each pound of lumber shipped out of Montgomery via the Central of Georgia Railway proportional rates authorized in our transit tariff will be applied on not more than three pounds of logs shipped into Montgomery. To illustrate this result I submit as Exhibit 155 a statement showing revenue on transit per car rates into Montgomery on logs plus 10 cents per 100 pounds on lumber outbound at one-third of the inbound log tonnage. The figures on this exhibit may be briefly explained as follows:

For the period 1927 to 1931, inclusive, the Central of Georgia handled 204,956 cars of lumber——

Mr. Norman: Are you going into the question of the outbound lumber rates?

Exam. Hoy: I understand the exhibit is only to illustrate how he makes his refund on the inbound logs.

Mr. Norman: No. it is not; it is to show revenue here (Tes. p. 1714).

Mr. Alston: Your Honor, we withdraw that exhibit.

[fol. 1536] A. (continued) In establishing transit rates on logs into Montgomery we have, as I have stated, been largely influenced by outbound tonnage we would get under the so-called transit arrangement. During the three months period prior to the establishing of these truck competitive or transit rates we handled five cars of logs into Montgomery; since they were established we handled 53 cars, averaging 68,736 pounds per car.

Exam. Hoy: The exhibits 150 to 154 are received in evidence.

A. As to what distances were those cars handled, we handled 25 cars 50 miles; 7 cars 59 miles; 7 cars 70 miles; the other 3 cars approximately 50 miles. The point from which they came is just north of Union Springs, which is 40 miles away; I don't know the exact distance to the particular point. The total number of cars is 53. I think I missed 11 cars here; there are 11 cars 96 miles. I (Tes. p. 1715) missed that one. Our tariff is applicable 100 miles.

Q. You seem to have little or no effect on the haulage in 25 or 30 miles.

A. No, we didn't get a car in the 25-mile block. Our rates are published in 4 blocks; 25, 50, 75 and 100 miles. As to what was the nearest cars we hauled, or how many we hauled in the next block over 25 miles, why, the nearest point was 50 miles. The Gooch Lumber Company in Montgomery is located on the Western of Alabama. We were getting very little outbound lumber on that. Certain lumber of course would naturally come to us, but we are getting very little. As to this truck situation (Tes. p. 1716) we looked upon it as experiment, and we hope we can stop them. We look upon these rates as experiments. As to additional regulations in Alabama of trucks, we are hoping for that; we don't know what they may do; but we hope [fol. 1537] for regulation in all of the states we serve. The present truck regulations in Alabama are not enforced. That goes in toto, of course they may be to a certain extent enforced. As to from what points are these rates applicable on our system, to Montgomery, Alabama, only. To no other point. As to how many miles there are in our system, 1,920 miles approximately. We only operated in Georgia and Alabama. We have about ten miles in Tennessee, and about two miles in Florida. As to the general

basis of log rates that is now applicable over the balance of our system, exclusive (Tes. p. 1717) of these transit rates that you have put in to Montgomery, they are practically all rates prescribed by the Georgia Commission, and Alabama Commission, and the Interstate Commerce Commission. In other words the general movement of log traffic over the Central of Georgia, other than to Montgomery is being handled under those rates; with one exception. We have one points where we have a small movement on rates that were published from competitive points with another railroad, and those rates—well they are substantially the same as the Georgia rates. That situation has been in effect for some time. Logs are moving under these other rates over the system as a whole. Prior to the reduction we moved 5 cars to Montgomery. That was for 3 months period prior, and 53 cars since—have moved since the reduction (Tes. p. 1718) since the rates went into effect, up to November 11th.

Cross-examination.

Q. I say, logs are not moved very much under these other rates on your system, are they, from this exhibit 150 of yours it appears to be about 20 per cent of what they were four years ago or five years ago.

A. Unfortunately there is very little of any kind of traffic [fol. 1538] moving sir.

Q. I know, but logs have fallen off a larger percentage than lumber, or most any other thing, haven't they?

A. I would not say most any other thing. They have fallen off a greater percentage than lumber; I made that statement. As to whether I know of any other traffic handled by our railroad that has a normal, a regular movement, that has fallen off as much in the last five years as the log traffic, yes, cotton (Tes. p. 1719). I don't know where it has gone; it has gone away from us. As to whether there is just as much cotton being raised and moved now as there was before, I don't know—I haven't kept up with the number of bales by years. We have reduced our rates on cotton, and tried to get some of that back. We are making a lot of experiments in truck rates. I mean truck competitive rates.—We didn't reduce our rates to meet competition with some rail carrier, ours is just trucks.

It is correct to judge from our tariff that we always collect the local normal rate when we move the logs. We don't operate under the bond plan at all. As to who serves Montgomery besides the Central of Georgia, the Western of Alabama, Seaboard Air Line, Atlantic Coast (Tes. p. 1720) Line Railroad, Mobile & Ohio, and the Louisville & Nashville Railroad. As to whether the value of this arrangement to us at Montgomery is due to the fact that thereby we assure to ourselves the revenue on the outbound tonnage, that was part of the reason that we made the rates inbound; that is, to the extent that we get the revenue on the outbound tonnage, and other lines do not get it. We want as many logs inbound to Montgomery under these new rates as we can get.

[fol. 1539] Redirect examination:

The coal traffic has fallen equally as much as the forest products (Tes. p. 1721).

Recross-examination:

We do not carry very much coal to Atlanta. We are unfortunately the long-line from Alabama and Kentucky and Tennessee fields to Atlanta, and we handle very little of it. Natural gas has within the last couple of years come in to Atlanta. That has put quite a dent in the coal business.

C. D. Thomas, called as a witness, being duly sworn, testified as follows:

Direct examination:

My name is C. D. Thomas; I live in Atlanta, Georgia; I am employed by the Southern Railway System as Assistant General Freight Agent. I have been with the company 23 years. I have been all that time in the traffic department. Our road hauls long-length logs, that is logs over six feet (Tes. p. 1722).

We have established truck competitive log rates, and notably at Chattanooga, Tennessee, we published to that point, effective August 15, 1932, on Tennessee intrastate traffic, and September 15, 1932, on interstate traffic in Southern Railway L. C. C. No. A-10472, a scale to apply

from stations on the Southern Railway, the Alabama-Great Southern Railroad, the Cincinnati, New Orleans & Texas Pacific Railway Company, for distances 100 miles and under, and for single-line application over the roads mentioned. The scale we established is as follows: For distances 25 miles and less $12.50 per car; 50 miles and over 25, $15.00 per car; 75 miles, and over 50 $17.50 per car; 100 miles, and over 75, $20.00 per car. The rates apply [fol. 1540] per car irrespective of weight.

In the initial publication the rates were surrounded with a transit arrangement. Subsequently in Supplement 4 to the Southern Railway I. C. C. A-10425, the same scale was published without the transit requirement. This was effective on Tennessee intrastate traffic August 27, 1932, and on interstate traffic September 26, 1932.

The truck competitive scale was published upon request of two concerns at Chattanooga, the Williams & Vorhis Lumber (Tes. p. 1723) Company, and the Chattanooga Handle Company. Their argument was that if the proper scale were established it would eliminate the movement of logs for short distances by truck. Our division traffic officer confirmed the statement made by the shippers that there was a substantial movement of logs by truck to Chattanooga, although it was not practicable to develop what the volume of this movement amounted to. Our division officer did report to us that logs were being handled by truck for varying distances, certainly as far as 50 or 60 miles. No accurate figures could be secured as to the rates which were being charged, because in practically all instances the logs appeared to be handled by the shippers in their own trucks, who made delivered prices at the plant. Every assurance was given us that if the scale of rates was made effective it would eliminate the trucking of logs. The scale was established wholly in the nature of an experiment, and specifically published to expire in September, 1933.

It is problematical how much of the log traffic this reduced scale has recaptured or will recapture. We are not in position to compare the movement by truck with that by rail. I have obtained a record of the number of cars of logs moving from stations within 100 miles on our line by [fol. 1541] rail into Chattanooga from June 1, 1932, through October 31, 1932, which is as follows: In June 4 cars; July 7 cars; August 5 cars; September 4 cars; and October 6

cars (Tes. p. 1724). Based on these figures the establishment of the truck competitive scale does not appear to have stimulated a rail movement. The total number of cars for the two months of September and October since the scale has been in effect is only ten cars, while the total movement for the three months of June, July and August was sixteen cars.

Business conditions of these mills at Chattanooga are very much the same as with many other industries, and they are barely operating. Normally the two concerns, the Williams & Vorhis Lumber Company and the Chattanooga Handle Company ship two or three carloads of finished handles or flooring daily, which would indicate that normally the movement of logs is substantially more than it is or has been for several months. Practically the same situation exists at several other points where truck competitive rates have recently been established by our line on logs for distances 100 miles and under.

At Laurel, Mississippi, we established a truck competitive scale which is substantially though not identically the same as the Chattanooga scale. This became effective July 5, 1932, on Mississippi intrastate traffic, and July 26, 1932, on interstate traffic; being published in New Orleans & Northeastern I. C. C. 3101.

Checking up on this movement we found for four months, March, April, May and June, a total of 50 cars from stations within 100 miles of Laurel; and for four months of July, August (Tes. p. 1725), September and October, a total of 50 cars. This also fails to demonstrate any increased [fol. 1542] movements since the truck-competitive scale became effective. Like the Chattanooga scale that is published as an experiment, to expire approximately twelve months after the date of publication, or July 26, 1933. The same truck competitive scale was established to Memphis, Tennessee, from Southern Railway stations within 100 miles of Memphis. This scale became effective September 15, 1932, for both interstate and intrastate application. I have the movement of logs by rail to Memphis from stations on our line within 100 miles of the latter point for the months of July, August, September, and October, which are: July 5 cars, August 1 car, September 1 car, October 18 cars. The Memphis movement shows an increase in October over the three previous months.

Again, we established a truck-competitive scale to Corinth, Mississippi, effective September 15, 1932, for both interstate and intrastate application, and to Mobile, Selma, and York, Alabama, effective October 5, 1932, for Alabama intrastate application, and November 15, 1932, for interstate application, but our investigation shows no movement into Corinth, Mobile, Selma, or York for the period June 1, 1932, through October 31, 1932. The establishment of the scale to Mobile, Selma, and York, has been rather recent, but notwithstanding the fact that it has been effective since October 5th on intrastate (Tes. p. 1726) traffic there has been no movement from October 5th to October 31st.

In each of the instances where we have established truck competitive rates on logs, investigation through our division traffic officers has indicated actual truck competition, and representations have been made to us that the establishment of the truck-competitive scales would regain all or a substantial portion of the traffic. It is a very difficult [fol. 1543] matter to develop accurate information as to the extent of truck movements or the rates charged by trucks. The best we can do in any case is to develop what information we can, and rely upon our judgment the rest of the way. For this reason we have invariably, in establishing truck-competitive rates, published them for an experimental period, with a limited effectiveness, so that the results can be watched during the time they are in effect, and so that we can shape our future course by such experiments. Our truck competitive scale into Laurel, Mississippi is a transit scale (Tes. p. 1727). As to our rates into Memphis, that is true as to the Memphis scale. It is true as to Corinth. The scale presently in effect to Chattanooga, Mobile, Selma, and York are not subject to transit restrictions. To the other points on our system, we are charging what is commonly referred to as our Southern Railway System normal interstate log scale, and of course some of the States rates, which were prescribed by State commissions which are if anything lower than the normal interstate scale. We are using the rates which I have described—that is the flat car rate in only the places which I have mentioned, and in the circumstances which I have mentioned. I am not convinced that we have regained any traffic from the trucks under these truck-competitive scales.

I think the (Tes. p. 1728) duration of the experiment is too short to yet form anything like an accurate idea as to whether the truck competitive scales are or will be effective in recapturing the log traffic. I spoke of the Southern Railway Company's interstate scale which applies generally on logs over the system, with the exceptions that I have named here. That is what is commonly known as [fol. 1544] the Pierpont scale. It was prescribed and fixed by the Interstate Commerce Commission in the Pierpont case. At Charleston in reference to the handling of logs, poles, etc., for creosoting, we have no situation with respect to logs. There is one with respect to timbers or lumber after the logs have gone through a manufacturing process.

Exam. Hoy: Just what are you getting into now Mr. Alston?

Mr. Alston: There was some evidence here, given earlier by some of the witnesses of our opponents with reference to the condition at Charleston which dealt with lower rates.

Exam. Hoy: I don't remember any such testimony (Tes. p. 1729).

Mr. Green: I put that in.

Mr. Hillyer: Mr. Examiner, that evidence showed that there were reduced rates on poles, piling and lumber into Charleston in the tariff to which Mr. Thomas just referred. That was for the purpose of making the comparison between the new log rates and the poles, piling and lumber rates established to Charleston.

A. Mr. Alston, I am not very familiar with that particular arrangement which I think you have in mind. I know very well that it does not apply in any way on logs.

Q. Our information is that the rate referred to was a creosoting rate on certain sorts of timbers or lumber. Are you familiar with that?

A. Only in a general way; that we have this creosoting arrangement, but I don't see the relevancy of that arrangement and what we are talking about. I think we have some low charge into Charleston, more in the nature of backhaul charge. I would prefer not to try to—— (Tes. p. 1730). I had rather wait until I see this tariff; I don't know that I am sure exactly what you are talking about.

[fol. 1545]. Cross-examination:

A. At Chattanooga, Mobile and Selma these rates were not now subject to transit conditions. There is a fourth point in the same class, Chattanooga, Selma, Mobile, and York, Alabama (Tes. p. 1731). In some cases at some of these points which I have mentioned we do not collect the normal log rate in, and subsequently we make a refund to the basis of the lower rate. I don't understand that the tariffs provide for that. We protect the lower rate in the initial instance, in the first instance in every case. The value of this arrangement is in the fact that the Southern Railway assures to itself the revenue on the outbound movement of the product made from the logs. We would get business that being competitive might go to another carrier to an extent. These rates that are (Tes. p. 1732) published as local rates, with no tying up of the tonnage were published primarily to meet truck competition. We surrounded the Chattanooga scale with transit, and were immediately told by the consignees who had requested it that it would not do them any good if it were surrounded by transit, in that they would not use it, unless we took the transit off. As to whether those rates that are published as local rates without any tying up with outbound tonnage are published solely for the purpose and in the hope that we will get log traffic at those rates; while we have removed the transit feature of the scale at Chattanooga, and have not published it at some of these other points we still feel that the shippers are going to treat us fair enough to give us the outbound product even without the transit restriction; and if we hadn't thought so we would never have taken the transit feature off of them. They will give it to us when they reasonably can. They [fol. 1546] would not necessarily do that though if the logs came in by truck (Tes. p. 1733). Under transit they would be compelled to.

Q. I am not talking about transit now—I am talking about where you haven't got any transit—the shipper would not necessarily give it to you whether it cam- in over the railroad, or over the truck, so long as you haven't any raw material rates tying up the outbound tonnage?

A. Well, don't you think that the moral obligation of the shipper is worth something? The good will of the shipper is worth a good deal to us, it ought to be. We publish

these rates as flat rates to these four points, and we want to get all of the log traffic on them we can. As to the result of our study on the inbound movement of logs over the Southern Railway to Chattanooga, we didn't find very much (Tes. p. 1734) movement there. We did not make a corresponding study over the Nashville, Chattanooga & St. Louis during the same period. The testimony which I gave as to the Southern would not necessarily conflict with that of Mr. True, who testified as to the greatly increased movement over the Nashville, Chattanooga & St. Louis.

By Mr. Adair:

Q. Mr. Thomas, as a matter of fact, in dealing with shippers you have generally found you could rely upon their good faith in giving you the outbound if you gave them what they considered to be reasonable inbound, haven't you?

A. Well, found them all pretty human sort of fellows as a general rule; yes.

[fol. 1547] Redirect examination:

As to why we did not apply over the other parts of our system the rate which I refer to at (Tes. p. 1735) these four or five points, we are very cautious in the matter of reducing our normal log rates, and proceed very slowly in establishing truck-competitive rates, unless we are rather thoroughly convinced of the necessity, and the possibility of regaining lost traffic. In other words, we require rather complete showing of necessity before we reduce these log rates.

Q. State whether or not the rates which you call the normal log rates, and which you have heretofore referred to over your road are in your opinion just and reasonable?

Mr. Adair: We object to that, Your Honor.

Exam. Hoy: Objection sustained.

R. I. Miles, called as a witness, being duly sworn, testified as follows (Tes. p. 1736):

Direct examination:

R. I. Miles; my address Chicago, Illinois; I am Commerce Agent of the Illinois Central System. I have been

with the Illinois Central system for 13 years; all of which time has been spent in the freight traffic department, and the past eight years in the handling of commerce matters. The Illinois Central Railroad has put into effect changes in rates on logs in the recent months, and on the statement submitted as my exhibit No. 155 I have shown the local and reshipping rates; also truck competitive rates that were established on or about April 12th on logs at points on the Illinois Central Railroad, and the Yazoo & Mississippi Valley Railroad in Tennessee, Mississippi and Louisiana east of the Mississippi River. In Southern territory [fol. 1548] south of the Ohio River the Illinois Central runs from Cairo, Illinois, south through Memphis, Jackson, Tennessee, Jackson, Mississippi, to New Orleans. They have a line running from Jackson, Mississippi, to Gulfport, Mississippi, and the Yazoo & Mississippi Valley pretty well (Tes. p. 1737) honeycombs the state of Mississippi. The Yazoo & Mississippi Valley is a subsidiary of the Illinois Central. West of the Mississippi they have a line running west of the Mississippi River from Vicksburg, Mississippi to Shreveport, Louisiana. That is the only mileage west of the Mississippi River in the South.

Exhibit 155 item A shows of the Illinois Central Railroad our gross log rates, interstate Column B, is the intrastate Mississippi rates. I show the Mississippi intrastate rates because that is the only state in which the intrastate is different to the interstate scales, under Yazoo & Mississippi Valley column A, are the interstate rates, column B the intrastate Mississippi rates. The next column are shown our net reshipping rates applicable (Tes. p. 1738) over the entire Southern lines, and in the last column the truck-competitive reshipping rates stated in amounts of per car applicable from points on the Illinois Central and Yazoo & Mississippi Valley, and Gulf & Ship Island, to manufacturing points, and are restricted to reshipping rates. The local rates which we have described which appear on this exhibit are also in existence; they were continued. They continue throughout our system, at least as described by me the rates which do not move under the flat car rate. The flat car rate, the rate appearing on the last column of 155—the truck competitive rates as shown in the last column as designated were put in to meet truck competition. They were also put in to meet competition

of rates that had been put in by the lines operating in the [fol. 1549] Southwest. In other words, the lines operating west of the Mississippi River into Memphis, Tennessee, had established these rates into Memphis before they were put into effect on our lines east of the Mississippi River; and the mills located at Memphis were drawing their logs from roads west of the Mississippi River in Arkansas, and the rates were put in both to meet the truck competition on our (Tes. p. 1739) own line, and to meet what had been done by the roads in the Southwest. As to the distance logs are being moved by truck-competitive rates, from the investigation that I have made they are moving for distances of 11 to 98 miles. The large preponderance of the movement being between 35 and 50 miles. As to what effect these rates have wrought on truck competition, it is mighty hard to tell just what effect that it has made. Since the rates were established the movement has been lighter than it was prior to the time they were established. The movement by rail has been lighter since they were put in than it was prior to that time, that is measured in cars. The rates which have been put in apply per car regardless of the load. I have a statement showing the movement of logs on the (Tes. p. 1740) Illinois Central for the years 1928, 1929, 1930, 1931, and for six months of 1932. The statement offered as my exhibit 156 is the statement showing movement of logs on the Illinois Central system for the years 1928, 1929, 1930, 1931 and six months of 1932. I would like to call attention while the exhibit shows it, I have segregated the months of January, February, and March—those were the three months prior to the time the truck-competitive rates were established, and shows we handled 64,806 tons; and for the three months subsequent to the establishment of the truck-competitive rates we handled 46,744 tons. As to what normally are the months of [fol. 1550] highest movement of logs, I could not say exactly, because weather conditions enter into the movement. April, May, and June are likely to be as good months as any. These new rates do not apply to all manufacturing points; all points on the lines where the logs are manufactured; only at points where we found that there was actual truck competition (Tes. p. 1741). And between all non-manufacturing points; and to manufacturing points not

named in the schedule the old rates which I have described continue to apply.

Q. Have you been able to notice any difference in the relative receipt of logs for the period which you have described for the year 1932 at the manufacturing points where these rates apply, and the manufacturing points where they do not apply?

A. Well, we really have made no comparison—such comparison; I don't know how it would be.

Exam. Hoy: The exhibits will be received and marked Nos. 155 and 156.

Cross-examination:

On our exhibit 155, as to whether the Illinois Central moves any considerable log tonnage under those column 1 rates, I would say that it would be small. The Illinois Central is one of the largest lumber-originating (Tes. p. 1742) roads of the South.

Q. You said that you established the rates into Memphis in part because of the competition with West Side roads. Now that was in competition to haul the same logs?

[fol. 1551] A. No, sir. That was market competition.

Q. Then, if you were influenced by that, why is it that you say that you didn't establish these per car rates in places except where the truck competition required it? That market competition would apply at a point where there was no truck competition, wouldn't it?

A. Well, we have never had any request to publish them at other points, and where there was no truck competition we haven't put them in. The moving cause has been the truck competition. This exhibit 156 shows that our movement of logs on our system fell off in the year 1931 from 1,579,000 tons to 361,000 tons (Tes. p. 1743). And for the six months in 1932 even that fell off. We get down now to the point where our log traffic is pathetic. That is not due only because of truck competition or perhaps as much because of truck competition as because of the general depressed situation in the lumber industry. During the period that we have had these per car any quantity rates in effect there has been no real opportunity to determine just what the result will be. I have no data showing the difference in the loadings, the weight loadings, since we put in these new

reduced rates;; that is compared with what the loadings were prior (Tes. p. 1744). I haven't that. As to whether or not they are heavier, I could not say. I know about the approximate loadings that we are getting now, but I don't know what it was prior to the time the rates were put in. That tendency of the shippers with a flat per car rate is to load them heavier than on a minimum with excess in proportion. We are taking as much traffic as we can get on these new rates. We hope to get more. They were [fol. 1552] put in with the hope that we would take it away from the trucks, but it has been disappointing so far. It was with the idea of getting the traffic, and holding it to our own lines (Tes. p. 1745). I have not made any further investigation as to the extent of the movement since June the 30th. I don't know whether it is heavier or lighter since that time.

Redirect examination:

They are all transit rates.

By Mr. Gwathmey:

Q. Mr. Miles, in answer to Mr. Adair that you would like to get this business under these rates, did you or not have in mind the fact that they are transit rates, and that you expect to secure the outbound movement of the lumber?

A. That was predicated on the assumption that we would get the outbound movement.

By Mr. Norman:

Q. Well Mr. Miles, these rates that have been (Tes. p. 1746) referred to loosely here as transit rates—they are not transit rates in the true sense are they? They are rates that——

A. Well, it is different to other characteristics of transit—that is the general character of transit, yes. They are transit in the sense that they tie up the outbound movement, and in that sense only. They are operated the same as explained by the Frisco; that is, either by claim, or they furnish bond. I should say the predominating is the bond, and charging the low rate inbound; that is correct. The transit features of our rates are all described in the tariffs.

[fol. 1553] J. W. PERRIN, called as a witness, being duly sworn, testified as follows:

Direct examination:

My name is J. W. Perrin; I live at Wilmington, North Carolina, and I am Freight Traffic Manager of the Atlantic Coast Line Railroad Company. What I am going to present, so that the force of the exhibits that I may make in explanation of them may be more forcibly presented at the time they are presented. We have made no change in our log rates since the closing of this case before the Commission. We have the same situation in Florida and elsewhere as existed when the case was formerly before the Commission. We haven't found any substantial change in conditions in Florida, even as to truck competition. It is true that the volume of our log traffic in Florida has been reduced, running over a period since 1929. It is not the case, however, that the volume of the log traffic has fallen off in greater degree than the volume of traffic in the products of logs. Now I want to present first in order to bring up to date the picture of the log situation in Florida an exhibit showing by months, beginning as far back as February, 1931, and continuing (Tes. p. 1748) then until August, 1932, the number of cars of long length logs handled by the Atlantic Coast Line between points on its lines in Florida, naming the points of origin, the destinations, and the distances in each case. I assume that that will be Exhibit No. 157.

Mr. Adair: Your Honor, we object to the introduction [fol. 1554] of this exhibit; nothing within the scope of the reopened order.

Mr. Alston: Mr. Examiner, the scope of the order has the three prongs, which you have heretofore so clearly stated: one of them is for the sole purpose of receiving evidence respecting the change in the rates on logs since the close of the last hearing—that has been gone into at great length. The second is the circumstances connected with and the conditions which occasioned such changes—that has been gone into in great length. What we are now offering is a part of that. The third prong is whether such circumstances or conditions or any of them are present with respect to Florida intrastate log rates of the Atlantic Coast Line. We are now on that (Tes. p. 1749).

Exam. Hoy: Well, it seems to the examiner that this would have some bearing on the third of those, that is, whether such circumstances and conditions, or any of them, are present with respect to the change in intrastate log rates of the defendant, in that there is some tendency to show that the rail movement is still in existence, and in that way is connected up, possibly remotely, with the truck competition in Florida that has been testified to as one of the impelling reasons for making these other reductions; and while I cannot tell now just how much weight that might be attached to it in that connection, I think it is within the issues of the reopened proceeding.

Mr. Alston: Your Honor, in the light of the scope of the testimony, or the substance of the testimony given, it may very well be valuable because of the showing of the mileages between the points of origin and estimation.

Exam. Hoy: Yes, that is another point on which it might be valuable. I will receive it as Exhibit No. 157.

[fol. 1555] Mr. Adair: Your Honor will note our exception.

Exam. Hoy: Yes sir.

A. (continued) It will be recalled that at previous hearings in this case I submitted an exhibit, which I think was No. 61 (Tes. p. 1750), showing the general distribution of the log movement throughout the State of Florida on the Atlantic Coast Line. That, however, only covered the period up to the Spring of 1931. This exhibit No. 157 takes up the showing of the distribution of logs in our service in Florida for the period since the Spring of 1931 up to and including the last month for which statistics are available, namely, August, 1932. I have shown the points of origin, and the points of destination as a means of indicating the general character of the distribution of the logs on our line in Florida; and this is also accomplished by showing the distances between each point from and to which logs were handled. It will be noted that there were logs moved in some of these months for extremely short distances, the lowest distance being 5 miles, and for what might be termed extreme long distances for log traffic, extending up as high as 235 miles. It is readily and easily obtained from this statement the extent to which the movement of logs between the Atlantic Coast Line points in Florida is for short distances and for long distances, and

that is one of the purposes of this exhibit, having in mind that the matter of the extent to which trucks may have taken the log traffic during the period since this case was closed before in larger proportion than during the period prior to the closing of the case, I have thought it entirely proper to present to the Commission the absolute details of the movement. The exhibit of (Tes. p. 1751) course speaks for itself, and is perhaps not necessary for me to call [fol. 1556] attention to any particular features of this exhibit, other than to repeat that it shows that logs are moving in greater or less quantities between points of practically all distances within the State of Florida—moving by rail. Now I have nothing further to say on that, but want to present another exhibit as a summary of the information contained in Exhibit 157.

Exam. Hoy: It will be received as Exhibit 158.

A. (continued) In this Exhibit No. 158 I have brought forward the monthly movement of cars of logs for the period for all months in the years 1930, and 1931, and for the period in 1932 through the month of August, the latter being the last months for which statistics were available. It shows that the average number of cars for the year 1930 was 282 per month. In 1931, 198, and in 1932, was 188. Now, my principal purpose in preparing this statement is to show for comparable periods before and since the closing of the case before the Commission what change has taken place in the log movement in Florida. The record of the case closed in July, 1931 (Tes. p. 1752).

The 21st day of July, 1931, therefore from August, 1931, to August, 1932, a period of 13 months, I compare the number of cars of logs handled in Florida for 13 months prior to August, 1931. This I did because of the citation that we are to show any changes in conditions existing in the State of Florida, and I think this is perhaps the best way to indicate what those changes have been with respect to the log traffic. It will be noted that for the 13-month period before the closing of the case the movement of logs consisted of 3,245 cars, while for the 13-month period following the closing of the case the movement consisted of 2,453 cars—a reduction of 792 cars—equivalent to 24.4 per cent. I may state that considering the general depression that [fol. 1557] exists throughout the whole country, and in

Florida as well, the small percentage of the falling off in the Florida log traffic was a matter of considerable surprise. In order to test whether the reduction in the log traffic of 24.4 per cent was due to trucks or to other considerations, I have compiled another exhibit, showing the state of the lumber industry throughout the country, which I would like to offer as Exhibit No. 159.

Mr. Adair: Your Honor understood that we are still objecting to all this line of testimony on this page?

Exam. Hoy: Well, I hadn't so understood.

Mr. Adair: I took it the last exhibit was merely a (Tes. p. 1753) continuation of the preceding exhibit.

Exam. Hoy: It was a summary of the preceding exhibit, yes. This is a different exhibit.

Mr. Adair: We make the same objection to this, your Honor, on the same grounds, it is not within the scope of the reopening order.

Exam. Hoy: The objection will be overruled. The exhibit will be admitted as Exhibit 159.

A. (Continued:) It is fair to assume that a reduction in the log traffic as a whole would result in a reduction in the production of lumber as a whole. It is not sufficient to show that you have had a certain falling off in logs, and to conclude from that fact that that is due to some influence, without an investigation of what has taken place in the general lumber industry. My exhibit 159 was prepared in a manner perhaps broad enough to show what has been the source of the lumber industry in the United States during the last two years, beginning with the fourth quarter in 1929. For that purpose I have shown during the two periods, the first being six quarter-years (Tes. p. 1754), beginning with the fourth quarter of 1929, and ending with the first quarter of 1931; and the second period [fol. 1558] beginning with the second quarter of 1931, and ending with the third quarter of 1932; both periods covering the same number of quarters and months. I have shown the number of carloads of lumber originated first by the Atlantic Coast Line Railroad Company; second, by all Class 1 Railroads in the Southern region; and third, by all Class 1 Railroads in the United States; and in the last column the total number of carloads of lumber transported by the Atlantic Coast Line Railroad—the latter

column includes the cars in the first column, as originated by the Atlantic Coast Line, and also cars received by the Atlantic Coast Line from its connections. The statement shows the quarterly average for the two periods, and the amount of decrease for the second period. It will be noted that the lumber originated by the Atlantic Coast Line in the second period was 44.4 per cent less than in the first period. The percentage of reduction simply for all class I railroads in the Southern region was 36.2 per cent; by all class I railroads in the United States 37.8 per cent; and in the number of carloads of lumber transported by the Atlantic Coast Line 42.3 per cent. Now the foot-note indicates that the figures shown in the third quarter of the second period are filled out for the month of September by adding one-half of the number of cars for July and August; the statistics for September not being available (Tes. p. 1755). This in view of the general decline in the number of cars slightly inflates the number of cars shown as moving in the third quarter of the second period. The authority for these figures is the statistics of the Bureau of Statistics of the Interstate Commerce Commission. Now I have compiled another exhibit, showing somewhat similarly the number of carloads of lumber handled by the [fol. 1559] Atlantic Coast Line out of the State of Florida for two periods, by months, beginning with November, 1929, and ending for the first period in March, 1931; and beginning in April, 1931, and ending in August, 1932, for the second period. It will be noted that the lumber traffic from Florida fell off 46.6 per cent during those periods. However, narrowing the comparison down to the change that has taken place since the case before the Commission was closed, and using the 13 months, it will be noted that the reduction during the period August, 1931 to August, 1932, inclusive, under the movement during July, 1930 to July 1931, inclusive, amounted to 39.4 per cent.

Exam. Hoy: It will be received as Exhibit No. 160.

Mr. Adair: The same exception (Tes. p. 1756).

A. (Continued:) I want next to offer a report of the National Survey of Lumber Supply and Demand, made by the Timber Conservation Board of the Commerce Department of the United States on October 29, 1932. I will not go into any discussion of the contents, except to call at-

tention to a statement on the cover that "The Committee Finds that lumber consumption has declined from a total of 35½ billion feet in 1929 to an annual rate of less than 12 billion feet during the first 9 months of 1932. It therefore recommends a further reduction in the stocks to the extent of 3 and 4 billion feet." I have only 3 copies of that.

Mr. Adair: Your Honor, we will object to this exhibit upon the same grounds as those interposed to the last three exhibits.

Mr. Norman: *If it please your Honor, I want to object* on the further ground. Now I think I made it fairly plain [fol. 1560] that I interposed very few objections to anything that anybody wants to offer, but it does seem to me that this is carrying the thing to (Tes. p. 1757) reducio ad absurdum. They have come in here with a voluminous report of the Timber Conservation Board, that I happen to know all about, and there are just a lot of lumbermen that are operating under the auspices of the Department of Commerce, and are undertaking to persuade the lumber industry generally to reduce production—that is the size of it. And they come in here with a report that has no official status at all, and I would not care anything about it, but this record just gets so awfully big, and if we ever want to go into Court, as conceivably that it may, it having been there twice and may go a third time, and having to pay for a record with a lot of stuff in it that is really not germane to the issues.

Mr. Gwathmey: You say that it has no official status? That publication has been officially released and made public document under the date of November 4, 1932. So far as its relevancy is concerned, it is in substantiation of the showing which is made in the exhibit previously offered by the witness, No. 159.

Exam. Hoy: It will be received as Exhibit 161.

Mr. Adair: Your Honor note our exceptions to this (Tes. p. 1758).

A. Supplementing what Mr. Flack put in the record yesterday about the extent to which logs are being hauled by trucks in Florida I have also made a study covering two periods. The first period is from February 8, 1929, to March 25, 1931; and the second period is from March 26,

1931, to October 30, 1932. Now, bearing in mind those two periods I report the following as the advice furnished us [fol. 1561] by the representatives of the lumber companies which I will name. February 8, 1929, to March 25, 1931, and from March 26, 1931, to October 30, 1932. Those are just two periods that I will mention as I go along. The J. W. Jones Lumber Company—

Mr. Norman: Do I understand the witness to say that these are just reports that lumber companies have made to him personally (Tes. p. 1759)?

A. No, I didn't make them. Personally I didn't make them; personally I didn't get them. They were made by interviews with our commercial agents throughout the State of Florida who called upon the lumber companies and got the specific information as to the logs that they are trucking. This investigation that I have made is along the lines of the investigation that was made by Mr. Flack and I want to supplement what he has put in by giving the names of some additional lumber companies. It may have some of the same names, but information as to those who were named by Mr. Flack is somewhat more specific than he gave to the record, showing the logs that have moved into the mill by trucks (Tes. p. 1760) and the distances for which they have moved. That is the point in it.

Mr. Norman: But the difference is, Mr. Examiner, that Mr. Flack made the investigation himself and is testifying from what he learned; what he found out; and Mr. Perrin is taking—we are getting it third-hand from Mr. Perrin. Mr. Perrin gets it from his agent, and the agent gets it from the lumber company.

Mr. Gwathmey: Now Mr. Examiner, all of this was going into the record yesterday. And then we all recognized to a certain extent as hearsay testimony, that of Mr. Flack, [fol. 1562] and that of Mr. True. We didn't object to it simply as going to the extent of showing the best available information for the purposes of a proceeding of this kind as to what the actual movement is. Mr. Perrin has had his commercial agents, and our men locally in the territory, and whose duties it is to keep themselves accurately informed as to the movement of logs or other traffic to make a study at each one of these points. We would like to submit it for what it is worth, with the understanding that

to a certain extent it is hearsay testimony, just as the testimony given by the other witnesses was.

Mr. Adair: Your Honor, if he will bring up his commercial agents whosoever his agents are and put them on here and let them swear first hand, so that we can have the sanctity of (Tes. p. 1761) an oath; some one man that now compiled this stuff, and got it together, and submit to cross-examination on that, it would be — very interesting and beneficial thing. It seems to me strange thing that the very people who got this thing together are not brought here to talk about it, but another officer of the company is brought here to testify as to what they told him.

Mr. Gwathmey: Mr. Examiner, it is not any compilation; it is simply a statement as to what the movement was, and for what distance.

Exam. Hoy: It seems to me that I will have to sustain the objection, that it is hearsay evidence. It is true that the evidence yesterday may have been somewhat similar, but no objection was made to it. Here we have got the results of an investigation made by somebody else. In other words, what Mr. Perrin would testify to would be what somebody told him, what somebody else has told him—his agent has told him—commercial agents.

[fol. 1563] Mr. Gwathmey: * * * men who reported directly to him have given him. Now, that is a part of this man's regular duties. Mr. Perrin is a superior officer, and it is certainly a recognized practice before the Commission.

By Exam. Hoy:

Q. Is it in the nature of a formal report from one of your subordinates Mr. Perrin?

A. It is in a written report from each of them; there are 7 (Tes. p. 1762) or 8 of them, written reports of each of my subordinates, in response to information that I requested them to obtain.

Mr. Norman: And the information is what somebody told him—told the agent—not what the agent found out for himself.

Q. Is this report a result of facts ascertained by the agent himself, or is it a recital of what people have told him?

A. It is of course—he had to get the information from the lumber company itself. For instance the first lumber company I would mention would give him the number of thousand feet he had trucked, and how far he had trucked it; and the agent in reporting that and other lumber companies to me in writing, furnishes me with the information that the lumber companies had given to him.

Exam. Hoy: It seems to me from your explanation there that what you have got are written reports from your subordinates of what various lumber companies told each of them?

A. Yes, sir.

Exam. Hoy: Well I think I will have to adhere to my previous ruling sustaining the objection (Tes. p. 1763).

A. Now, I want to say first, that the situation about trucking in Florida is nothing peculiar in itself, so far as our experience goes, and so far as the territory of the Atlantic Coast Line is concerned from one end of our line [fol. 1564] to the other. There is the trucking of logs; but the extent to which the trucks are moving logs beyond a distance of 25 miles is entirely negligible. In fact we have had many applications, and I have many of them now, seeking reductions in the log rates beyond the trucking rates—not that there is any threat of the trucks operating beyond a reasonable limit, but stating in practically all cases that the supply of the timber within trucking areas is fast being eliminated. As to what I base the statement that the amount of trucking over 25 miles is negligible, I know that of my own knowledge (Tes. p. 7164), that of course is a part of my job. I know of many substantial losses of logs to the railroads that takes place in the territory that the Coast Line serves, and I am supposed to know to the full conditions under which those losses are sustained; but I say without hesitation that the trucking of logs on our system for distances in excess of 25 miles is negligible entirely, and not in any way sufficient to consider truck competition as a means of saving logs from the trucks. Now I do realize this, that throughout the length of our line that the logs are being moved by trucks for these short distances, that we could not recapture regardless of any rates we make, because in practically every case those logs must be brought from the woods before they are carried to the railroad station, and in most cases

the distances from the woods to the loading station would be practically as far as direct to the mill, or represent such a large percentage of the distance to the mill as not to justify the transfer from trucks to cars. I am not going [fol. 1565] to try to tell (Tes. p. 1765) the Commission what it costs us to handle logs by trucks, but I am going to show by my next exhibit the revenues that a truck can earn if it should operate on as low a rate as the Cummer scale, and as low a rate as the scale prescribed in this case by the Commission. I have compiled an exhibit which I would like to present as No. 162. In the State of Florida the legal gross weight permitted is 19,000 pounds—the truck and semi-trailer.

Mr. Adair: The Court and Commission knows—the Examiner knows the law of Florida, and he is charged with the knowledge of the laws of all other States in the Union—the Commission knows that is incorrect, irrespective of the testimony of the witness. If he does not he can ask the regulatory officer here what it is. Mr. Turnbull will tell you. I object to this exhibit your Honor, any testimony in connection with it, in that it is outside of the scope of the issues.

By Exam. Hoy:

Q. Just what is your objection?

A. That is not my idea of the law, and not my interpretation of the law; that is the interpretation of our general solicitor (Tes. p. 1766) in Florida.

Mr. Alston: Mr. Examiner, the purpose of the evidence is to show the inability of the trucks to make a headway into this business, which ought to be checkmated by the intense sacrifices which it is suggested it should make.

Exam. Hoy: In other words, your object here is to show that under certain rates the trucks could not profitably carry the logs?

Mr. Alston: Cannot carry these logs except for limited distances, if at all.

Exam. Hoy: I don't think that is within the scope of this proceeding. We don't care whether they are making [fol. 1566] money on them or not. The question here is as to truck competition, whether there is or is not truck competition; the same truck competition or other condi-

tions as surround these other rates that have been established.

Mr. Gwathmey: How can the trucks operate and compete if they cannot make money?

Exam. Hoy: I don't know; they certainly can.

Mr. Gwathmey: We offer this as bearing on the extent of, or the ability of the trucks to compete in Florida within the (Tes. p. 1767) meaning of the third paragraph of the Commission's order of reopening. It depends upon the conditions in Florida, and the similarity if any between those conditions and the conditions under which other rates have been reduced.

Mr. Norman: The railroads themselves are operating without making any money these days; so is everybody else in the United States.

Mr. Gwathmey: I know that, but we are offering this as bearing upon this particular feature of the case.

Exam. Hoy: I will admit it as exhibit 162, but I don't see what particular weight it has got. It has got something to do with the truck competition we will admit, but I cannot see where it follows, that because a truck cannot make money that it won't participate in the business.

[fol. 1567] Mr. Adair: Note our exception.

Mr. Norman: Certainly have to have some expert evidence to show that they cannot make money.

Mr. Gwathmey: I understand that exhibit has been admitted?

Exam. Hoy: It has been admitted as 162.

(No notation as to filing, because later ruled out.)

Mr. Hillyer: Mr. Examiner, may we understand that your ruling is only subject to the condition that the witness [fol. 1568] shall afterwards qualify to prove the assumption that he started out on. As I understand the record there is no proof here as to the cost of truck operation (Tes. p. 1768).

Exam. Hoy: That is nothing but a mathematical computation as I understand it, based on certain rates, showing what the earnings would be per load of 19,000 pounds.

Mr. Hillyer: I understand that there will be no attempt to show the basis of the contention made by counsel or that there will be any evidence as to the cost of operation of the truck.

Mr. Gwathmey: Mr. Perrin stated that he could not state the cost of operation.

Exam. Hoy: Mr. Hillyer, this just shows the gross receipts per load, or per truck, for certain distances, based on certain charges.

Mr. Hillyer: May I ask also an exception be noted on behalf of the Buffum Company?

Exam. Hoy: Wait a minute Mr. Perrin. Are you going to connect this up in any way by cost of truck operation?

Mr. Alston: Mr. Perrin has stated already that he could not do that. He is going to present some things of the Department of Commerce on cost of truck operation.

[fol. 1569] Exam. Hoy: Well, continue Mr. Perrin.

A. (continued:) The purpose of exhibit 162 is to indicate the reasons why trucks are not operating beyond 25 miles. Undoubtedly for the shorter distances the revenues of the trucks are sufficient to enable them to handle the traffic in competition with the railroads at practically any rate that the (Tes. p. 1769) railroad might make.

Mr. Adair: If your Honor please, we are sorry to interrupt. We must move to strike—The conclusion of the witness as to the sufficiency of the revenue to permit a truck to operate; he has not entirely qualified himself to express such an opinion, nor do I think he can qualify himself to do so.

Mr. Gwathmey: Well, he has presented the figures which would show for instance at 25 miles the revenue per truck mile, per loaded and empty miles, as 4.6 cents.

Examiner Hoy: I think the objection will be sustained. Now you can argue what those figures show. You can argue that they show that.

The Witness: Now, I present as an exhibit a report from [fol. 1570] the United States Department of Commerce, showing result of investigation of the costs of motor-truck operation. I call particular attention to the contents of pages 37—I have only one copy at hand, Mr. Examiner, you can get any number that is necessary and distribute them.

Mr. Norman: If your Honor please, we want to object to this in the first place; we think it would be objectionable if it showed the cost of operating the trucks, but of course

it does not show the cost of operating trucks, and cannot show the cost of operating trucks in Florida, for that depends upon too many varied factors, for instance cost of gasoline (Tes. p. 1770); and I don't see how that it is informative, even that it is competent; and I cannot see its competency or relevancy; and I would like to know on which theory counsel offer it as being competent or informative or anything else. If he can show us in there where it says what the cost of handling or operating trucks is in Florida or any other place.

Mr. Gwathmey: Mr. Examiner, I don't understand in the first place that this study is limited to Florida, although it includes Florida.

Exam. Hoy: Mr. Perrin is testifying now as to Florida, as I understand it.

Mr. Gwathmey: That is quite true. He is testifying as to Florida in connection with his rate testimony, but this is simply a publication gotten out by the Department of the Government which deals generally on the question of the cost of truck operation both in Florida and elsewhere. Now, for what it may be worth it seems to me that it is an official document, and is certainly admissible in evidence [fol. 1571] as the best evidence available on that subject.

Exam. Hoy: I would just like to know what the object is in introducing that. What is the purpose of introducing that? To show the cost of truck operation where?

Mr. Gwathmey: Anywhere, including Florida (Tes. p. 1771).

Exam. Hoy: Mr. Perrin's testimony so far as gone to what I say Mr. Alston terms the third prong of this reopening—that is it goes to show, or tends to show that there is not much truck operation down there; that that is the purpose of introducing this evidence; that there is not a serious problem of truck operation in Florida on logs. Now, I should think that evidence showing the cost of transporting logs by truck in Florida would be pertinent along with other evidence tha he has introduced, but where does that off of the exhibit show the cost of transporting anything by truck in Florida.

Mr. Gwathmey: This compilation does not undertake to submit a study of the cost of operation in Florida independently and separately from other truck operation in other States. It shows the truck lines operated in Florida,

and the location of lines, and things of that sort; and Florida is included with other States in the total truck mileage which is covered by the study.

[fol. 1572] Mr. Gwathmey: We will not insist upon it Mr. Examiner; we will withdraw the proposed exhibit, because it is all that we can offer it for, just general information bearing on that subject.

Exam. Hoy: Are you going to offer any further cost of truck operation?

Mr. Gwathmey: No (Tes. p. 1572).

Exam. Hoy: I think I will reconsider my ruling to 162, [fol. 1573] and sustain the objection to that. As I see it now it is nothing but a matter of mathematical computation; and I think irrelevant, or rather immaterial.

Mr. Alston: May we note an exception to that?

Exam. Hoy: Yes, sir.

Mr. Gwathmey: There is one additional point on which I would like to question Mr. Perry.

By Mr. Gwathmey:

Q. Mr. Perrin, in the course of a question that was asked by Mr. Norman during the forenoon there was some mention of the Louisville & Nashville Railroad as being a family line of the Atlantic Coast Line. Apparently the purpose was to create the impression that in not publishing truck competitive rates the Louisville & Nashville may have been in some way influenced by the Atlantic Coast Line Railroad. Is there now pending before the Commission a proceeding which involves the question as to the extent, if any, to which the Atlantic Coast Line Railroad Company controls in any way the traffic policies of the Louisville & Nashville Railroad?

A. There is. That proceeding is the so-called "Sand and Gravel Case" involving the question of applying single-line scales for joint hauls. That proceeding has reached the stage at which the examiner's proposed report has actually been issued (Tes. p. 1773). I was a witness in that case. Other officials of the Atlantic Coast Line and I testified fully in that case as to the extent to which the Atlantic Coast Line Railroad controls the traffic policies of the Louisville & Nashville. The testimony was to the effect that the Atlantic Coast Line had no control whatever over the policies of the Louisville & Nashville Railroad.

[fol. 1574] Cross-examination:

A. The Atlantic Coast Line also controls the Nashville, Chattanooga & St. Louis, only through the Louisville & Nashville. If there was any control of the Louisville & Nashville there would also be of the Nashville, Chattanooga & St. Louis, but by the same token as in the case of the Louisville & Nashville the Atlantic Coast Line does not control the Nashville, Chattanooga & St. Louis (Tes. p. 1774).

Q. But does the Nashville, Chattanooga & St. Louis—

Exam. Hoy: I don't think it is necessary to go into detail here Mr. Norman; it is not pertinent to the issue.

Mr. Norman: I think it is pertinent in this way Mr. Examiner: this record shows that the Nashville, Chattanooga & St. Louis is operating these car rates irrespective of the weight, and without any tying up of outboard tonnage generally over its system, and if that costs any burden, if it is losing any money, it is the Atlantic Coast Line money that they are losing.

Mr. Gwathmey: Mr. Examiner—pardon me Mr. Norman. I think that very statement illustrates the force of your Honor's remarks. The question as to what the relationship between these railroads is a question that is now before the Commission in a pending case.

Exam. Hoy: It is not before the Commission in this proceeding Mr. Norman.

Mr. Norman: I think Mr. Examiner, it is certainly pertinent and proper to show that the Atlantic Coast Line owns the controlling interest in a company which is doing the very thing that it is here saying casts a burden on interstate commerce.

Exam. Hoy: Well, it has already been shown in this case [fol. 1575] what the Nashville, Chattanooga & St. Louis has done, and shown what the Atlantic Coast Line has not done in the same respect; and it is generally known that the Atlantic Coast Line (Tes. p. 1775) controls the Louisville & Nashville, and the Louisville & Nashville controls the Nashville, Chattanooga & St. Louis. I think the Commission is fully aware of that fact. I don't know why it is necesssary to go into that in detail in this proceeding.

Mr. Norman: All right; that is perfectly all right.

Q. Now Mr. Perry, inasmuch as I have started I will just go ahead. I understand you to say that so far as you know

there is no substantial difference between truck competition in Florida and truck competition in other Southern states; is that correct?

A. On our railroad; yes sir, in Virginia, North and South Carolina, Georgia and Alabama. As to whether there is any substantial difference in truck competition in those states, and any other states such as Tennessee, Mississippi, Louisiana, and Arkansas, I am not familiar with those. I have no information on it.

Q. And you are not here undertaking to show that there is any difference in the truck competition in Florida from the truck competition in those other states? (Tes. p 1776).

A. I am not in position to say anything about the truck competition in the other states, and I make no such claim, certainly not, if I don't know it.

Q. Now, Mr. Perrin, you have shown here that your log traffic in Florida has fallen off very much less than your lumber traffic, comparing the periods from July 1, 1930 to July 30, 1931, with August 1931 to August 1932, it has fallen off [fol. 1576] very much less than has your lumber traffic, and you state that in view of the general depression in business generally, that it has been most surprising how little it has fallen off. Do you think that the fact that your rates are more nearly in line in Florida with the truck competitive rates, your rates on logs, are responsible for that most gratifying showing?

A. No sir. As a matter of fact if you will study those exhibits you will find that our heavier movement of logs in Florida since the trucks have been operating was under the higher scale of rates.

Q. But the truck competition, as has been testified to here, has been steadily getting more pronounced, and you have been steadily losing various kinds of business to the truck; and it appears here from your testimony that under the operation of the Cummer (Tes. p. 1777) scale in Florida you have lost a smaller percentage than has been lost to the lumber traffic generally, and of all traffic generally. Now, isn't that due to the fact that you have during that period been operating under a scale of log rates that compares favorably with truck charges?

A. In the first place I don't know that there has been any testimony that there is increased truckage in the last year over what there was in the previous year in Florida;

certainly the trucking has been going on in Florida for more than two years. There have been more roads every year; more trucks every year, but Florida was one of the earliest road builders, and they had their roads long before anybody else had them; and there have been trucks operating in Florida longer than any other Southern State. [fol. 1577] I think that this most surprising and gratifying showing as to the small percentage of loss in log traffic would have been made or could have been made under the scale of rates that was in effect in Florida from February 8, 1929 to April 10, 1931 (Tes. p. 1778). I do not think that the trucks would have taken any more logs away from us under the interstate commerce scale than under the Cummer scale, to any substantial extent.

Q. Then, according to your idea, the railroad charge for transportation has nothing to do with how much you lose to trucks? In other words, you can charge twice as much, and you won't lose any more traffic than if you charged half as much?

A. I say the results speak for themselves. When we had higher rates in we had more competition with trucks than we do now, as indication of the fact that the log movement now is at a low ebb, because of the small consumption of logs. As to whether our percentage of log traffic under the Cummer scale has been less than our percentage of loss of lumber traffic, of lumber traffic, oh, yes.

Q. And you think that the fact that your charge was in line with these truck competitive rates had nothing to do with that, and that you would have lost just as small a percentage if you (Tes. p. 1779) hadn't charged twice as much for hauling logs as you would when you had charged half as much for the logs?

A. If the Commission scale was twice as high, I will say that because the record speaks for itself to that effect. It is the policy of the Atlantic Coast Line Railroad to meet truck competition by reduction in rates, to a very guarded extent. We have found this, however, that for these short haul movements, not only of logs, but of other commodi- [fol. 1578] ties, that you don't accomplish anything by reducing the body of your rates, because they merely serve as a measure for new rates by the truck.

Q. If you have felt that you might do something to hold some of your traffic by reducing your rates on other com-

modities to meet truck competition, why is it you think that it won't have any effect on the log traffic whether you charge twice as much or not?

A. I will illustrate that in the case of cotton. Cotton and leaf tobacco are perhaps the most subject to truck competition among the major lines of traffic that we handle. We reduced the rates on cotton very greatly. We don't get the cotton even under the greatly reduced rates because of the conditions under which cotton is handled. Most of the cotton in our territory goes to the ports. The ports are distributors of merchandise to the interior: the trucks can handle cotton very cheaply to the ports because they get a return load of merchandise and (Tes. p. 1780) in that way there is a condition attached to cotton that would not attach to logs or other commodities that move between what might be called country or interior stations.

Q. Well, the fact is that on logs you have now in effect what are substantially truck-competitive rates, haven't you?

A. The Cummer scale, not made as such, but they are certainly low enough to meet any condition that the truck might create. I don't know whether it would get the traffic even at that, because some of these trucks work pretty cheap, but I do know this, that rates under the Cummer scale had no relationship at all to truck competition.

Q. Well now Mr. Perrin, it is in evidence here that a [fol. 1579] large number of railroads, some of them the largest railroads in the South, and in fact including all of the largest railroads in the South, and Southwest, except the Louisville & Nashville, and Atlantic Coast Line have seen fit to establish and put into effect certain carload rates applicable irrespective of weight, and I would like to have you tell me what are the differences, if any, other than the fact that you already have a truck competitive rate in the Cummer scale in Florida as between the situation in Florida and the situation confronting the traffic executives of these numerous other railroads operating throughout this territory? (Tes. p. 1781).

A. Well, I could not speak for what the traffic executives of the other lines did, but I know our own situation.

Q. Well, I will ask you to tell me if you can, any substantial difference in the conditions in Florida and the conditions existing in these other states other than the fact

that you already had in Florida a truck competitive rate on logs?

A. I have already said that I have no information at all about the truck competitive conditions in these other states.

Q. Well, do you know any other conditions—truck or anything else that distinguishes the situation in Florida than from the situation generally throughout this whole great territory now?

A. I don't think that there is any difference in conditions in Florida, except as a customary thing the rates in Florida ought to be slightly higher than the rates in the remaining parts of the South. That is all the difference that I know of now that would apply equally in Florida as applies throughout this whole territory where all these other railroads have reduced these rates but that does not mean that [fol. 1580] the rates of the other lines in the other parts of the South should be made effective in Florida (Tes. p. 1782).

By Mr. Adair:

Q. Mr. Perrin, do you consider that the fact that some of these other rates are transit rates would make any difference in the level of the rates of the other lines?

A. I don't know.

Q. Is it not a fact that the Cummer scale in practical operation and effect operates as a transit scale? I mean this: that you and the Southern and the Seaboard, in Southeastern territory get say nearly all of the outbound over your road—that your regular rates are made upon a transit basis or local basis?

Mr. Gwathmey: Now, if the Examiner please, we have no disposition whatever to prevent an answer to that question so far as the information itself goes, but I call your Honor's attention to the fact that Mr. Adair has now opened up the very question about which the Examiner ruled at the outset of this hearing, and up to the time everybody has refrained from going into it, and I think perhaps it is rather a late date to start now.

Exam. Hoy: I don't think we will go into that question Mr. Adair.

Mr. Adair: Your Honor, they have given many reasons why (Tes. p. 1783) some of the other railroads have, their

witnesses, as to why that rate was put in there to control the traffic. I now propose to prove by their own witness that in practical operation and effect that the Cummer scale is tantamount to a transit scale for Florida.

[fol. 1581] Mr. Gwathmey: And he is undertaking to do that Mr. Examiner, by cross-examining the witness who has not testified to the transit rates of other railroads, and on the contrary has expressly disclaimed familiarity or knowledge of the situation.

Mr. Adair: This witness has testified in the proceeding involving this thing before to that very effect, which I propose to show, if the Examiner will permit me to do so.

Exam. Hoy: You may cross-examine the witness upon his direct testimony here today Mr. Adair; and I cannot see where that question is pertinent to any direct testimony that he has offered.

Mr. Adair: Your Honor, do I understand, do I construe you to rule that I have no right to inquire of this witness as to whether there is any difference between the operation of the Cummer scale as a transit scale in Florida?

Exam. Hoy: Yes, and the reason for that is that I think it is beyond the scope of the direct testimony of the witness. Well, that is a sufficient reason right now.

Q. Mr. Perrin, you said that the negligible amount of traffic, or amount of logs moving in trucks over 25 miles was negligible (Tes. p. 1784). How do you know that?

A. From our study of the situation. I know in a general way. I could not say in respect to every point, but I do know that the trucking of the logs is limited in its area. I have sat here during these proceedings; I heard this testimony from various of these witnesses, that logs were trucked—some of them testifying themselves that they trucked for substantial distances over and above 25 miles; [fol. 1582] and I also heard Mr. Flack name the distances that they were trucked in Florida, and I don't think that there was hardly a place where it was in excess of 25 miles.

Q. Well, that is a matter that the record will show, and I differ with your view on it. You heard Mr. Bryson testify, didn't you? He had been transporting up to about 70 miles?

Mr. Alston: Your Honor, do you think that helps at all? It is all in the record.

Exam. Hoy: It is all in the record.

Mr. Adair: I think it helps materially. I resent this witness swearing to an opinion like it is a fact (Tes. p. 1785).

A. Mr. Adair, when I say negligible—when I say that the trucking beyond these short distances is negligible, I have not said that there is no trucking beyond those distances, but I do say that the extent of the trucking beyond those distances is so small as to not justify any consideration of the trucking competition as a whole, and you may consider it as effective only within the usual range of truck operations.

Q. What study have you made, Mr. Perrin, of the amount of logs that are trucked in Florida over 25 miles?

A. I have made a study here that I would have put into the record but for the objections.

Q. You have not made it yourself?

A. Well, I have got the record of what is being done by direct from the shippers and I——

Q. (Interrupting:) That is your whole source of information, is it?

A. That is the best source that I know of, is from the shipper himself. That is the only source of my information.

[fol. 1583] By Mr. Hillyer:

Q. Mr. Perrin, in answer to a previous (Tes. p. 1786) question you made a statement which I would like to clarify a little. I think you said that the rates in the Florida section were generally higher than in the South?

A. No, I didn't. I was speaking then of difference in conditions, and I said that as far as conditions are concerned there was a reason why the rates in Florida might reasonably be higher than in other parts of the South. In making that statement I had in mind Southern States, in the South—well, Southeast, if you prefer to call it that way. I didn't have in mind the States west of the Mississippi River. I spoke of the South, and not the Southwest. I would not say then that the rate level in the Southwest is lower than in Florida—I would not say that, and I did not say what is the level of the rates anywhere. I spoke of the difference in conditions that has been recognized

generally, and many many times by the Commission as justifying higher rates in Florida than in other points in the Southeast. I had in mind particularly the class-rate adjustment and commodity rates.

Q. Now, is it not a fact that the class-rate structure in the Southwestern States is higher than in Florida?

A. I don't know about that (Tes. p. 1787).

[fol. 1584] Redirect examination:

A. In the discharge of my duties as freight traffic manager of the Atlantic Coast Line Railroad Company, I of course have jurisdiction as to such matters of the Atlantic Coast Line in the State of Florida. Throughout the development of the truck industry during the last few years, and while this case has been pending—the case has been pending now more than six and a half years substantially—I have kept informed as to that development throughout the lines of the Atlantic Coast Line. I think I have kept very thoroughly in touch with the situation, and know certainly as to points of importance as to what has taken place since this case has been going on. As a matter of fact, as traffic manager of the Atlantic Coast Line Railroad Company, it is one of my important functions and duties to keep myself informed through every available source as to the extent to which trucks are in fact taking the business away from our railroad, not only in Florida but elsewhere on its line, and as to the advisability or the practicability of the railroad (Tes. p. 1788) reducing its rates on account of that competition, and I would not hesitate to say that from 75 to 80 per cent of my time is given to a study of truck competition.

C. D. Thomas, recalled as a witness, having been previously sworn, testified as follows:

Direct examination:

A. In reference to Charleston creosoting movements, I only undertake to explain this tariff in so far as it reads. I am not familiar with the haul particularly or sufficiently [fol. 1585] leading up to it, to go into it other than what the tariff shows itself. If I may confine my remarks to

that I will be glad to undertake it. This is a tariff which authorizes the creosoting in transit of carload shipments of conduits, cross-arms, cross-ties, fence posts, lumber, paving blocks, piling, poles, and timber at Charleston, South Carolina when originating at certain (Tes. p. 1789) origins, generally on and east of a line of the Southern Railway from Sumter, South Carolina, through Columbia, South Carolina, to Augusta, Georgia. Reshipment under this tariff is permitted to Eastern—Interior Eastern and New England points, Virginia Cities, and to a territory which we know in railroad parlance as the Mid-East, meaning sections of Virginia, West Virginia, and the Eastern portion of Kentucky. The tariff provides a set of charges under Item 1 into Charleston, which are assessed in addition to the through rate, plus also the transit charges of 2½ cents per 100 pounds. The set of charges which I understand have been referred to are those in Item 1 on page 4, and as a practical matter, while not so stated, they amount substantially to a set of back-haul charges. Back-haul charges are lower than other charges in common use. The tariff provides that the rate to be protected shall not be less than the rate from the original point of origin to final destination, plus the transit charge. It may not be clear upon first reading of the tariff, just what the basis for collection or final settlement of the charges is. It is not a tariff under which we assess the rate from the transit point to final destination plus this net scale in Item 1, plus the transit charge, because Paragraph G of Rule 18 provides—now this is a quotation—"In no case shall the net [fol. 1586] rates protected be less than the through rate from original point of origin to final destination in effect on date of shipment plus (Tes. p. 1790) the transit charge." This more nearly explains what I have just said.

Mr. Hillyer: Mr. Examiner, we were asked to submit a list of the certified tariffs which were filed in evidence. We have had that list made up now, and it shows the name of the railroad, and the tariff suplement, and the effective date. Those effective dates may not accord with those shown on the Commission's statement, because the Commission has shown the date the tariff was issued in certain instances, but otherwise I think they are approximately correct as to the dates. Now in the last column there are some symbols designating whether the tariff is a local

tariff, a proportional tariff, or a transit tariff, as testified to by Mr. Green. We submit this as our Exhibit No. 140-A.

Exam. Hoy: This is 140-A (Tes. p. 1791), received in evidence.

L. F. SHORE, called as a witness, being duly sworn, testified as follows:

Direct examination:

A. L. F. Shore, 234 Ives Street, Jacksonville, Florida. I am logging superintendent for F. M. Buffum Company, Incorporated. I was asked to furnish the inbound movement of logs received by the Buffum Company by truck during the year 1932. We offer this statement for identification as our Exhibit No. 162. The statement was thereupon received in evidence. I compiled this statement "Inbound Shipment of Logs Received by the Buffum Company" (Tes. p. 1792). In the first column showing the origins, I have shown the nearest railroad point, to the [fol. 1587] timber area, I have used then the origins in the sense of the timber areas in the vicinity of those railroad points in the average railroad mileage. I have taken an estimated mileage from the point where the logs might reach the railroad. These average railroad distances will perhaps not agree with the exact railroad distance tables. In taking the truck haul mileage I had in mind the location of the timber. I converted the number of feet board measure in to the number of equivalent carloads. We used an average of 4,231 feet. That is the same average which was used on Mr. Buffum's exhibit (Tes. p. 1793). By Doyle-Scribner measurement. Generally there are paved highways in the vicinity of the railroads reaching the points shown on this list, with the exception of one point the highways parallel the railroads into Jacksonville, with the exception of the point listed here as Lem Turner road. It is between two railroads, a distance of about six miles I would say. As to whether there is anything peculiar about that timber area along the Lem Turner road, it is an exceptionally low bad looking country, and the people that we have been logging this timber have better facilities to get this timber into Jacksonville than the ordinary logger does. They have to use caterpillars to pull these logs to the highway. The tractor movement is necessary.

This last point which will be Baldwin, Florida (Tes. p. 1794), on the exhibit, that railroad mileage there is the approximate mileage from Baldwin to Jacksonville, from the timber area.

Q. Now, what is the highway distance from the same point from which you would measure the real distance? In other words, is there any real difference between the railroad mileage and the highway mileage from those, any point you have in mind, into Jacksonville?

[fol. 1588] A. Very little from Baldwin. This point that I have in mind where the logs might reach the railroad is about three miles west of Baldwin. As to how far the highway is from the railroad, they are right parallel; just a few hundred yards difference in distance between them. The timber areas that I have in mind there in the Baldwin section have a 10-mile area, about 10-mile diameter (Tes. p. 1795). There are timber areas there about that extent on both sides of the railroad and the highway, so that the timber from one area would have to cross the railroad to reach the highway, and from the other area would have to cross the highway to reach the railroad. These logs are brought from this 10-mile timber area up to the hard-surfaced road on the railroad by trucks. They are not brought on hard-surfaced roads. It is all sand roads, and some swampy wood roads, not any hard roads at all. The trucks cannot carry a full load from the timber up to the highway or the railroad. They can only carry about 60 per cent. of their load until they get to the highway. After they get to the highway, they would have the choice of shipping by rail or by truck into Jacksonville, for approximately the same distance. This difference in mileage between 20 miles by (Tes. p. 1796) railroad, which I show, and 32 miles by truck, takes into consideration the truck haul over the sand road, as well as the paved highway. In either event it would have to be hauled over the sand road at less than the maximum capacity, before it reached either the hard-surface road or the railroad.

Q. Now, let us take the last portion of your exhibit. An inquiry was made as to the Seaboard cars, or the cars of logs which came in over the Seaboard, as shown on Mr. Buffum's Exhibit. What kind of logs were those logs, Mr. Shore?

[fol. 1589] A. These were ash logs. They were a much more valuable class of logs than the class of timber that we have ordinarily been sawing. These were not Mr. Buffum's lots. We were purchasing these logs for the account of another company, and they were paying for the logs, and having them sawn at our plant. It was an unusual operation. They had some orders that they were anxious to fill, and were very anxious to get these (Tes. p. 1797) logs at that time.

Q. Now, the question was asked whether the Seaboard Air Line Railway's charges on logs were not about the equal of the Commission's scale. Now, will you give an illustration here to show what was paid on some of these cars under that Seaboard scale at—take Sumner for example.

A. From Sumner the Seaboard scale is based on so much per thousand feet, board measure. That rate is $6.19 per thousand feet for a distance of 119 miles; and the I. C. C. rate would be—that $6.19 a thousand on 50,000 pounds would figure $22.10 per car; and the I. C. C. rate would be $30.00 for a car of 50,000 pounds. In other words, on that car the Seaboard's scale would produce considerably less revenue than the Interstate Commerce Commission scale for the same distance, absolutely (Tes. p. 1798). Exhibit No. 162, these are all truck movements. Yes, you already have an exhibit showing the rail movements. As to what proportion of the logs which moved from the vicinity of South Jacksonville were brought out of the forest in trucks, they were all brought out of the forest in trucks. As to how far you would have to haul to a railroad, it would be from 2 to 6 miles. As to Bayard, and how many of those logs were brought out of the forest by truck, all that is on this exhibit were brought out by truck.

[fol. 1590] *A.* All right. Now, tell me as a rule, if you please, how far those logs would have to have been brought by the truck to get to a railroad station? I would like for you to make an estimate down this list (Tes. p. 1799), please. I don't want to bore you by going through each of those; in other words suppose that a truck picked up the logs at point "X" in the forest, now how far would they have had to have gone from there to the railroad station?

A. Well, from Bayard it would have been—you understand there is a big swampy territory in there, you know,

that I have covered in an area of several miles. And I would say from Bayard from the swamp to the railroad would be an average haul of about 6 miles. And from Densmore—well, that would be practically the same thing. The timber lies from the railroad back ten miles, that is practically all of that.

By Mr. Gwathmey:

Q. We have taken your exhibit No. 162, and have calculated that the average weighted haul per carload by truck is 30.6 miles. Have you made such a calculation?

A. No, sir; I have not.

Mr. Gwathmey: It is merely a matter of mathematical calculation Mr. Examiner, and if I may be permitted I will just call attention to the figure, which can be verified from the exhibit itself (Tes. p. 1800).

COLLOQUY

Mr. Hillyer: Mr. Examiner, we proffered certain testimony through Mr. Buffum which was excluded. We understood that if there was anything advanced by the railroads upon that subject that we perhaps would be permitted to introduce that evidence in rebuttal. The offer of proof was that the Buffum Lumber Company had received inbound over the Atlantic Coast Line Railroad about 34 per cent of its supply of logs, whereas on outbound shipments of lumber the Atlantic Coast Line Railroad had received about [fol. 1591] 56 per cent of the total outbound shipments. We had an exhibit, and there has been some testimony in support of that proposition which we offer to prove. Now do I understand that that still comes within the scope of the ruling, or that we should be permitted to show the relation of the inbound and outbound tonnage?

Exam. Hoy: Well, the Examiner still thinks that that would not come within the scope of the reopened proceeding.

Mr. Hillyer: And the record should stand just as it is now?

Exam. Hoy: Yes, sir. His ruling is to that effect.

Mr. Adair: Your Honor, I would like to have the same proffer—to make the same proffer, and have the same ruling, in case there is any change of conditions.

Exam. Hoy: What is your proffer? (Tes. p. 1801.)

Mr. Adair: Proffer to prove the substantial operation and effect of the Cummer scale would be the same as a transit operation.

Mr. Alston: We object to that, because it is too general, together with the other statement—that statement is rather too general.

Exam. Hoy: You make that proffer at what point? Each and every point?

Mr. Adair: No, I propose to show that, and want to so show by one or more shippers as being typical.

Exam. Hoy: One or more; how many?

Mr. Adair: Your Honor, I could only show one at a time. I am speaking now for the Wilson Cypress Company.

Exam. Hoy: Well, the Examiner's ruling is the same as he just expressed in response to Mr. Hillyer's proffer.

[fol. 1592] Mr. Alston: I would like to have it understood that to our general objection we make the general objection that Mr. Adair's proffer is too general.

Exam. Hoy: No, sir.

Mr. Adair: I understand your Honor not to rule it out on that account.

Exam. Hoy: I ruled it out for the same reason that I ruled out Mr. Hillyer's.

Mr. Adair: And ruled mine out—ruled out my offer?

Exam. Hoy: On the same grounds; yes, sir (Tes. p. 1802).

Mr. Adair: Your Honor, on last night some one was good enough to call our attention to an irregularity in our Exhibit No. 143. I will ask that the caption to each sheet be corrected by changing the word "at"—the first word in the second line of the captions, to read "of", so that the caption would then as corrected read, "Shipments to Wilson Cypress Company of Palatka, Florida, of over 70,000 pounds included in restitution claim." That is at the head of each sheet. That is 143. And by adding the following words to that caption: "Destination Palatka, unless otherwise shown." And on sheet 16 of that same exhibit on the 29th from the bottom, first item in the third paragraph on the right-hand side, in the right-hand margin, place opposite that item "Cross City," and ditto each of the other items on that sheet. Weight of the first car 73,300. On

sheet 17, opposite the first item in the right-hand margin place the words "Cross City," and ditto the next five items. Six in all on that sheet (Tes. p. 1803).

Mr. Adair: Your Honor, we indicated on yesterday we were trying to get a map showing the lines in Southwestern [fol. 1593] territory in a general way, so as to illustrate the tracks over which these new rates in mass are applicable, and we have gotten maps today, Rand-McNally map, which at least shows all of the principal lines; I am not sure it has got all of the branches in there. This was the largest one we could get on such short notice. We now offer this in evidence, and the others, three more, are being worked up now, and additional ones will be furnished here to the Examiner, and the additional one given to our adversaries.

Mr. Gwathmey: Mr. Examiner, may I ask a question about these maps?

Mr. Adair: Please don't ask me to make any representations about it, because I dont know enough personally about it to warrant——

Mr. Gwathmey: Let me ask you, and decide whether or not you want to answer it. Are your people contending that this map, or the previous maps that you have offered here correctly portray the territory over which these so-called truck competitive rates apply?

Mr. Adair: Yes, that is our contention, and while I didn't make up any of these myself.

Mr. Gwathmey: I merely want to call your attention to this. You show on all of these maps for instance the entire line of (Tes. p. 1804) a given railroad; you have shown that in colors. Now, it might be inferred from the map just by looking at it that the competitive rates apply everywhere on the line of that railroad. I think that if the maps are received it ought to be with the qualification that they are subject to the explanations that have been made by other witnesses, which are to the effect that the rates do not apply between all points on that line.

[fols. 1594 & 1595] Mr. Adair: Unquestionably all of the new rates do not apply between all points on all roads that issue them, but our understanding is that the new rates are applicable, or we believe them to be applicable over each mile of rail that is marked in blue there from some point of origin to some destination over that line.

Exam. Hoy: That will be received as Exhibit No. 163 (Tes. p. 1805).

Exam. Hoy: Is that all you have got Mr. Adair? Mr. Adair, have you got any further evidence.

Mr. Adair: I am asking my associates now. No, your Honor, we have nothing further.

Exam. Hoy: Is there any other party who desires to be heard in this proceeding? If not, the record will be closed for the receipt of evidence (Tes. p. 1806).

After taking of testimony was concluded oral argument was heard by Examiner Hoy.

[fol. 1596] PLAINTIFF'S EXHIBIT #2

INTERSTATE COMMERCE COMMISSION, WASHINGTON

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of the following:

Motion to Reopen Report and Order, filed March 5, 1931.

Motion to Reopen Report and Order, filed March 7, 1931.

Answer of Brooks-Scanlon Corporation, Wilson Cypress Company, and Cummer Cypress Company, Interveners, to Motions of Atlantic Coast Line Railroad Company, Defendant, and Georgia Public Service Commission, Complainant, to Reopen Report and Order Herein, filed March 27, 1931.

Answer and Reply of State of Florida and Florida Railroad Commission to Motion to Reopen Report and Order Filed by Georgia Public Service Commission and by Atlantic Coast Line Railroad Company, filed March 27, 1931.

Order of the Commission entered April 6, 1931.

Notice of the Commission dated April 21, 1931.

Order of the Commission entered April 28, 1931.

Transcript of the stenographer's notes of the hearing held June 10, 11, and 12, 1931, at Jacksonville, Florida, before Examiner E. J. Hoy, and of exhibits filed at said hearing.

Order of the Commission entered July 7, 1931.

Transcript of the stenographer's notes of the hearing held July 20, 21, 1931, at Washington, D. C., before Examiner E. J. Hoy, and of exhibits filed at said hearing and in response to requests made at said hearing.

Report on Further Hearing Proposed by E. J. Hoy and P. S. Peyser, Examiners.

Order of the Commission entered December 24, 1931.

Report and Order of the Commission, filed and entered July 5, 1932..

Order of the Commission entered July 28, 1932.

Order of the Commission entered August 13, 1932.

Motion on Behalf of Brooks-Scanlon Corporation, Wilson Cypress Company, Cummer Cypress Company, and Wilson Lumber Company of Florida, for Postponement of Effective Date of Final Order Outstanding in this Proceeding, filed August 11, 1932.

Petition on Behalf of Brooks-Scanlon Corporation, Wilson Cypress Company, Cummer Cypress Company, and [fols. 1597 & 1598] Wilson Lumber Company of Florida, Intervening Florida Log Shippers, For Further Hearing In, and Reconsideration Of, filed August 18, 1932.

Petition on Behalf of the State of Florida and The Florida Railroad Commission for Further Hearing In, and Reconsideration Of, filed August 24, 1932, and

Order of the Commission entered August 25, 1932,

in case No. 18364, Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, the originals of which are now on file and of record in the office of this Commission.

In witness whereof I have hereunto set my hand and affixed the Seal of said Commission this 10th day of September, A. D. 1932. George B. McGinty, Secretary of the Interstate Commerce, Commission. (Seal Interstate Commerce Commission.)

[fol. 1599] BEFORE INTERSTATE COMMERCE COMMISSION

I. C. C. Docket No. 18364

GEORGIA PUBLIC SERVICE COMMISSION

vs.

ATLANTIC COAST LINE RAILROAD COMPANY

MOTION TO REOPEN REPORT AND ORDER—March 5, 1931

Now comes Atlantic Coast Line Railroad Company, the defendant in the original petition filed by Georgia Public

Service Commission, and respectfully represents unto this Honorable Commission as follows:

1

The Georgia Public Service Commission filed its petition to this Commission against your movant, Atlantic Coast Line Railroad Company, in which it sought relief against [fol. 1600] certain rates and conditions as to the transportation of logs in the State of Florida, all of which is more particularly set out in the petition of the said Georgia Public Service Commission which is referred to. The said complaint sought relief against intrastate rates in Florida over the lines of the Atlantic Coast Line Railroad Company for the transportation of logs, which were alleged to be unduly prejudicial and disadvantageous to the interstate shipper in Georgia and caused undue, unreasonable and unjust discrimination against interstate commerce.

2

The said complaint was based upon violations of Sections 1, 2, 3 and 13 of the Interstate Commerce Act, and the issue which was made by said complaint and the answers thereto and the petitions of intervention made a proceeding before this Commission under each of the above mentioned four sections, and the said cause proceeded as a complaint, especially under Sections 3 and 13 of the Act to Regulate Commerce.

3

A large number of persons, associations and partnerships intervened. The said cause was placed at issue, evidence was taken thereon, and this Commission filed its report and order therein. The said report and order were [fol. 1601] promulgated on the 2nd day of August, 1928, (146 I. C. C. 717). Said report and order are referred to as fully as though made a part hereof. This Commission moved forward the effective date of the said order and the same became effective on the 8th of February, 1929. In the meanwhile two amendments to said order were made by this Commission.

4

Subsequent to the rendition of the Commission's original order, the State of Florida and the Florida Railroad Com-

missioners filed a bill in equity in the United States District Court for the Northern District of Georgia seeking to have the above mentioned order set aside and nullified. Another bill was filed in the said Court by Brooks-Scanlon Corporation, Wilson Cypress Company and Cummer Cypress Company; and another was filed in the said Court by Wilson Lumber Company. Each of said bills had for its purpose the setting aside and nullifying of the said order. The parties defendant in said bills were the United States and the Interstate Commerce Commission. Hearing was had thereon and on the 17th day of January, 1929, the said Court rendered an opinion and judgment, which is reported in 30 Fed. (2d) 116. Said opinion and judgment are referred to and made a part hereof. Said decree dismissed the above mentioned bills, but stated that the order of the Commission should be construed so as to be confined to [fol. 1602] points of origin in the territory mentioned in the said reports of this Commission called northern Florida.

5

The complainants in the above mentioned bills thereafter filed supplemental bills in said court, the Atlantic Coast Line Railroad Company intervened, and hearing was had thereon, and the court on the 22nd of March, 1929, filed its opinion, which is reported in 31 Fed. (2d) 580, and is referred to, and a decree was entered on said opinion on April 22, 1929. The result of this litigation was that the bills were dismissed and this Commission's order as aforesaid was sustained. Appeals were taken to the Supreme Court of the United States, which Court on the 5th day of January, 1931, rendered its opinion and the decree of the lower court was reversed.

Said opinion of the Supreme Court of the United States contains the following:

"The Commission made no findings as to the revenue which had been derived by the carrier from the traffic in question, or which could reasonably be expected under the increased rates, or that the alteration of the intrastate rates would produce, or was likely to produce, additional income necessary to prevent an undue burden upon the carrier's interstate revenues and to maintain an adequate transportation service.

[fol. 1603] "The question is not merely one of the absence of elaboration or of a suitably complete statement of the grounds of the Commission's determination, to the importance of which this court has recently adverted (Beaumont, S. L. & W. R. Co. v. United States, decided November 24, 1930, 282 U. S. — ante, 41, 51 S. Ct. 1), but of the lack of the basic or essential findings required to support the Commission's order. In the absence of such findings, we are not called upon to examine the evidence in order to resolve opposing contentions as to what it shows or to spell out and state such conclusions of fact as it may permit. The Commission is the fact-finding body and the Court examines the evidence not to make findings for the Commission but to ascertain whether its findings are properly supported. If the facts as to intrastate transportation of logs in Florida are such as to justify an order as to intrastate rates in order to end an unjust discrimination as against interstate commerce either as between persons and localities, or because of an undue burden upon the revenues of the carrier, the Interstate Commerce Commission is still at liberty, acting in accordance with the authority conferred by the statute, to make such determinations as the situation may require.

"We conclude that the portion of the order of the Commission which is now under review, with respect to intrastate rates, is not supported by the findings of the Commission and this part of the order must be set aside."

[fol. 1604] The said opinion of the Supreme Court is referred to.

6

Movant respectfully shows that it is necessary that this Commission reopen the said cause and proceed therein to make such additonal findings and orders as may be proper in the light of the opinion of the Supreme Court of the United States in this cause.

7

Movant has been served with notice by the Railroad Commissioners of Florida of their purpose to enter an order in the cause, the effect of which will be to undertake to en-

force the old rates which this Commission found to be unreasonable and discriminatory for the movement of logs over the lines of this movant for distances up to one hundred seventy (170) miles and for distances beyond one hundred seventy (170) miles in the State of Florida, and it is necessary that this Commission proceed in this matter with such expedition as may be possible, having in view the record already made and the actions already taken by this Commission.

8

Movant further shows that there have been filed in the District Court of the United States for the Northern Dis-
[fol. 1605] trict of Georgia by the Brooks-Scanlon Corporation, Wilson Cypress Company, and Cummer Cypress Company, as well as by the State of Florida through the Railroad Commissioners of said State, motions for decree in accordance with the mandate of the Supreme Court of the United States, and in addition for an order or orders directing restitution to be made by this movant to the aforesaid lumber companies, as well as to numerous other shippers, both named and unnamed, based upon the difference in charges on shipments alleged in said motions to have been made during the intervening period since February 8, 1929, as computed on the intrastate rates theretofore in effect in Florida, on the one hand, as contrasted with the intrastate rates which were established by this movant in compliance with the order of this Commission, on the other hand, and that the aggregate of the amounts set forth and claimed in said motions, exclusive of additional amounts claimed by undisclosed shippers and as yet unestimated therein, is approximately $216,000, plus interest at the rate of 8 per cent. per annum, as more specifically described in said motions, as follows:

In the motion of Brooks-Scanlon Corporation, et al.:

"Brooks-Scanlon Corporation, approximately the sum of $5,900.00.

Wilson Cypress Company, approximately the sum of $153,000.00.

[fol. 1606] Cummer Cypress Company, approximately the sum of $48,500.00."

and in the motion of the State of Florida:

"Eugene Stacy	$408.51
Hazzard Brothers	459.25
F. S. Buffum & Company	1345.28
Gress Manufacturing Company	208.24
Thompson-Katz Lumber Company	5214.36
Wilson Otwell Lumber Corporation	156.27
Hessler Hardwood Company	902.11"

This movant has been notified that said motions will be brought up for hearing before the District Court at Atlanta, Ga., on March 7, 1931.

Movant directs attention to the fact that the foregoing shipments are alleged in said motions to have been made subsequent to February 8, 1929, and the foregoing claims are alleged to have accrued in connection therewith, notwithstanding the fact that in the proceedings before this Commission it was contended and urged on behalf of the same shippers, or some of them, that an increase in the intrastate rates would cause a material falling off in the volume of traffic to be offered for shipment, thereby preventing any substantial increase in the aggregate intrastate revenues of the carrier upon such traffic.

[fols. 1607 & 1608] Wherefore, movant prays:

(a) That the Georgia Public Service Commission, and all of the persons, associations, partnerships or corporations who have intervened in this cause, be given notice of this motion; that the State of Florida be notified thereof; that this Commission proceed to make such further findings and to issue such further reports and orders in this cause as it may deem to be requisite or necessary.

(b) That this Commission prescribe such intrastate rates in Florida for the transportation of logs over the lines of this movant, for distances up to one hundred seventy (170) miles, and for distances beyond said one hundred seventy (170) miles, as may be lawful.

(c) That this Commission issue such other and further reports, findings and orders as this Commission may deem proper.

Respectfully submitted, Atlantic Coast Line Railroad Company, by Carl H. Davis, Robt. C. Alston, Frank W. Gwathmey, Its Attorneys.

March 5, 1931.

[fol. 1609] BEFORE INTERSTATE COMMERCE COMMISSION

I. C. C. Docket No. 18364

[Title omitted]

MOTION TO REOPEN REPORT AND ORDER

Now comes Georgia Public Service Commission, the above named complainant, and respectfully represents unto this Honorable Commission as follows:

1

Heretofore on the 3rd day of May, 1926, this complainant filed its petition against the Atlantic Coast Line Railroad Company seeking relief against certain rates and conditions as to the transportation of logs described in the said petition. The object of said complaint was stated in said petition to be "to secure reasonable rates on logs from all points on the Atlantic Coast Line Railroad, as hereinafter shown, within the State of Florida, to all destinations on the Atlantic Coast Line Railroad in the State of Georgia, and to have removed any unjust discrimination or undue prejudice found to exist as provided in the Interstate Commerce Act." Said complaint alleged, amongst other things, that by reason of the facts stated in the complaint. [fol. 1610] "Georgia shippers have been subjected to the payment of rates for interstate transportation which were then exacted, and still are, unjust and unreasonable, in violation of Section 1 of the Interstate Commerce Act; unjustly discriminatory, in violation of Section 2 of the said Act; and unjustly prejudicial to the interstate shipper and preferential in favor of the intrastate shipper, in violation of Section 3 of the Interstate Commerce Act." The said complaint also alleged that the intrastate rates in Florida were unduly prejudicial and disadvantageous to the interstate shipper in Georgia and caused undue, unreasonable and unjust discrimination against interstate commerce, and were in violation of Section 13 of the Interstate Commerce Act.

2

The said cause came to issue and a large number of persons, associations and partnerships intervened. It pro-

ceeded to report and order of this Commission, which report was promulgated on the 2nd day of August, 1928. Said report and order are published in the 146th I. C. C. 717, and are referred to. The said order became effective on the 8th day of February, 1929.

3

Thereafter three bills in equity were filed in the United States District Court for the Northern District of Georgia. One of them was filed by the State of Florida and the three members of the Florida Railroad Commission; another by Brooks-Scanlon Corporation, Wilson Cypress Company and Cummer Cypress Company; and the other by Wilson Lumber Company. These bills were all filed against the United States and the Interstate Commerce Commission. They proceeded to trial and the court ren- [fol. 1611] dered an opinion and judgment on the 17th day of January, 1929, reported in 30 Fed. (2d) 116, which opinion is referred to. The decree rendered in this cause dismissed the above mentioned bills but indicated that the application of the Commission's order was to be confined to northern Florida.

4

Thereafter the complainants in the above mentioned bills filed supplemental bills in the said court and hearing was had thereon and an opinion on the rehearing was rendered on March 22, 1929, reported in 31 Fed. (2d) 580, and is referred to, and a decree was entered on that opinion on April 22, 1929. The bills were dismissed and the Commission's order, as aforesaid, was sustained. Thereupon appeals were taken to the Supreme Court of the United States, which court on the 5th day of January, 1931, rendered its opinion, which opinion is referred to. The said opinion and the judgment entered thereon reversed the decrees of the United States District Court for the Northern District of Georgia, hereinbefore referred to. A part of the said opinion is as follows:

"The Commission made no findings as to the revenue which had been derived by the carrier from the traffic in question, or which could reasonably be expected under the increased rates, or that the alteration of the intrastate rates would produce, or was likely to produce, additional income

necessary to prevent an undue burden upon the carrier's interstate revenues and to maintain an adequate transportation service.

"The question is not merely one of the absence of elaboration or of a suitably complete statement of the grounds [fol. 1612] of the Commission's determination, to the importance of which this court has recently adverted (Beaumont, S. L. & W. R. Co. v. United States, decided November 24, 1930, 282 U. S. * * * ante, 41, 51 S. Ct. 1), but of the lack of the basic or essential findings required to support the Commission's order. In the absence of such findings, we are not called upon to examine the evidence in order to resolve opposing contentions as to what it shows or to spell out and state such conclusions of fact as it may permit. The Commission is the fact-finding body and the court examines the evidence not to make findings for the Commission but to ascertain whether its findings are properly supported. If the facts as to intrastate transportation of logs in Florida are such as to justify an order as to intrastate rates in order to end an unjust discrimination as against interstate commerce either as between persons and localities, or because of an undue burden upon the revenues of the carrier, the Interstate Commerce Commission is still at liberty, acting in accordance with the authority conferred by the statute, to make such determinations as the situation may require.

"We conclude that the portion of the order of the Commission which is now under review, with respect to intrastate rates, is not supported by the findings of the Commission and this part of the order must be set aside."

5

Complainant respectfully moves this Commission to reopen the said cause and to proceed in the manner prescribed by law and the rules of this Commission to make the determinations required by the situation and to issue such report and to make such findings and orders as will result in removing the discriminations set out in the original petition. [fol. 1613] Wherefore, complainant prays:

(a) That the Atlantic Coast Line Railroad Company, and all of the persons, associations, partnerships or corporations who have intervened in this cause, be given notice of this motion; that the State of Florida be notified thereof;

that this Commission proceed to make such further findings and to issue such further reports and orders in this cause as it may deem to be requisite or necessary to fully accomplish the purposes of the original petition and of this motion.

(b) That this Commission prescribe just, reasonable, non-discriminatory and non-prejudicial interstate rates to be observed and charged by the defendant carrier for the transportation of carload shipments of logs, from all points located in the State of Florida to all destinations located in the State of Georgia; that the measure of said rates be no higher than the rates concurrently in effect for the same kind of property, from producing points located within the State of Florida, moving in intrastate commerce, to destinations within the State of Florida.

(c) That this Commission issue such other and further reports, findings and orders as this Commission may deem proper, to the end that the discrimination referred to in the original complaint be removed and remedied.

Respectfully submitted, Georgia Public Service Commission, by James A. Perry, Chairman.

[fols. 1614 & 1615] GEORGIA,
Fulton County:

Before me, the undersigned officer, duly authorized to administer oaths in said State and County, personally appeared Jas. A. Perry, who being by me duly sworn deposeth and saith on oath that he is Chairman of the Georgia Public Service Commission; that the statements contained in the foregoing motion are true, except when stated upon information and belief or as matters of opinion, and then he verily believes them to be true.

James A. Perry.

Sworn to and subscribed before me, this 2nd day of March, 1931. Ellen Douglass, Notary Public, Georgia, State at Large. (Seal.)

[fol. 1616] BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 18364

[Title omitted]

ANSWER OF BROOKS-SCANLON CORPORATION, WILSON CYPRESS COMPANY, AND CUMMER CYPRESS COMPANY, INTERVENERS, TO MOTIONS OF ATLANTIC COAST LINE RAILROAD COMPANY, DEFENDANT, AND GEORGIA PUBLIC SERVICE COMMISSION, COMPLAINANT, TO REOPEN REPORT AND ORDER HEREIN—March 27, 1931

Come now Brooks-Scanlon Corporation, Wilson Cypress Company and Cummer Cypress Company, interveners before the Commission upon the original proceedings herein, and respectfully file this their answer to motions filed by defendant Atlantic Coast Line Railroad Company and complainant Georgia Public Service Conimission, praying that the Commission reopen its report and order herein.

[fol. 1617] For answer to the petition of defendant Atlantic Coast Line Railroad Company these interveners respectfully state as follows:

I

Answering Paragaphs 1 and 2.—While complainant Georgia Public Serivce Commission in its complaint filed May 3, 1926, alleged violations of Sections 1, 2, 3 and 13 of the interstate commerce act, the real object of its complaint was as stated in paragraph 3 thereof as follows:

"3. That the object of the complaint is to secure reasonable rates on logs from all points on the Atlantic Coast Line Railroad, as hereinafter shown within the state of Florida to all destinations on the said Atlantic Coast Line Railroad in the State of Georgia, and to have removed any unjust discrimination or undue prejudice found to exist as provided in the Interstate Commerce Act."

Further, complainant Georgia Public Service Commission in the course of the hearings before the Commission by its witness and by its attorney stated that the Florida intrastate rates should—

"be extended into Georgia for interstate application" and "that is all there is in the case, it is all that has ever been

in the case, it is all we are asking for and all we hope to gain." (Transcript, pp. 36, 57.)

Further answering, interveners say that defendant Atlantic Coast Line Railroad Company in answering said [fol. 1618] complaint of the Georgia Public Service Commission denied that there was any violation of the interstate commerce act and prayed for the dismissal of the complaint.

II

Answering Paragraph 3.—The order of the Commission herein did not accomplish the aim of the Georgia Public Service Commission. Instead it prescribed a level of interstate rates from North Florida to Georgia which was but slightly less than the interstate rates attacked and alleged by complainant Georgia Public Service Commission to be too high to permit logs to move from Florida to Georgia in interstate commerce.

Further answering, the attention of the Commission is directed to the fact that the Motion of the Atlantic Coast Line Railroad Company prays that the Commission now prescribe such intrastate rates in Florida "as may be lawful," whereas the Motion of the Georgia Public Service Commission prays that this Commission now prescribe "just, reasonable, non-discriminatory and non-prejudicial interstate rates"; that it thus appears that the Movants are pursuing different aims; that the Atlantic Coast Line Railroad Company neither in its answer to the original complaint herein, nor at any time since has admitted that its intrastate Florida rates were unlawful or prayed that their reasonableness be fixed by this Commission; and that the interstate rates on logs from North Florida to Georgia have already been fixed by this Commission pursuant to the petition of the Georgia Public Service Commission, and that no contention has ever been made by the Georgia Pub- [fol. 1619] lic Service Commission that said action of this Commission was in any respect unlawful.

III

Answering Paragraph 4.—Interveners admit the allegations of this paragraph but state further that upon their original bills seeking to enjoin the statewide order of the Interstate Commerce Commission, the District Court found that such order could probably not be justified as a state-

wide order. State of Florida v. United States, 30 Fed. (2d) 116.

IV

Answering Paragraphs 5 and 6.—Interveners respectfully state that in the hearing upon their supplemental bills of complaint, the District Court reversing its former opinion in that respect, held that—

"We cannot say the order is without evidence to sustain it, on the ground that the former state rate was an undue discrimination against general interstate commerce over the Coast Line Railroads,"—

and upheld the order as an order made to remove a—

"discrimination against *general* interstate commerce, when one state rate or the system of state rates is so low as to throw an undue burden on the revenues arising from interstate commerce in order to sustain the carrier engaged in both kinds of commerce." State of Florida v. United States, 31 Fed. (2d) 580.

Further answering, these interveners respectfully submit that the Supreme Court of the United States upon the [fol. 1620] appeal of the decree of the District Court, expressly reviewed at length the evidence before the Commission on the revenue aspect of the case and clearly indicated that such evidence was not sufficient to justify a Section 13 order statewide in its scope; and further, the Supreme Court expressly stated, after reviewing this evidence that:

"The Commission made no findings as to the revenue which had been derived from the traffic in question, or which could reasonably be expected under the increased rates, or that the alteration of the intrastate rates would produce, or was likely to produce, additional income necessary to prevent an undue burden upon the carrier's interstate revenues and to maintain an adequate transportation service." Florida v. United States, Adv. Ops., October Term, 1930, p. 212, 220-221.

Further answering, interveners respectfully submit that there is no evidence of record in this proceeding upon which the Commission could make a state-wide order rais-

ing all the rates on logs applicable on the Atlantic Coast Line Railroad Company for hauls up to 170 miles within and throughout the entire State of Florida without exception.

V

Answering Paragraph 7.—These interveners state that the Railroad Commission of Florida has taken such action as it deems to be necessary to maintain the integrity of the lawful state rates applicable to the transportation of logs within and throughout the State of Florida which lawful state rates were dis-established only by the unlawful order [fol. 1621] of this Commission, which the Supreme Court of the United States has found must be set aside and which it has directed the District Court for the Northern District of Georgia, Atlanta Division, to set aside in its mandate directed to said District Court.

Further answering this paragraph, interveners respectfully refer to what has been said above to the effect that there is no evidence before the Commission in this proceeding which will justify a Section 13 order as sought by the petitioners.

VI

Answering Paragraph 8.—These interveners admit that they, with others, have filed their motions in the District Court for the Northern District of Georgia, Atlanta Division, asking that the mandate of the Supreme Court of the United States be complied with and that the unlawful order of this Commission herein be set aside, and in that respect interveners state that said District Court, as of March 7, 1931, has entered its decree setting aside such order of the Commission in this proceeding.

Further answering, these interveners admit that they with others have moved that said District Court for the Northern District of Georgia, Atlanta Division, order the Atlantic Coast Line Railroad Company to make restitution to them of sums unlawfully exacted from them for the transportation of logs because of the erroneous decree of said District Court which dismissed the Bills and Supplemental Bills praying for an injunction against the unlawful order of this Commission prescribing rates on logs within and throughout the State of Florida without exception on

[fol. 1622] the lines of the Atlantic Coast Line Railroad Company.

Further answering, these interveners respectfully state that despite the fact that large sums are thus due them by way of restitution, there was a material decline in the intrastate shipment of logs over the lines of the Atlantic Coast Line Railroad Company in Florida during the period when the unlawful rates prescribed by this Commission were collected.

Further answering, and particularly with respect to this Commission's previous finding that there was no interstate commerce in logs from Florida to Georgia, these interveners respectfully state that they are reliably informed, and believe, and therefore aver, that no intrastate commerce in logs has developed on the rates prescribed by this Commission herein for the interstate transportation of logs from Florida to destinations in Georgia, which rates were in force and effect from February 8, 1929, to March 7, 1930; and that there is not now and will not be any interstate commerce in logs from Florida to Georgia on such rates.

* * * * * * * *

For answer to the Motion of the Complainant Georgia Public Service Commission, these interveners respectfully state as follows:

VII

For answer to Paragraph 1, reference is made to Paragraph I above.

The allegations of Paragraph 2 are admitted, and further answering, reference is made to Paragraph II above. [fol. 1623] For answer to Paragraph 3, reference is made to Paragraph III above.

For answer to Paragraph 4, reference is made to Paragraph IV above.

For answer to Paragraph 5, reference is made to Paragraph V above.

* * * * * * * *

IX

Further by way of answer to both Motions, these interveners respectfully represent:—

That the complaint in this proceeding was filed May 3, 1926, almost five years ago; the ancient character of the proceedings before the Commission is accentuated by the fact that in the intervening years great economic changes have taken place throughout the entire United States, and that there has been a material change in the situation of the parties to the proceedings;

That meanwhile the unlawful order of this Commission, which the Supreme Court condemned, took effect February 8, 1929, more than two years ago, and was not finally set aside until March 7, 1931. In the intervening two years and more, mills and property valued at millions of dollars have been dismantled and destroyed, and prosperous communities have been wiped out, with no compensating advantage accruing to anyone;

That such log shippers as have continued to ship during these two years and more have been overcharged several hundred thousands of dollars by the Atlantic Coast Line Railroad Company, and said carrier is now resisting in [fol. 1624] every possible way the restitution of such unlawfully exacted monies, and the reinstatement of the lawful state rates upon log traffic.

That the decision of the Supreme Court of the United States which found the order of the Commission unlawful and directed that it be set aside, reviewed at length the evidence upon which the lower Court relied to sustain the order of the Commission and clearly indicated that the evidence of record is insufficient to justify the order;

That said decision finally disposed of the unlawful report and order of the Commission herein, and of the proceedings upon which it was based; and that said decision not only condemned said report and order as containing insufficient findings, but also examined all of the evidence recited in the report of the Commission and found such evidence insufficient to warrant the invasion of the domain of the State;

That the Supreme Court in said decision found in terms that "the authority to determine the reasonableness per se of the intrastate rates lay with the State authorities and not with the Interstate Commerce Commission"; that the State rates on logs were voluntarily established by the Atlantic Coast Line Railroad Company; and that neither said carrier nor anyone else has ever appealed to the Railroad

Commission of Florida to determine the reasonableness per se of said state rates on logs;

Finally, that there is no necessity for, nor obligation upon, this Commission to reopen this cause or to proceed therein to make additional findings and orders upon evidence of such antiquity as to be valueless; and that the opinion and decree of the Supreme Court of the United [fols. 1625 & 1626] States, the law of this case, and the comity and courtesy due by a Federal administrative body to a sovereign state require that the Motions of the Atlantic Coast Line Railroad Company and of the Georgia Public Service Commission be denied.

For all of which these interveners respectfully pray that the petitions of defendant Atlantic Coast Line Railroad Company and complainant Georgia Public Service Commission that this Commission reopen its report and order herein, be denied.

Respectfully submitted, H. P. Adair, Atlantic Natl. Bank Bldg., Jacksonville, Florida. C. E. Cotterill, Grant Bldg., Atlanta, Ga. August G. Gutheim, 712 Jackson Place, Washington, D. C.

March 27, 1931.

[fol. 1627] BEFORE INTERSTATE COMMERCE COMMISSION

I. C. C. Docket No. 18364

[Title omitted]

ANSWER AND REPLY OF STATE OF FLORIDA AND FLORIDA RAILROAD COMMISSION TO MOTION TO REOPEN REPORT AND ORDER FILED BY GEORGIA PUBLIC SERVICE COMMISSION AND BY ATLANTIC COAST LINE RAILROAD COMPANY—March 27, 1931

Now comes the State of Florida by Cary D. Landis, its Attorney General, and the Railroad Commissioners of the State of Florida by Theo. T. Turnbull, Special Counsel, designated by them, and for answer and reply to the Motions of the Georgia Public Service Commission and the Atlantic Coast Line Railroad Company to Reopen the Report and Order in the above mentioned cause, say:

[fol. 1628] I

That the primary issue before this Commission in the original case was the interstate rate; the intrastate rate was involved only incidentally in its relationship to the interstate rate.

The interstate rates were fixed by the Commission and were not set aside by the Supreme Court of the United States. Therefore, the Georgia Public Service Commission, complainant in this case, has secured all that it asked for in its original complaint.

II

That the Motion on the part of the Atlantic Coast Line Railroad Company contains the following prayer:

"(b) That this Commission prescribe such intrastate rates in Florida for the transportation of logs over the lines of this movant, for distances up to one hundred and seventy (170) miles, and for distances beyond said one hundred and seventy (170) miles as may be lawful."

That this prayer broadens the issues in this case and it would be impossible under the evidence heretofore submitted to this Commission to grant the relief prayed.

That the opinion and decision of the Supreme Court of the United States finally disposed of the order of the Interstate Commerce Commission and all the proceedings upon which it was based. The Supreme Court of the United States not only condemned the order of the Interstate Commerce Commission as containing an insufficient finding [fol. 1629] upon which to supersede State authority but it also examined all of the matters of evidence which were recited in the report of the Interstate Commerce Commission. And having examined the several classes of evidence relied upon by the Commission in its report, that Court found that none of them were sufficient to warrant the invasion of the domain of the State. There was and is no evidence or class of evidence upon which this Commission could rely except that recited in its report and referred to in the opinion of the District Court, and that was the evidence which was considered and condemned by the Supreme Court of the United States.

III

That the State of Florida respectfully shows that the evidence upon which the unlawful order of the Interstate Commerce Commission was entered is now more than four years old and that this Commission is bound to take knowledge of the great economic changes that have taken place since that evidence was closed. And that it would be contrary to all the rules of law for this Commission upon this ancient record to attempt to invade the domain of the State either under Section 3, or Section 13. That this order took effect on February 8, 1929, and as a result of that order mills and property valued at millions of dollars have been dismantled and destroyed and prosperous communities have been wiped out with no compensating advantages accruing to anyone, and in addition to this, as a result of said order, the revenues of the carrier from the transportation of logs has been reduced by several hundreds of thousands of dollars per year.

[fol. 1630] IV

That the Supreme Court of the United States in the Florida Log Case found in effect that the so-called Cummer scale of rates having been voluntarily established by the Atlantic Coast Line Railroad Company, the defendant herein, became and are the lawful state rates and were and are maintained in intrastate commerce subject to the authority of said state.

That said Court likewise found in said opinion that the authority to determine the reasonableness per se of said state rates lies with the State authorities and not with the Interstate Commerce Commission.

That the laws of the State of Florida and the rules and regulations duly adopted by the Florida Railroad Commission require that before any state rate lawfully established shall be advanced, increased, discontinued, or changed, consent and approval thereof shall be had from the Florida Commission after notice given and a hearing had by said Florida Commission.

That said Cummer scale has been in force and effect for more than fifteen years last past and that said Atlantic Coast Line Railroad Company has never applied to said Florida Commission or sought the permission of said

Florida Commission to establish between points on its lines in the State of Florida any scale of rates for the transportation of logs other than said Cummer scale, or for leave to change, alter, modify, discontinue, or increase the said Cummer scale of rates.

That the lawful state authority referred to in said opinion of said Supreme Court, to-wit, the authority of the Florida Commission has never been invoked by said carrier [fol. 1631] or by the Georgia Public Service Commission, the complainant herein, with respect to the level of said Cummer scale of rates.

That until such state authority has been invoked with respect to the level of said Cummer scale of rates, Federal authority ought not to be exercised even if there be power to exercise it, which these interveners deny.

That the provisions of the Interstate Commerce Act do not deprive the Interstate Commerce Commission of power to refuse to exercise its discretion to entertain a petition for an investigation of intrastate rates until proper effort has been made to secure relief from a State regulatory body having primary jurisdiction to grant such relief.

V

That the Florida Railroad Commission is ready and willing at any proper time to consider, hear, and determine, after giving notice to interested parties and affording them an opportunity to be heard, any application which shall hereafter be made by the Atlantic Coast Line Railroad Company or by any other party interested with respect to the level of the lawful intrastate rates thereafter to be applied for the transportation of logs in intrastate commerce between points on the lines of the Atlantic Coast Line Railroad Company in Florida.

VI

The State of Florida further shows that this Commission found in its report that there was no interstate traffic in logs but found that the evidence was not convincing that [fol. 1632] there would not be interstate traffic if the interstate rate and the intrastate rate were equal. The order of this Commission has been in force and effect for two years and during those two years no interstate commerce in logs has developed and none will develop.

Wherefore it is submitted on the part of the State of Florida that the opinion and decree of the Supreme Court of the United States, which is now the law in this case, and that comity and courtesy which this Commission has always shown to a sovereign State requires that the Motion of the Georgia Public Service Commission and the Atlantic Coast Line Railroad Company be denied.

Respectfully submitted, State of Florida, by Cary D. Landis, Attorney General. Florida Railroad Commission, by Theo. T. Turnbull, Special Counsel.

Tallahassee, Fla., March 27, 1931.

[fol. 1633] BEFORE INTERSTATE COMMERCE COMMISSION

No. 18364

[Title omitted]

ORDER REOPENING PROCEEDING—April 6, 1931

Upon consideration of motions filed by complainant and defendant to reopen the above-entitled proceeding and of replies to said motions filed by the State of Florida, Florida Railroad Commission, and interveners, Brooks-Scanlon Corporation, Wilson Cypress Company and Cummer Cypress Company:

It is ordered, That said proceeding be, and it is hereby reopened for further hearing.

It is further ordered, That said proceeding is assigned for such further hearing May 4, 1931, at 10 o'clock A. M. Standard Time, at the Mayflower Hotel, Jacksonville, Florida, before Examiner Hoy.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 1634] BEFORE INTERSTATE COMMERCE COMMISSION, WASHINGTON

No. 18364

[Title omitted]

ORDER REASSIGNING CAUSE—April 21, 1931

Hearing in the above-entitled case, now assigned for May 4, 1931, at the Mayflower Hotel, Jacksonville, Florida, before Examiner Hoy, is hereby cancelled, and this case is re-assigned for further hearing on June 10, 1931, at nine o'clock, A. M. (Standard Time), at the Mayflower Hotel, Jacksonville, Florida, before Examiner Hoy.

By the Commission.

George B. McGinty, Secretary.

[fols. 1635-2028] BEFORE INTERSTATE COMMERCE COMMISSION

No. 18364

[Title omitted]

ORDER ALLOWING INTERVENTION—April 28, 1931

Upon further consideration of the record in the above-entitled proceeding, and for good cause shown:

It is ordered, That the order heretofore entered in said proceeding on November 1, 1928, be, and it is hereby, set aside in so far as it denied the petition of the Wilson Lumber Company of Florida for leave to intervene in said proceeding.

It is further ordered, That the said Wilson Lumber Company of Florida be and it is hereby, permitted to intervene and be treated as a party to said proceeding, with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses and be heard in brief and on oral argument, if oral argument is heard; provided, however, that the permission to intervene herein granted shall not be construed to allow intervener to introduce evi-

dence which will unduly broaden the issues raised in the complaint;

It is further ordered, That a copy of the intervening petition be served upon complainant and defendant; and that a copy of this order be served upon each of the parties to this case.

By the Commission.

George B. McGinty, Secretary. (Seal.)

(Here follow Exhibits 54 and 55, side folios 2029-2031)

Statement Showing in Cents per 100 Pounds Comparison of the So-Called Cummer Log Scale wit
and (2) with Net Transit Log Rates Operated by Ce

Description and Appl

	A	B	C	D	E	F	G
	Log Scales Applicable on Interstate Traffic within Mississippi Valley						
Distances in Miles	So-called Cummer Log Scale	St. L. & S. F. Railway Net transit	Illinois Central Railroad		Mobile and Ohio Railroad		Gulf, M Northern
			Local	Net transit	Local	Net transit	Local
5	1.71	2½	3½	2	4½	2	4½
10	1.71	2½	3½	2	4½	2	4½
15	1.71	2½	4½	2	6	2	6
20	1.71	2½	5	2½	6	2½	6
25	1.71	2½	6	2½	7	2½	7
30	1.71	3½	6	2½	7	2½	7
35	1.71	3½	6½	3½	7	3½	8
40	1.71	3½	7	3½	8½	3½	9
45	2.1	3½	8	4	8½	4	9
50	2.1	3½	8½	4½	8½	4½	9
55	2.1	4½	8½	4½	8½	4½	9
60	2.1	4½	8½	5	8½	5	9
65	2.3	4½	9	5	8½	5	9
70	2.3	4½	9	5	8½	5	9
75	2.3	4½	10½	6	8½	6	9
80	2.3	5	10½	6	8½	6	9
85	2.3	5	10½	6	8½	6	9
90	2.3	5	10½	6½	10½	6½	11
95	2.6	5	11	6½	10½	6½	11
100	2.6	5	11	6½	10½	6½	11
105	2.8	6	11	6½	10½	6½	11
110	2.8	6	11	6½	10½	6½	11
115	3.2	6	11	6½	10½	6½	11
120	3.2	6	11	6½	10½	6½	11
125	3.2	6	11½	7	10½	7	11
130	3.2	6½	11½	7	10½	7	11
135	3.4	6½	11½	7	10½	7	11
140	3.4	6½	11½	7	10½	7	11
145	3.4	6½	11½	7	11½	7	11½
150	3.4	6½	11½	7	11½	7	11½
155	3.4	7	11½	7	11½	7	11½
160	3.4	7	11½	7	11½	7	11½
165	3.7	7	12½	8	11½	8	11½
170	3.7	7	12½	8	11½	8	11½

[fol. 2030]

Description and Application

A—Logs, carloads, except Cedar logs. Per car 50,000 pounds, excess in proportion. To be loa
between Atlantic Coast Line Railroad stations in Florida for distances 170 miles and less.

B—Applies on rough material, carloads, including logs minimum weight 40,000 pounds, betwee
stacking, creosoting or further manufacture and re-shipment via the St. L. & S. F. Ry.

C—Applies on logs (except Walnut, Cherry and Cedar) carloads, minimum weight 40,000 pou
and Henderson Districts, and other Illinois Central Railroad Stations in Tennessee and Kentucky.

D—Applies on rough material, carloads, including logs, (except Cedar, Cherry, Pine and Walnu

cket No. 18364

J. W. Perrin

6/10/31.

with (1) Local Rates of Lines Operating Within Southeastern and Mississippi Valley Territories
Certain Mississippi Valley and Southeastern Lines

Application of Scales

H	I	J	K	L	M	N	O
Valley Territory	Log Scales Applicable within Southeastern Territory						
lf, Mobile and thern Railroad	Atlantic Coast Line R. R.	Southern Railway	C. C. & O. Railway	N. C. & St. L. Railway	Louisville & Nashville Railroad		Seaboard Air Line Railway
Reshipping rates	Local	Local	Local	Local	Local	Net transit	Local
2	2½	2½	2.6	2½	4½	2½	2½
2	2½	2½	2.6	3½	4½	2½	2½
2	3	3	2.8	3½	6	3	3
2½	3	3	2.8	4	11	3	3
2½	3½	3½	3¼	4	7	3½	3½
3½	3½	3½	3¼	4½	8½	3½	3½
3½	4	4	3½	4½	8½	4	4
3½	4	4	3½	4½	8½	4	4
3½	4½	4½	4	5	10½	4½	4½
3½	4½	4½	4	5	10½	4½	4½
4½	4½	4½	4¼	6	10½	4½	4½
4½	5	5	4¼	6	11½	5	5
4½	5	5	4.6	6	11½	5	5
4½	5	5	4.6	6½	11½	5	5
....	5½	5½	5	6½	11½	5½	5½
....	5½	5½	5	7	11½	5½	5½
....	5½	5½	5.3	7	11½	5½	5½
....	6	6	5.3	7	11½	6	6
....	6	6	5.3	7	11½	6	6
....	6	6	5.6	7	11½	6	6
....	6½	6½	6.1	8	11½	6½	6½
....	6½	6½	6.1	8	11½	6½	6½
....	6½	6½	6.2	8½	11½	6½	6½
....	6½	6½	6.2	8½	11½	6½	6½
....	7	7	7.1	8½	11½	7	7
....	7	7	7.1	9	11½	7	7
....	7	7	7.3	9	11½	7	7
....	7	7	7.3	9½	11½	7	7
2	7½	7½	7.3	9½	11½	7½	7½
2	7½	7½	7.3	10½	11½	7½	7½
2	7½	7½	7¾	10½	11½	7½	7½
2	7½	7½	7¾	10½	11½	7½	7½
2	8	8	8½	11	11½	8	8
2	8	8	8¼	11	11½	8	8

ation of Scales

loaded and unloaded by owner and not to be unloaded on the Railroad's right of way. Applies

tween points on the St. L. & S. F. Ry. in Alabama, Florida, and Mississippi, when for dressing,

pounds between points on the Illinois Central Railroad, on the Louisville, Paducah, Ownesboro

y.

alnut and certain Foreign woods), carload minimum weight 40,000 pounds from I. C. R. R. and

B—Applies on rough material, carloads, including logs minimum weight 40,00
stacking, creosoting or further manufacture and re-shipment via the St. L. & S. F.

C—Applies on logs (except Walnut, Cherry and Cedar) carloads, minimum w
and Henderson Districts, and other Illinois Central Railroad Stations in Tennessee

D—Applies on rough material, carloads, including logs, (except Cedar, Cherry,
Y. & M. V. R. R. stations to Memphis, Tenn., for manufacture and re-shipment vi

E—Logs, all kinds (except Mahogany, Cedar, Cherry and Walnut) carloads, m

F—Applies on rough material, carloads, including logs (except Cedar and Che
re-shipment via the Mobile and Ohio Railroad.

G—Same description as "E." Applies between stations on the Gulf, Mobile a

H—Applies on logs, pine, gum, oak, hickory and poplar, carloads, minimum
(Applicable only on shipments loaded in privately owned equipment.)

I—Logs (except Cedar, Cherry, Mahogany and Walnut), carloads, minimum we
between Florida Peninsula points and interstate points, and also on intrastate traffi

J—Logs, native wood, Canadian wood or Mexican Pine, carload, minimum wei

K—Logs (except, Walnut, Cherry or Cedar) in the rough, C. L. in cents per c
tween points on the Clinchfield Railroad and Erwin, Fordtown, Gray, Johnson City

L—Logs, other than Walnut, Cherry or Cedar, carload minimum weight 30,00

M—Logs (except Cherry and Walnut), carloads, minimum weight 30,000 pou
stations to Decatur, Alabama and the rates shown are from points where distances,

N—Rates apply on rough material including logs, carloads (except certain foreig
N. R. R.

O—Logs (native wood, Canadian wood, or Mexican Pine) carload, minimum w

St. L. & S. F. Ry., I. C. C. No. 9019.
I. C. R. R., I. C. C. Nos. 7236 and 7351.
M. & O. R. R., I. C. C. Nos. B-796 and B-754.
G. M. & N. R. R., I. C. C. No. 1058.
A. C. L. R. R., I. C. C. No. B-2512.
Sou. Ry., I. C. C. No. A-10159.

Wilmington, N. C., June 3, 1931.

40,000 pounds, between points on the St. L. & S. F. Ry. in Alabama, Florida, and Mississippi, when for dressing, S. F. Ry.

im weight 40,000 pounds between points on the Illinois Central Railroad, on the Louisville, Paducah, Ownesboro essee and Kentucky.

herry, Pine and Walnut and certain Foreign woods), carload minimum weight 40,000 pounds from I. C. R. R. and nt via the I. C. R. R. or the Y. & M. V. R. R.

ds, minimum weight 40,000 pounds. Applies between points on the Mobile & Ohio Railroad on interstate traffic. Cherry and certain Foreign woods), between points on the Mobile and Ohio Railroad, when for manufacture and

bile and Northern Railroad on interstate traffic.

num weig 40,000 pounds. To be manufactured at Laurel, Miss. and products reshipped via G. M. & N. R. R.

um weight 40,000 pounds. Applies on interstate traffic between points on the Atlantic Coast Line Railroad, except traffic between points in Alabama and Virginia.

n weight 40,000 pounds. Applies on interstate traffic between Southern Railway System Lines.

per car of 40,000 pounds, excess in proportion. (Rates have been reduced to cents per 100 pounds). Applies be- City and/or Kingsport, Tenn.

0,000 pounds Applies between points on the N. C. & St. L. Railway.

pounds. The rates are not published in the form of a scale, but as specific rates from L. & N. R. R. Alabama nces to Decatur, Alabama corresponds with distances shown at left.

oreign woods), from L. & N. R. R. stations to points on L. & N. R. R. for manufacture and re-shipment via L. &

um weight 40,000 pounds. Applies interstate between points on the Seaboard Air Line Railway.

Tariff Authorities

Clinchfield Ry., I. C. C. No. 75.
N. C. & St. L. Ry., I. C. C. No. 2986-A.
Agent J. H. Glenn's I. C. C. Nos. A-659, A-756, A-531 and A-757.
L. & N. R. R., I. C. C. Nos. A-16022 and A-15992.
S. A. L. Ry., I. C. C. No. A-7528.

[fol. 2031]

Statement Showing Comparison of Freight Charges Accruing
Gainesville, and Palatka, Florida, and at A. C. L. R. R. S
Comparison Weight of 150,000 Pounds of Logs Has Been

Destinations			Jacksonville, Florida					Loughman, and Gr		
			Logs, Cl, 150,000 Lbs.		Lumber, Cl, 50,000 Lbs.			Logs, Cl, 150,000 Lbs.		Lu 50
			Rate	Revenue	Rate	Revenue	Total	Rate	Revenue	Rate
Portland, Me.										
Boston, Mass.										
Inbound	Miles	25	1.71	$25.65	45	$225.00	$250.65	1.71	$25.65	48
(Logs)	"	50	2.1	31.50	45	225.00	258.50	2.1	31.50	48
	"	75	2.3	34.50	45	225.00	259.50	2.3	34.50	48
	"	100	2.6	39.00	45	225.00	264.00	2.6	39.00	48
	"	150	3.4	51.00	45	225.00	276.00	3.4	51.00	48
Jersey City, N. J.										
Inbound	Miles	25	1.71	25.65	39½	197.50	223.15	1.71	25.65	42½
(Logs)	"	50	2.1	31.50	39½	197.50	229.00	2.1	31.50	42½
	"	75	2.3	34.50	39½	197.50	232.00	2.3	34.50	42½
	"	100	2.6	39.00	39½	197.50	236.50	2.6	39.00	42½
	"	150	3.4	51.00	39½	197.50	248.50	3.4	51.00	42½
Philadelphia, Pa.										
Inbound	Miles	25	1.71	25.65	36	180.00	205.65	1.71	25.65	39
(Logs)	"	50	2.1	31.50	36	180.00	211.50	2.1	31.50	39
	"	75	2.3	34.50	36	180.00	214.50	2.3	34.50	39
	"	100	2.6	39.00	36	180.00	219.00	2.6	39.00	39
	"	150	3.4	51.00	36	180.00	231.00	3.4	51.00	39
Baltimore, Md.										
Washington, D. C.										
Inbound	Miles	25	1.71	25.65	35	175.00	200.65	1.71	25.65	38
(Logs)	"	50	2.1	31.50	35	175.00	206.50	2.1	31.50	38
	"	75	2.3	34.50	35	175.00	209.50	2.3	34.50	38
	"	100	2.6	39.00	35	175.00	214.00	2.6	39.00	38
	"	150	3.4	51.00	35	175.00	226.00	3.4	51.00	38

Age
Age
A. C

Wilmington, N. C., June 2, 1931.

DEFENDANTS' EXHIBIT NO. 55

Witness: J. W. Perrin

Before Interstate Commerce Commission

I. C. C. Docket No. 18364

ruing on Shipments of Logs from A. C. L. R. R. Stations in Florida Milled at Jacksonville, Loughman, C
R. Stations in South Georgia and on Lumber from Such Points to Representative Eastern Destinations
Been Used for Each 50,000 Pounds of Lumber)

Mill Points

											A. C
										Interstate from A. C. I Florida Stations and P from Georgia	
nd Groveland, Florida			Perry, Gainesville, and Palatka, Florida					Logs, Cl, 150,000 Lbs.		Lum 50,0	
Lumber, Cl, 50,000 Lbs.			Logs, Cl, 150,000 Lbs.		Lumber, Cl, 50,000 Lbs.						
Rate	Revenue	Total	Rate	Revenue	Rate	Revenue	Total	Rate	Revenue	Rate	
48	$240.00	$265.65	1.71	$25.65	46	$230.00	$255.65	3.5	52.50	45	
48	240.00	271.50	2.1	31.50	46	230.00	261.50	4.5	67.50	45	
48	240.00	274.50	2.3	34.50	46	230.00	264.50	5.5	82.50	45	
48	240.00	279.00	2.6	39.00	46	230.00	269.00	6	90.00	45	
48	240.00	291.00	3.4	51.00	46	230.00	281.00	7.5	112.50	45	
42½	212.50	238.15	1.71	25.65	40½	202.50	228.15	3.5	52.50	39½	
42½	212.50	244.00	2.1	31.50	40½	202.50	234.00	4.5	67.50	39½	
42½	212.50	247.00	2.3	34.50	40½	202.50	237.00	5.5	82.50	39½	
42½	212.50	251.50	2.6	39.00	40½	202.50	241.50	6	90.00	39½	
42½	212.50	263.50	3.4	51.00	40½	202.50	253.50	7.5	112.50	39½	
39	195.00	220.65	1.71	25.65	37	185.00	210.65	3.5	52.50	36	
39	195.00	226.50	2.1	31.50	37	185.00	216.50	4.5	67.50	36	
39	195.00	229.50	2.3	34.50	37	185.00	219.50	5.5	82.50	36	
39	195.00	234.00	2.6	39.00	37	185.00	224.00	6	90.00	36	
39	195.00	246.00	3.4	51.00	37	185.00	236.00	7.5	112.50	36	
38	190.00	215.65	1.71	25.65	36	180.00	205.65	3.5	52.50	35	
38	190.00	221.50	2.1	31.50	36	180.00	211.50	4.5	67.50	35	
38	190.00	224.50	2.3	34.50	36	180.00	214.50	5.5	82.50	35	
38	190.00	229.50	2.6	39.00	36	180.00	219.00	6	90.00	35	
38	190.00	241.00	3.4	51.00	36	180.00	231.00	7.5	112.50	35	

Tariff Authorities

Agent J. H. Glenn's Eastern Lumber Tariff, I. C. C. No. A-604.
Agent J. H. Glenn's Southern Lumber Tariff, I. C. C. No. A-659.
A. C. L. R. R. Florida Local Tariff, I. C. C. No. B-2632.

DEFENDANTS' EXHIBIT No. 55

Witness: J. W. Perrin

Before Interstate Commerce Commission

I. C. C. Docket No. 18364

wing Comparison of Freight Charges Accruing on Shipments of Logs from A. C. L. R. R. Station and Palatka, Florida, and at A. C. L. R. R. Stations in South Georgia and on Lumber from Such Weight of 150,000 Pounds of Logs Has Been Used for Each 50,000 Pounds of Lumber)

Mill Points

Florida		Loughman and Groveland, Florida				Perry, Gainesville, and		
ber, Cl, 0 Lbs.		Logs, Cl, 150,000 Lbs.		Lumber, Cl, 50,000 Lbs.		Logs, Cl, 150,000 Lbs.		Lum 50,0
Revenue	Total	Rate	Revenue	Rate	Revenue	Total	Rate	Revenue	Rate
$225.00	$250.65	1.71	$25.65	48	$240.00	$265.65	1.71	$25.65	46
225.00	258.50	2.1	31.50	48	240.00	271.50	2.1	31.50	46
225.00	259.50	2.3	34.50	48	240.00	274.50	2.3	34.50	46
225.00	264.00	2.6	39.00	48	240.00	279.00	2.6	39.00	46
225.00	276.00	3.4	51.00	48	240.00	291.00	3.4	51.00	46
197.50	223.15	1.71	25.65	42½	212.50	238.15	1.71	25.65	40½
197.50	229.00	2.1	31.50	42½	212.50	244.00	2.1	31.50	40½
197.50	232.00	2.3	34.50	42½	212.50	247.00	2.3	34.50	40½
197.50	236.50	2.6	39.00	42½	212.50	251.50	2.6	39.00	40½
197.50	248.50	3.4	51.00	42½	212.50	363.50	3.4	51.00	40½
180.00	205.65	1.71	25.65	39	195.00	220.65	1.71	25.65	37
180.00	211.50	2.1	31.50	39	195.00	226.50	2.1	31.50	37
180.00	214.50	2.3	34.50	39	195.00	229.50	2.3	34.50	37
180.00	219.00	2.6	39.00	39	195.00	234.00	2.6	39.00	37
180.00	231.00	3.4	51.00	39	195.00	246.00	3.4	51.00	37
175.00	200.65	1.71	25.65	38	190.00	215.65	1.71	25.65	36
175.00	206.50	2.1	31.50	38	190.00	221.50	2.1	31.50	36
175.00	209.50	2.3	34.50	38	190.00	224.50	2.3	34.50	36
175.00	214.00	2.6	39.00	38	190.00	229.50	2.6	39.00	36
175.00	226.00	3.4	51.00	38	190.00	241.00	3.4	51.00	36

Tariff Authorities

Agent J. H. Glenn's Eastern Lumber Tariff, I. C. C. N
Agent J. H. Glenn's Southern Lumber Tariff, I. C. C.
A. C. L. R. R. Florida Local Tariff, I. C. C. No. B-26

ión

tations in Florida Milled at Jacksonville, Loughman, Groveland, Perry,
n Such Points to Representative Eastern Destinations (in Making This

A. C. L. R. R. Stations in South Georgia

, and Palatka, Florida			Interstate from A. C. L. North Florida Stations and Proposed from Georgia					Georgia Manufacturer's Disadvantage as Compared with Manufacturers At:		
Lumber, Cl, 50,000 Lbs.			Logs, Cl, 150,000 Lbs.		Lumber, Cl, 50,000 Lbs.					
Rate	Revenue	Total	Rate	Revenue	Rate	Revenue	Total	Jacksonville Florida	Loughman and Groveland Florida	Perry Gainesville and Palatka, Florida
46	$230.00	$255.65	3.5	52.50	45	$225.00	$277.50	$26.85	$11.85	$21.85
46	230.00	261.50	4.5	67.50	45	225.00	292.50	36.00	21.00	31.00
46	230.00	264.50	5.5	82.50	45	225.00	307.50	48.00	33.00	43.00
46	230.00	269.00	6	90.00	45	225.00	315.00	51.00	36.00	46.00
46	230.00	281.00	7.5	112.50	45	225.00	337.50	61.50	46.50	56.50
40½	202.50	228.15	3.5	52.50	39½	197.50	250.00	26.85	11.85	21.85
40½	202.50	234.00	4.5	67.50	39½	197.50	265.00	36.00	21.00	31.00
40½	202.50	237.00	5.5	82.50	39½	197.50	280.00	48.00	33.00	43.00
40½	202.50	241.50	6	90.00	39½	197.50	287.50	51.00	36.00	46.00
40½	202.50	253.50	7.5	112.50	39½	197.50	310.00	61.50	46.50	56.50
37	185.00	210.65	3.5	52.50	36	180.00	232.50	26.85	11.85	21.85
37	185.00	216.50	4.5	67.50	36	180.00	247.50	36.00	21.00	31.00
37	185.00	219.50	5.5	82.50	36	180.00	262.50	48.00	33.00	43.00
37	185.00	224.00	6	90.00	36	180.00	270.00	51.00	36.00	46.00
37	185.00	236.00	7.5	112.50	36	180.00	292.50	61.50	46.50	56.50
36	180.00	205.65	3.5	52.50	35	175.00	227.50	26.85	11.85	21.85
36	180.00	211.50	4.5	67.50	35	175.00	242.50	36.00	21.00	31.00
36	180.00	214.50	5.5	82.50	35	175.00	257.50	48.00	33.00	43.00
36	180.00	219.00	6	90.00	35	175.00	265.00	51.00	36.00	46.00
36	180.00	231.00	7.5	112.50	35	175.00	287.50	61.50	46.50	56.50

C. No. A-604.
. C. No. A-659.
B-2632.

6/10/31

EXHIBIT No. 61

I. C. C. Docket No. 18364

Witness: Perrin

ment Showing for the Period February 9, 1929 to January 31, 1931, Inclusive, the Number of Cars of Logs More Than Six Feet in Length oved Between Stations on Atlantic Coast Line Railroad in Florida; Also the Weights and the Revenue Collected, Together with Revenue at Would Have Accrued on Basis of the So-Called Cummer Scale of Rates.

Recapitulation

	Number of cars	Weight (pounds)		Revenue	
		As billed	Using carload minimum of 50,000 lbs.	As collected	Using so-called Cummer Scale
et No. 1	2,862	155,173,700	164,137,600	$63,559.74	$31,947.99
et No. 2	13,357	786,139,700	798,191,700	451,955.91	221,203.39
et No. 3	1,763	83,360,500	91,825,900	40,878.72	20,808.62
et No. 4	620	31,059,300	32,667,300	15,114.57	7,265.75
Grand Total	18,602	1,055,733,200	1,086,822,500	$571,508.94	$281,225.75

$571,508.94
281,225.75

$290,283.19

EXHIBIT No. 61—Continued

Sheet No. 1

From	To	Miles	No. of cars	Weight (pounds) As billed	Weight (pounds) Using carload minimum of 50,000 lbs.	Revenue As collected	Revenue Using so-called Cummer Scale
Altoona	Groveland	82	21	1,060,900	1,104,900	$583.46	$254.13
"	Loughman	93	38	1,924,200	1,985,600	1,155.55	516.26
Amonate	Slater	21	53	2,227,890	2,660,800	779.75	355.00
"	Tampa	147	2	86,200	100,000	64.65	34.00
Apopka	Bonds Mill	49	63	2,880,900	3,170,100	1,296.47	655.72
Ascot	Palatka	96	6	281,400	301,200	168.84	78.31
Astor	Jacksonville	106	1	40,000	50,000	26.00	14.00
Astor Park	Groveland	99	17	849,700	901,300	509.82	234.34
Athena	"	96	116	5,747,700	6,028,400	3,448.92	1,567.38
Auburndale	Perry	11	2	90,400	100,000	27.09	17.10
Aulls	Groveland	69	14	697,400	734,200	348.70	168.87
"	"	37	7	333,600	364,500	133.44	62.33
"	Jacksonville	136	14	796,700	810,700	557.69	275.64
Baldwin	Loughman	52	48	2,510,900	2,592,300	1,129.97	544.38
Baum	Palatka	81	2	117,200	117,200	64.46	26.96
Callahan	Jacksonville	20	330	19,665,900	22,001,400	5,899.75	3,762.24
Carbur	Perry	59	3	744,900	150,000	72.44	31.50
"	Jacksonville	20	2	96,800	100,200	29.04	17.13
"	Cross City	27	593	35,848,800	36,196,800	12,560.76	6,189.65
"	Eastport	152	79	4,717,700	4,717,700	3,539.84	1,604.02
Cary	Jacksonville	145	3	179,100	179,100	134.43	60.89
Cassia	Perry	17	201	12,295,400	12,387,100	3,743.41	2,118.19
"	Jacksonville	12	1	48,300	50,000	14.49	8.55
"	Bonds Mill	35	14	724,300	748,700	299.04	128.03
"	Jacksonville	137	25	1,203,900	1,295,400	842.73	440.44
	Loughman	64	14	698,600	725,900	349.30	166.96
	Palatka	82	23	1,129,500	1,187,400	621.25	273.10

Chiefland	Cross City	22	2	113,000	113,000	39.56	19.32
"	Jacksonville	118	4	203,000	206,300	131.95	66.02
"	Perry	66	8	351,200	406,900	175.61	93.59
Citronelle	Jacksonville	141	3	120,000	150,000	90.00	51.00
Clara	Cross City	17	1	56,700	56,700	17.01	9.70
"	Gainesville	77	15	684,300	762,600	376.35	175.40
"	Jacksonville	135	1	51,100	51,100	35.77	17.37
"	Palatka	126	1	82,100	82,100	63.83	26.27
"	Perry	27	4	223,100	232,400	87.68	39.74
Clark	Live Oak	51	1	52,600	52,600	23.67	11.05
Clermont	Jacksonville	167	1	52,300	52,300	41.84	19.35
Clydes	"	133	27	1,153,400	1,352,700	807.38	459.92
"	Loughman	58	21	1,126,300	1,152,200	563.15	241.96
"	Palatka	78	7	322,100	352,100	177.16	80.98
Coats	Jacksonville	157	2	117,200	117,200	87.90	39.85
"	York	39	334	14,584,500	16,827,300	5,833.45	2,877.47
Cross City	Gainesville	60	14	1,040,800	1,041,800	520.40	218.78
" "	Perry	44	382	21,738,100	22,589,500	9,825.29	4,743.80
Crystal River	York	28	192	9,252,000	9,808,300	3,237.22	1,677.22
Deeville	Jacksonville	15	22	1,197,300	1,226,600	359.19	209.75
Drifton	Perry	32	46	1,954,700	2,306,000	781.90	394.33
Dukes	Jacksonville	58	49	2,513,800	2,596,700	1,256.90	545.31
Dyal	Eastport	31	1	55,200	55,200	19.32	9.44
"	Jacksonville	24	32	1,730,700	1,785,100	605.92	305.25
Total			2,862	155,173,700	164,137,600	$63,559.74	$31,947.99

EXHIBIT No. 61—Continued

[fol. 2034]

Sheet No. 2

From	To	Miles	No. of cars	Weight (pounds)		Revenue	
				As billed	Using carload minimum of 50,000 lbs.	As collected	Using so-called Cummer Scale
East Alachua	Gainesville	15	1	41,500	50,000	$22.83	$8.55
"	Jacksonville	74	45	2,322,100	2,361,000	1,277.25	543.03
Edgar	"	77	1	56,100	56,100	30.86	12.90
Erida	Perry	16	10	441,600	500,000	132.49	85.50
Estero	Slater	25	7	280,600	350,000	98.21	59.85
Eugene	Perry	47	2	80,000	100,000	36.00	21.00
Fesan	Jacksonville	63	3	138,400	152,700	69.20	35.12
"	Perry	100	5	232,400	254,500	139.44	66.17
Forest City	Loughman	47	1	55,500	55,500	24.97	11.66
Ft. Mead	Childs	104	1	40,000	50,000	26.00	14.00
Ft. White	Gainesville	32	3	140,800	155,600	56.32	26.61
"	Jacksonville	91	1	46,500	50,000	27.90	13.00
"	Live Oak	37	24	1,273,900	1,287,800	512.00	220.21
Francis	Perry	148	5	209,500	250,000	157.13	85.00
Gainesville	"	104	41	2,132,100	2,183,100	1,385.98	611.27
Gardenia	Jacksonville	142	17	775,700	855,200	543.00	290.77
Green Cove Spgs	"	31	5	241,500	273,400	104.27	46.75
Groveland	Loughman	68	1	55,000	55,000	27.50	12.65
Grove Park	Jacksonville	91	29	1,431,800	1,489,500	858.96	387.27
"	Palatka	36	10	480,300	510,500	192.12	87.30
"	Perry	118	15	735,400	763,500	478.02	244.32
Gulf Hammock	Tampa	115	1	50,100	50,100	32.57	16.03
Hague	Jacksonville	75	96	4,933,900	5,032,900	2,713.83	1,157.57
"	Perry	94	124	6,468,900	6,560,300	3,881.34	1,703.68
Hardeetown	"	65	2	84,100	100,000	42.00	23.00
Haynesworth	"	93	2	104,000	104,000	62.40	27.04
Hazelton	Jacksonville	83	1	56,000	56,000	33.60	12.88

Herlong	"	97	15	832,200	833,700	499.92	216.76
"	Perry	105	4	208,300	208,800	135.41	58.46
High Springs	Gainesville	23	3	159,200	159,200	55.73	27.22
"	Jacksonville	81	13	626,700	660,800	344.72	151.98
"	Palatka	72	1	17,600	50,000	21.12	11.50
"	Perry	90	6	199,700	300,000	126.63	69.00
Hildreth	Jacksonville	97	56	2,982,000	3,025,500	1,789.20	786.63
"	Perry	105	160	9,033,400	9,067,800	5,872.10	2,538.98
Hines	Cross City	10	549	38,731,800	38,813,700	10,342.52	6,637.14
"	Gainesville	70	16	1,210,300	1,211,300	618.73	278.60
"	Palatka	119	7352	458,210,700	458,554,600	298,101.61	146,737.47
"	Perry	34	724	38,853,300	39,905,900	15,601.40	6,823.91
Hollister	Jacksonville	68	1	62,700	62,700	31.35	14.42
"	Perry	141	3	125,200	150,000	93.91	51.00
Homosassa	Lacoochee	68	2995	153,704,600	161,941,400	76,849.26	37,246.52
"	Otter Creek	52	519	29,091,300	29,703,200	13,142.37	6,237.67
"	Perry	130	242	15,531,400	15,593,700	10,976.79	4,989.98
Hooper	Lacoochee	18	7	321,200	351,500	96.36	60.11
Iddo	Perry	14	4	179,400	202,800	53.79	34.68
Istachatta	Groveland	40	2	136,100	136,100	61.24	23.27
"	Lacoochee	17	201	11,485,700	11,941,800	3,447.83	2,042.05
Jacksonville	Baldwin	20	9	444,800	466,300	133.44	79.74
"	Buffalo Bluff	63	1	43,100	50,000	21.53	11.50
Johnson	Jacksonville	79	21	1,041,300	1,094,200	572.76	251.67
Total			13,357	786,139,700	798,191,700	$451,955.91	$221,203.39

[fol. 2035]

EXHIBIT No. 61—Continued

Sheet No. 3

From	To	Miles	No. of cars	Weight (pounds) As billed	Weight (pounds) Using carload minimum of 50,000 lbs.	Revenue As collected	Revenue Using so-called Cummer Scale
Johnstown	Jacksonville	49	7	403,300	403,300	$181.51	$84.69
Jones Siding	Perry	59	21	1,010,100	1,060,900	505.05	222.79
Jonesto	Gainesville	36	2	103,500	103,500	41.40	17.70
"	Jacksonville	68	7	424,900	434,900	212.45	100.03
Kendrick	Gainesville	36	3	167,800	167,800	67.12	28.69
"	Jacksonville	121	6	281,000	302,600	196.70	96.83
Lacoochee	Perry	155	4	197,000	205,600	147.75	69.90
Lamont	"	22	648	29,811,600	33,022,600	10,432.77	5,646.86
Lebanon	Cross City	48	45	2,702,500	2,721,100	1,216.25	571.43
"	Perry	92	2	83,300	100,000	50.00	26.00
Leno	Buffalo Bluff	27	1	44,500	50,000	15.57	8.55
"	Jacksonville	38	23	1,089,100	1,178,300	435.64	201.49
Linden	Lacoochee	11	2	87,800	100,000	26.34	17.10
Lisbon	Loughman	91	2	106,300	106,300	63.78	27.64
Longwood	Jacksonville	134	171	7,216,600	8,562,500	5,051.63	2,911.25
"	Palatka	79	24	1,093,500	1,219,300	601.42	280.44
Lowell	Perry	133	3	131,900	150,000	92.33	51.00
Markham	Bonds Mill	30	39	2,149,600	2,203,500	859.84	376.80
Martin	Gainesville	33	5	235,000	257,500	94.00	44.03
Micanopy	Jacksonville	103	5	220,400	255,600	135.02	71.57
"	Perry	122	34	1,710,200	1,788,300	1,197.14	572.26
Miccosukee	"	54	43	2,029,500	2,215,200	913.58	465.19
Monticello	Gainesville	140	1	50,000	60,000	42.00	20.40
"	Perry	36	284	12,452,400	14,276,300	4,981.58	2,441.25
Mount Plymouth	Bonds Mill	39	11	559,900	582,800	228.43	99.66
Oakton	Eastport	88	1	53,700	53,700	29.54	12.35
"	Gainesville	29	2	111,100	111,100	38.89	19.00
"	Jacksonville	75	10	596,300	596,900	327.89	137.29

O'Brien	Live Oak	18	2	104,000	106,200	31.86	18.16
"	Perry	118	5	251,800	269,800	163.69	86.34
Ocala	Jacksonville	126	2	80,000	100,000	56.00	32.00
"	Perry	133	3	149,000	150,000	104.72	51.00
Okahumpka	Claim	81	2	93,400	101,700	56.04	23.19
"	Gainesville	81	3	164,300	164,300	90.37	37.79
"	Loughman	99	5	270,200	271,700	162.12	70.64
Old Town	Jacksonville	109	9	431,800	456,300	329.54	127.76
"	Perry	54	16	689,700	807,600	310.61	169.60
Orange Park	Jacksonville	15	6	292,200	313,400	87.66	53.59
Otter Creek	Cross City	34	18	1,007,300	1,011,300	402.92	172.93
"	Lacoochee	77	2	103,500	104,700	56.93	24.08
"	Perry	78	5	211,200	250,000	116.26	57.50
Oviedo	Jacksonville	143	87	3,531,400	4,350,000	2,648.64	1,479.00
Palatka	Jacksonville	57	9	448,600	470,900	224.30	98.89
"	Perry	153	13	543,700	650,000	407.78	221.00
Paradise	Jacksonville	82	5	207,300	250,000	114.02	57.50
"	Perry	100	7	360,800	374,700	216.48	97.42
Perry	Eastport	169	142	8,483,500	8,483,500	6,786.45	3,138.90
"	Otter Creek	78	2	80,000	100,000	44.00	23.00
Pineola	Groveland	42	9	438,000	457,900	197.09	96.16
"	Lacoochee	18	5	285,400	292,300	85.62	49.98
Total			1,763	83,360,500	91,825,900	$40,878.72	$20,808.62

[fol. 2036]

EXHIBIT No. 61—Continued

Sheet No. 4

From	To	Miles	No. of cars	Weight (pounds)		Revenue	
				As billed	Using carload minimum of 50,000 lbs.	As collected	Using so-called Cummer Scale
Raiford	Jacksonville	45	8	393,600	419,400	$177.14	$88.07
Raleigh	"	104	6	319,200	324,400	207.49	90.83
"	Perry	94	10	541,500	541,500	324.66	140.79
Ratliff	Jacksonville	15	6	275,600	300,000	82.68	51.30
Rochelle	Buffalo Bluff	45	32	1,539,000	1,635,900	692.56	343.54
"	Cross City	70	52	2,686,100	2,727,100	1,340.90	627.23
"	Jacksonville	95	11	588,600	596,000	353.34	454.96
"	Palatka	40	34	1,942,000	1,943,300	778.83	332.30
Rogers Mile Post	Perry	114	41	2,084,100	2,170,800	1,354.67	694.66
Rowell	Live Oak	47	12	638,400	646,200	286.81	135.70
Sadler	Palatka	35	1	52,800	52,800	21.12	9.03
Salem	Palatka	94	1	48,100	50,000	26.46	13.00
Sanford	Perry	19	13	551,300	650,000	165.37	111.15
Sanlando	Loughman	51	25	1,280,000	1,309,300	640.00	268.80
Santa Fe	"	52	2	96,500	106,500	43.43	22.37
"	Gainesville	21	2	88,200	100,000	30.87	17.10
"	Jacksonville	65	2	109,100	110,100	54.55	25.32
Seville	Perry	98	11	533,400	564,000	320.04	156.64
"	Buffalo Bluff	22	61	2,912,000	3,113,000	1,019.32	532.32
"	Jacksonville	84	2	86,600	100,000	47.63	23.00
Sorrento	Palatka	29	1	44,500	50,000	15.56	8.55
Thompsons Spur	Groveland	57	1	50,900	50,900	30.54	10.69
Tice	Perry	107	47	2,221,800	2,396,700	1,444.19	671.08
Trenton	Slater	6	11	440,000	550,000	110.00	94.04
"	Gainesville	41	2	101,800	101,800	45.82	21.38
	Jacksonville	99	1	49,500	50,000	29.70	13.00

Wagner	Bonds Mill	35	32	1,331,600	1,600,600	532.56	273.70
"	Glenwood	33	2	97,600	101,600	39.04	17.37
"	Jacksonville	137	16	770,100	837,200	539.07	284.65
"	Loughman	62	60	2,996,100	3,122,400	1,498.10	718.15
"	Palatka	82	1	44,500	50,000	24.48	11.50
Walkill	Eastport	47	1	70,700	70,700	28.28	14.85
"	Jacksonville	34	3	185,800	185,800	74.32	31.77
Walling	Bonds Mill	35	62	3,481,600	3,540,400	1,342.56	600.28
"	Glenwood	34	1	51,600	51,600	20.64	8.82
Walling Spur	Bonds Mill	35	2	118,500	118,500	47.40	20.26
Wekiva	"	31	3	139,300	153,200	55.72	26.20
"	Jacksonville	134	9	423,700	454,900	296.59	154.67
Williston	Perry	98	27	1,415,800	1,450,700	849.48	377.18
York	Jacksonville	136	1	44,400	50,000	26.64	17.00
Zephyrhills	Groveland	42	5	213,400	250,000	96.01	52.50
Total			620	31,059,300	32,667,300	$15,114.57	$7,265.75

Wilmington, N. C., June 1, 1931.

[fol. 2037]

DEFENDANT'S EXHIBIT No. 63

Witness: J. W. Perrin

BEFORE THE INTERSTATE COMMERCE COMMISSION

I. C. C. Docket No. 18364

Statement Showing Comparison in Cents Per 100 Pounds, of the So-Called Cummer Log Scale with Intrastate Rates Between Points on the Atlantic Coast Line Railroad in North Carolina, South Carolina, Georgia, Alabama and Virginia

		Description					
	A	B	C	D	E	F	G
	So-Called Cummer		North	South	Georgia		
Miles	Log Scale	Virginia	Carolina	Carolina	Transit	Local	Alabama
5	1.71	2½	1.8	2	1.83	3.05	2½
7	1.71	2½	1.8	2	1.83	3.05	2½
10	1.71	2½	1.8	2	2.11	3.51	2½
12	1.71	3	1.8	2½	2.11	3.51	3
15	1.71	3	2.13	2½	2.11	4.17	3
17	1.71	3	2.13	2½	2½	4.17	3
20	1.71	3	2.13	2½	2.63	4.38	3
22	1.71	3½	2.13	3	2.63	4.38	3½
25	1.71	3½	2.62	3	2.88	4.79	3½
27	1.71	3½	2.62	3	2.88	4.79	3½
30	1.71	3½	2.62	3	3	5	3½
32	1.71	4	2.62	3	3	5	4
35	1.71	4	2.88	3	3¼	5.41	4
37	1.71	4	2.88	3	3¼	5.41	4
40	1.71	4	2.88	3	3.38	5.61	4
42	2.1	4½	2.88	3½	3.38	5.61	4½
45	2.1	4½	2.88	3½	3½	5.91	4½
47	2.1	4½	3¼	3½	3½	5.91	4½
50	2.1	4½	3¼	3½	3½	5.91	4½
52	2.1	4½	3¼	3½	3½	5.91	4½
55	2.1	4½	3½	3½	3.63	6.04	4½
57	2.1	5	3½	4	3.63	6.04	5
60	2.1	5	3½	4	4	6.66	5
62	2.3	5	3½	4	4	6.66	5
65	2.3	5	4	4	4.13	6.87	5
67	2.3	5	4	4	4.13	6.87	5
70	2.3	5	4	4	4¼	7.08	5
72	2.3	5½	4	5	4¼	7.08	5½
75	2.3	...	4¼	5	4.38	7.29	5½
77	2.3	...	4¼	5	4.38	7.29	5½
80	2.3	...	4¼	5	4.63	7.71	5½

[fol. 2038]

82	2.3	...	4¼	5	4.63	7.71	5½
85	2.3	...	4.62	5	4¾	7.91	5½
87	2.3	...	4.62	5	4¾	7.91	6
90	2.3	...	4.62	5	4.88	8.12	6
92	2.6	...	4.62	5	4.88	8.12	6
95	2.6	...	5	5	5.13	8.54	6
97	2.6	...	5	5	5.13	8.54	6
100	2.6	...	5	5	5.38	8.96	6
110	2.8	...	5.38	6½	5½	9.17	6½

Description	A So-Called Cummer Log Scale	B Virginia	C North Carolina	D South Carolina	E Georgia Transit	F Georgia Local	G Alabama
120	3.2	...	5.63	6½	5.63	9.34	6½
130	3.2	...	6.13	7	5¾	9.58	7
140	3.4	...	6¼	7	6	10	7
150	3.4	...	6¾	8	6¼	10.41	7½
160	3.4	...	7.13	8	6.38	10.62	7½
170	3.7	...	7.38	8	6½	10.83	8

Explanation of Descriptions

Where Rates in Tariffs are Stated in Cents Per Car of a Given Weight, They Have Been Converted to Cents Per 100 Pounds, Holding to Nearest Fraction.

A—Logs carloads, except cedar logs. Per car 50,000 pounds, excess in proportion.

B—Logs (except Cedar, Cherry, Mahogany and Walnut), carloads, minimum weight 40,000 pounds. (Authorized by Virginia Corporation Commission in Case No. 4208, August 26, 1930).

C—Logs, rough, C. L., per car 40,000 pounds, excess in proportion, (prescribed by the North Carolina Corporation Commission in its Circular No. 251 of August 5, 1923.)

D—Logs, native wood carload minimum weight 40,000 pounds. Issued in compliance with Order No. 616, Docket No. 1097 and Circular 322 (Corrected) of the Railroad Commission of South Carolina, dated July 21, 1930. (Published under protest.)

E—Logs (not hewn or sawn; nor piling or poles) and short length blocks, round or split, when for manufacture and product reshipped, per car 40,000 pounds.

F—Logs, N. O. S., carload minimum 24,000 pounds (Authority Georgia Public Service Commission's Order, September 28, 1926, file 16019.)

G—Forest Products, Viz: Billets, Blocks, Bolts or Butts (handle, heading, hoop,

[fol. 2039]

shingle or stave) and logs, carloads, minimum weight 40,000 pounds. (Issued in compliance with order of the Alabama Public Service Commission in Docket No. 4136, dated April 29, 1925.)

Tariff Authorities

Agent J. H. Glenn's Alabama Commodity Tariff I. C. C. No. A-757.
A. C. L. R. R. Virginia-Carolina Lumber Tariff I. C. C. No. B-2512.
Agent E. H. Dulaney's Georgia Intrastate Exceptions No. 3, I. C. C. No. 39.
Agent J. H. Glenn's South Carolina Commodity Tariff I. C. C. No. A-664.
Agent J. J. Cottrell's North Carolina Intrastate Tariff, I. C. C. No. 767.
Wilmington, N. C., June 5, 1931.

[fol. 2040] DEFENDANT'S EXHIBIT NO. 64

Witness: Perrin

I. C. C. Docket No. 18364

Statement Showing "Cummer Scale" (in Cents per Car of 50,000 Pounds, Excess in Proportion, but Reduced to Cents per 100 Pounds), also 5.03%, 3.54%, and 3.85%, Respectively, of 1st Class, K-2 Scale, Prescribed in Docket No. 13494, Southern Class Rate Investigation, 113 I. C. C. 200, 207

Miles	"Cummer" Scale	Percentage of 1st Class, K-2 Scale: 5.03 Percent (See Note 1)	3.54 Percent (See Note 2)	3.85 Percent (See Note 3)
5	1.71	1.71	1.20	1.31
10	1.71	1.81	1.27	1.39
15	1.71	1.96	1.38	1.50
20	1.71	2.06	1.45	1.58
25	1.71	2.21	1.56	1.69
30	1.71	2.31	1.63	1.77
35	1.71	2.46	1.73	1.89
40	1.71	2.56	1.81	1.96
45	2.10	2.72	1.91	2.08
50	2.10	2.82	1.98	2.16
55	2.10	2.97	2.09	2.27
60	2.10	3.07	2.16	2.35
65	2.30	3.22	2.27	2.46
70	2.30	3.32	2.34	2.54
75	2.30	3.42	2.41	2.62
80	2.30	3.52	2.48	2.70
85	2.30	3.62	2.55	2.77
90	2.30	3.67	2.58	2.81
95	2.60	3.72	2.62	2.85
100	2.60	3.82	2.69	2.93
110	2.80	3.97	2.80	3.04
120	3.20	4.12	2.90	3.16
130	3.20	4.27	3.01	3.27
140	3.40	4.43	3.11	3.39
150	3.40	4.58	3.22	3.50
160	3.40	4.73	3.33	3.62
170	3.70	4.83	3.44	3.70

[fol. 2041]

Explanation of Notes:

NOTE 1. 5.03%: Percentage relationship rate on logs for 5 miles (1.71), representing "minimum" rate of log scale, bears to 1st Class, K-2 Scale, for 5 miles (34).

NOTE 2. 3.54%: Percentage relationship rate on logs for 110 miles (2.80), representing "mean" rate of log scale, bears to 1st Class, K-2 Scale, for 110 miles (79).

NOTE 3. 3.85%: Percentage relationship rate on logs for 170 miles (3.70), representing "maximum" rate of log scale, bears to 1st Class, K-2 Scale, for 170 miles (96).

Tariff Authority:

Agent J. H. Glenn's "Southern Lumber Tariff", I. C. C. No. A-659.

[fol. 2042]

DEFENDANT'S EXHIBIT NO. 65

I. C. C. Docket No. 18364

Witness: Perrin

Statement Showing "Cummer" Scale and per Ton and Car-mile Revenue Thereunder. Scale Has also Been Extended Beyond 170 to 320 Miles at the Rate of 150 Cents for Each Additional 30 Miles so as to Afford a Better Demonstration of the Level of the Scale Involved

NOTE: The rate of progression used in extending the scale was determined by the amount of the last actual increase in the scale applied for the distance of the last complete mileage block of the original scale.

Tariff Authority:
Agent J. H. Glenn's Southern Lumber Tariff, I. C. C. No. A-659.

[fol. 2043]

Wilmington, N. C., June 6, 1931.

Miles,	"Cummer" Scale	Per Ton-Mile (Mills)	Per car 60,000 Pounds (Dollars)	Per car-Mile (Cents)
5	1.71	68.4	10.26	205.1
10	1.71	34.2	10.26	102.6
15	1.71	22.8	10.26	68.4
20	1.71	17.1	10.26	51.3
25	1.71	13.7	10.26	41.1
30	1.71	11.4	10.26	34.2
35	1.71	9.8	10.26	29.3
40	1.71	8.6	10.26	25.7
45	2.10	9.3	12.60	28.0
50	2.10	8.4	12.60	25.2
55	2.10	7.6	12.60	22.9
60	2.10	7.0	12.60	21.0
65	2.30	7.1	13.80	21.2
70	2.30	6.6	13.80	19.7
75	2.30	6.1	13.80	18.4
80	2.30	5.8	13.80	17.3
85	2.30	5.4	13.80	16.2
90	2.30	5.1	13.80	15.3
95	2.60	5.5	15.60	16.4
100	2.60	5.2	15.60	15.6
110	2.80	5.1	16.80	15.3
120	3.20	5.3	19.20	16.0
130	3.20	4.9	19.20	14.8
140	3.40	4.9	20.40	14.6
150	3.40	4.5	20.40	13.6
160	3.40	4.3	20.40	12.7
170	3.70	4.4	22.20	13.1
180	3.70	4.1	22.20	12.3
190	3.70	3.9	22.20	10.7
200	4.00	4.0	24.00	12.0
210	4.00	3.8	24.00	11.4
220	4.00	3.6	24.00	10.9
230	4.30	3.7	25.80	11.2
240	4.30	3.6	25.80	10.7
250	4.30	3.4	25.80	10.3
260	4.60	3.5	27.60	10.6
270	4.60	3.4	27.60	10.2
280	4.60	3.3	27.60	9.9
290	4.90	3.4	29.40	10.1
300	4.90	3.3	29.40	9.8
310	4.90	3.2	29.40	9.5
320	5.20	3.3	31.20	9.8

[fol. 2044]

DEFENDANT'S EXHIBIT No. 66

I. C. C. Docket No. 18364

Witness: Perrin

Statement Showing "Cummer" Scale, in Cents Per 100 Pounds, and Per Ton-Mile and Per Car and Per Car-Mile Revenue Derived Therefrom, in Comparison With Suspended Rates on Ex-Lake Iron Ore from the Lower Lake Erie Ports to Points of Destination Shown Found Not Justified Because Unreasonably Low in I. and S. Docket No. 1514, Trunk-Line and Ex-Lake Iron Ore Rates, 69 I. C. C. 589, (See Excerpts Following Rate Tables), and Per Ton-Mile and Per Car and Per Car-Mile Revenue Thereunder

Wilmington, N. C., June 8th, 1931

[fol. 2045]

"Cummer" scale						Ex-lake iron ore (see note)						
		Revenue				Miles		Suspended rates in cents		Revenue		
Miles	Per 100 lbs.	Per ton-mile Mills	Per car 60,000 pounds Dollars	Per car-mile Cents	From Lower Lake Erie ports To	Minimum maximum	Average	Per ton 2240 lbs.	Per 100 lbs.	Per net ton-mile Mills	Per car 119000 lbs. Dollars	Per car-mile Cents
63.....	2.30	7.1	13.80	21.2	Youngstown	50-74	63	73.0	3.26	10.3	38.79	61.6
89.....	2.30	5.1	13.80	15.3	Leetonie Group	75-99	89	78.5	3.50	7.9	41.65	46.8
113.....	3.20	5.3	19.20	16.0	Midland Group	100-124	113	88.5	3.95	7.0	47.01	41.6
145.....	3.40	4.3	20.40	12.7	Pittsburgh-Wheeling District	125-159	145	102.	4.55	6.3	54.15	37.4
170.....	3.70	4.4	22.20	13.1	Donora Group	163-181	170	109.	4.87	5.7	57.95	34.1

Certain pertinent extracts reproduced as a matter of convenience from report in I. and S. Docket No. 1514, Trunk-Line and Ex-Lake Iron Ore Rates, (69 I. C. C. 589):

Page 599: "In support of the suspended rates, which are admittedly lower than rates on coal for like hauls, it has been submitted that iron ore loads heavier per car than coal, that the expenses incident to assembling cars of coal from the different mines is not incurred at the lake ports, and that the movement of ore from the ports is in large volume, usually in trainload lots and concentrated from and to a comparatively few points, while the movement of coal is widely scattered, and though in the aggregate the movement is much greater than that of ore, coal often moves to particular points in lots of one or only a few cars."

Page 610-611: "We, therefore, find the suspended rates on ex-lake ore unreasonable and unlawful, and by order shall require their cancellation. We find them unreasonable and unlawful for the reason that in relation to rates in general, and in relation to rates closely affiliated, such as on coal, they would tend to cast an undue burden upon other traffic; that they would be unduly prejudicial to ore traffic from mines in eastern trunk-line territory, so far as the same carriers participate in the interstate carriage of both ex-lake and local mine ore traffic; that they are unlawful inasmuch as their establishment would jeopardize the rates on a large volume of other heavy-loading low-grade traffic which we have initiated under the authority of section 15a [fol. 2046] of the interstate commerce act with the intent that the carriers in the rate groups by us established shall 'under honest, efficient and economical management and reasonable expenditures for maintenance of way, structure and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation.' This rate of annual return we have fixed at 5.75 per cent, a rate of return which certain of the respondents have protested as inadequate, and which, if our judgement upon the effect of the proposed reduction in ex-lake ore rates is correct, the carriers are hereby likely to further reduce and jeopardize. We have only recently rejected tariffs of certain of the respondents intended to establish on three days' notice a further 10 per cent reduction over the 28 per cent

reduction already in effect in some of the eastern and import rates, notably the rate from Constable Hook to Bethlehem. We mention this fact in connection with the reductions on ex-lake ore here proposed by the carriers, in order to make clear that in our judgement our authority under section 15a, in the exercise of our power to prescribe just and reasonable rates to 'initiate, modify, establish or adjust' rates is not a mere transitory authority to establish in the first instance a general rate structure calculated to produce a fair return, but is a continuing authority to see that such a rate structure shall not be undermined and its purpose thwarted by new rates, either increases or reductions, proposed by particular carriers for the purpose of augmenting the traffic on certain carrier lines, or on certain descriptions of traffic, or for the immediate and special benefit of particular persons, companies, firms, corporations, localities, or particular descriptions of traffic, in disregard of the more general and seemingly inevitable consequences of such rates newly proposed. To upset or seriously to menace a general structure lawfully established suffices to make proposed rates calculated to effect such a disruption unreasonable and unlawful."

Loadings:

Logs: 60,000 pounds: Average referred to in report of prior hearing was 60,200 pounds. Average of all cars of logs originated on Atlantic Coast Line Railroad in Florida in 1930, amounted to approximately 58,000 pounds.

Ex-Lake Iron Ore: 119,000 pounds: Approximate average of all cars originated by carriers of Great Lakes Region during 1930, as per Statement No. 30100, issued by Bureau of Statistics, Interstate Commerce Commission, Washington, D. C.

[fol. 2047] Values:

Logs: $2.80 per ton of 2,000 pounds f. o. b. mill: Based on $14.02, average price of Longleaf Pine lumber logs per thousand feet, during 1929, as furnished by Mr. R. E. Marsh, in Charge, Division of Forest Economics, Forest Service, U. S. Department of Agriculture, Washington, D. C., in letter dated June 2, 1931, and estimated weight of 10,000 pounds per thousand feet for pine logs, as provided

in various notes in "Exceptions No. 8 to Southern Classification," Agent E. H. Dulaney's I. C. C. No. 35.

Ex-Lake Iron Ore: Iron ore, Mesabi, per net ton, lower lake ports:

Bessemer: $4.15,

Non-Bessemer: 4.02.

Authority: "Wholesale Prices of Commodities—April, 1931," issued by Bureau of Labor Statistics, U. S. Department of Labor, Washington, D. C.

NOTE: Miles and rates shown above in connection with ex-lake iron ore, reproduced from report in I. and S. Docket No. 1514, Trunk-Line and Ex-Lake Iron Ore Rates, (69 I. C. C. 589, 596).

Tariff Authority: Agent J. H. Glenn's "Southern Lumber Tariff", I. C. C. No. A-659.

[fol. 2048]

DEFENDANT'S EXHIBIT No. 67

I. C. C. Docket No. 18364

Witness: Perrin

Statement Showing "Cummer" Scale (in Cents Per 100 Pounds), also Present Interstate Scale on Logs, in Comparison with 65% of 6th Class Rates in Central Territory Generally Applicable Therein on Logs, and Rates in Southern Territory Made the Same Percentage of 1st Class Rates Therein (17.875%) as 65% of 6th Class Rates Bears to 1st Class Rates in Central Territory, (see Note)

NOTE: In No. 13679, Public Service Commission of Indiana v. Ann Arbor Railroad Company et al, 85 I. C. C. 533, 65% of 6th Class rates was prescribed for application on logs between points in Central territory.

Wilmington, N. C., June 8, 1931

[fol. 2049]

	Rates in cents per 100 pounds					
			Central territory		Southern territory	
Miles	"Cummer" scale	Interstate scale	6th class	65% of 6th class	1st class	17.875% of 1st class
5	1.71	2.5	8	5.20	34	6.08
10	1.71	2.5	9	5.85	36	6.44
15	1.71	3.0	9	5.85	39	6.98
20	1.71	3.0	9	5.85	41	7.33
25	1.71	3.5	10	6.50	44	7.88
30	1.71	3.5	10	6.50	46	8.22
35	1.71	4.0	11	7.15	49	8.76
40	1.71	4.0	11	7.15	51	9.12
45	2.10	4.5	12	7.80	54	9.65
50	2.10	4.5	12	7.80	56	10.02

Miles	"Cummer" scale	Interstate scale	Rates in cents per 100 pounds: Central territory 6th class	Central territory 65% of 6th class	Southern territory 1st class	Southern territory 17.875% of 1st class
55	2.10	4.5	12	7.80	59	10.55
60	2.10	5.0	13	8.45	61	10.90
65	2.30	5.0	13	8.45	64	11.44
70	2.30	5.0	13	8.45	66	11.80
75	2.30	5.5	14	9.10	68	12.15
80	2.30	5.5	14	9.10	70	12.51
85	2.30	5.5	15	9.75	72	12.87
90	2.30	6.0	15	9.75	73	13.05
95	2.60	6.0	15	9.75	74	13.23
100	2.60	6.0	15	9.75	76	13.58
110	2.80	6.5	16	10.40	79	14.12
120	3.20	6.5	17	11.05	82	14.65
130	3.20	7.0	17	11.05	85	15.19
140	3.40	7.0	18	11.70	88	15.73
150	3.40	7.5	18	11.70	91	16.26
160	3.40	7.5	18	11.70	94	16.80
170	3.70	8.0	19	12.35	96	17.15
180		8.0	19	12.35	98	17.52
190		8.5	20	13.00	100	17.88
200		8.5	20	13.00	102	18.23
210		9.0	21	13.65	104	18.59
220		9.0	21	13.65	106	18.95
230		9.5	21	13.65	108	19.30
240		9.5	22	14.30	110	19.66
260		10.0	23	14.95	114	20.30
[fol. 2050]						
280		10.5	23	14.95	118	21.09
300		11.0	24	15.60	122	21.80
320		11.5	24	15.60	126	22.52
340		12.0	25	16.25	130	23.22
360		12.5	26	16.90	134	23.94
380		13.0	26	16.90	138	24.67
400		13.5	27	17.55	142	25.38
420		14.0	28	18.20	145	25.92
440		14.5	29	18.85	148	26.45
460		15.0	29	18.85	151	26.99
480		15.5	30	19.50	154	27.52
500		16.0	31	20.15	157	28.07
520		16.5	31	20.15	160	28.60
540		17.0	32	20.80	163	29.12
550		17.5	32	20.80	166	29.67
560			32	20.80	166	29.67

Tariff authority: Agent J. H. Glenn's "Southern Lumber Tariff", I. C. C. No. A-659.

[fol. 2051]

DEFENDANT'S EXHIBIT No. 68

I. C. C. Docket No. 18364

Witness: Perrin

Statement Showing "Cummer" Scale (in Cents Per 100 Pounds), also Present Interstate Scale on Logs, in Comparison With 65% of the Lumber Scale Approved in I. & S. Docket No. 2479, Lumber and Forest Products Between Southern Points and Destinations in Virginia, 157 I. C. C. 280 (see Note)

NOTE: This basis, namely, 65% of rates on lumber, has been prescribed in a number of cases for application on logs, notably:

In No. 18307, Marvil Package Company v. Norfolk Southern Railroad Company, et al, 140 I. C. C. 78, covering rates from points in North Carolina and Virginia to points in Maryland, Delaware, and New Jersey.

In No. 21904, Williamson Veneer Company v. Baltimore & Ohio Railroad Company, et al, 171 I. C. C. 687, covering the rates from points in Virginia to Baltimore, Md.

Wilmington, N. C., June 8, 1931

[fol. 2052]

Miles	Rates in cents per 100 pounds "Cummer" scale	Interstate scale	I. & S. 2479 lumber scale	65% of lumber scale
5	1.71	2.5	4.5	2.93
10	1.71	2.5	5.0	3.25
15	1.71	3.0	5.5	3.58
20	1.71	3.0	6.0	3.90
25	1.71	3.5	6.5	4.23
30	1.71	3.5	7.0	4.55
35	1.71	4.0	7.0	4.55
40	1.71	4.0	7.5	4.88
45	2.10	4.5	8.0	5.20
50	2.10	4.5	8.5	5.53
55	2.10	4.5	9.0	5.85
60	2.10	5.0	9.5	6.18
70	2.30	5.0	10.0	6.50
80	2.30	5.5	10.5	6.83
85	2.30	5.5	11.0	7.15
90	2.30	6.0	11.0	7.15
100	2.60	6.0	11.5	7.48
110	2.80	6.5	12.5	8.13
120	3.20	6.5	13.0	8.45
130	3.20	7.0	13.5	8.78
140	3.40	7.0	14.0	9.10
160	3.40	7.5	14.5	9.43
170	3.70	8.0	15.0	9.75
180	....	8.0	15.5	10.08
190	....	8.5	16.0	10.40
200	....	8.5	16.5	10.73
210	....	9.0	17.0	11.05
220	....	9.0	17.5	11.38
230	....	9.5	18.0	11.70
240	....	9.5	18.5	12.03
250	....	10.0	19.0	12.35
260	....	10.0	19.5	12.68
280	....	10.5	20.0	13.00
300	....	11.0	20.5	13.33
320	....	11.5	21.5	13.96

Miles	"Cummer" scale	Rates in cents per 100 pounds Interstate scale	I. & S. 2479 lumber scale	65% of lumber scale
[fol. 2053]				
340		12.0	22.5	14.63
360		12.5	23.5	15.28
380		13.0	24.0	15.60
400		13.5	24.5	15.93
420		14.0	25.5	16.58
440		14.5	26.5	17.23
460		15.0	27.5	17.88
480		15.5	28.0	18.20
500		16.0	28.0	18.20
520		16.5	28.0	18.20
540		17.0	29.0	18.85
550		17.5	29.0	18.85
560			29.0	18.85

Tariff authority: Agent J. H. Glenn's "Southern Lumber Tariffs," I. C. C. No. A-659.

[fol. 2054]

DEFENDANT'S EXHIBIT No. 69

I. C. C. Docket No. 18364

Witness: Perrin

Statement Showing "Cummer Scale," in Cents per 100 Pounds, and Per Ton-Mile and Per Car and Per Car-Mile Revenue Derived Therefrom, in Comparison With Rates on Charcoal (see note) and Per Ton-Mile and Per Car and Per Car-Mile Revenue Thereunder

NOTE: Rates on Charcoal shown approved in I. and S. Docket No. 3460, covering general revision of rates to, from and between points in Southern territory, wherein it was said:

". . . The low level of the rates, particularly on the interterritorial traffic, and the light loading, would result in meager earnings, ordinarily from about 14 to 19 cents, and averaging about 16 cents, per car-mile and in all probability, therefore, be barely remunerative. Even before the World War we regarded such earnings as low." 168 I. C. C. 633, 638.

Wilmington, N. C., June 8th, 1931.

[fol. 2055]

Miles	"Cummer" Scale: Rate per 100 pounds	Revenue: Ton-mile (mills)	Per car 60,000 pounds	Car-mile (cents)	Charcoal: Rate per 100 pounds	Revenue: Ton-mile (mills)	Per car 28,000 pounds	Car-mile (cents)
10	1.71	34.2	$10.26	102.6	8	320.0	$22.40	224.0
15	1.71	22.8	10.26	68.4	9	120.0	25.20	168.0
25	1.71	13.7	10.26	41.1	10	80.0	28.00	112.0
35	1.71	9.8	10.26	29.3	11	62.9	30.80	88.0
40	1.71	8.6	10.26	25.7	12	60.0	33.60	84.0
50	2.10	8.4	12.60	25.2	13	52.0	36.40	72.8
60	2.10	7.0	12.60	21.0	14	46.7	39.20	65.3
70	2.30	6.6	13.80	19.7	15	42.9	42.00	60.0
80	2.30	5.8	13.80	17.3	16	40.0	44.80	56.0
90	2.30	5.1	13.80	15.3	17	37.8	47.60	52.9

Miles	"Cummer" Scale: Rate per 100 pounds	Revenue: Ton-mile (mills)	Revenue: Per car 60,000 pounds	Revenue: Car-mile (cents)	Charcoal: Rate per 100 pounds	Revenue: Ton-mile (mills)	Revenue: Per car 28,000 pounds	Revenue: Car-mile (cents)
95	2.60	5.5	15.60	16.4	17	35.8	47.60	50.1
100	2.60	5.2	15.60	15.6	18	36.0	50.40	50.4
110	2.80	5.1	16.80	15.3	18	32.7	50.40	45.8
120	3.20	5.3	19.20	16.0	19	31.7	53.20	44.3
130	3.20	4.9	19.20	14.8	20	30.8	56.00	43.1
140	3.40	4.9	20.40	14.6	20	28.6	56.00	40.0
150	3.40	4.5	20.40	13.6	21	28.0	58.80	39.2
160	3.40	4.3	20.40	12.7	22	27.5	61.60	38.5
170	3.70	4.4	22.20	13.1	22	25.9	61.60	36.2

Loadings:

Logs: 60,000 pounds: Average referred to in report of prior hearing was 60,200 pounds. Average of all cars of logs originated on Atlantic Coast Line Railroad in Florida in 1930, amounted to approximately 58,000 pounds.

Charcoal: 28,000 pounds: Average stated in I. and S. Docket No. 3460, covering general revision of rates to, from and between points in Southern territory. 168 I. C. C. 633, 634.

[fol. 2056] Values:

Logs: $2.80 per ton of 2,000 pounds f. o. b. mill: Based on $14.02, average price of longleaf Pine lumber logs per thousand feet, during 1929, as furnished by Mr. R. E. Marsh, in Charge, Division of Forest Economics, Forest Service, U. S. Department of Agriculture, Washington, D. C., in letter dated June 2, 1931, and estimated weight of 10,000 pounds per thousand feet for pine logs, as provided in various notes in "Exceptions No. 8 to Southern Classification," Agent E. H. Dulaney's I. C. C. No. 35.

Charcoal: With reference to value, it was stated in I. and S. Docket No. 3460, covering general revision of rates on charcoal to, from and between points in Southern territory, as follows:

"* * * It is a low-grade commodity. In bulk it is worth at point of origin between $8 and $9 per ton of 2,000 pounds, but when packed in sacks or compressed into briquettes it is worth two or three times as much." 168 I. C. C. 633, 634.

Tariff Authority: Agent J. H. Glenn's "Southern Lumber Tariff", I. C. C. No. A-659.

[fol. 2057] DEFENDANT'S EXHIBIT No. 70

I. C. C. Docket No. 18364

Witness: Perrin

Statement Showing "Cummer" Scale (in Cents Per 100 Pounds) With Per Ton-Mile and Per Car and Per Car-Mile Revenue Derived Therefrom, in Comparison With Rates On Cement (see Note) and Per Ton-Mile and Per Car and Per Car-Mile Revenue Thereunder.

NOTE: Rates on Cement shown prescribed in No. 15806, Lehigh Portland Cement Company v. Aberdeen & Rockfish Railroad Company, et al, wherein it was said:

". * * * Cement is frequently, and perhaps usually, loaded to the maximum capacity of the cars furnished. * * * Cement may be loaded in any kind of moisture-proof equipment and loss and damage claims are negligible." 132 I. C. C. 427, 432.

Wilmington, N. C., June 8th, 1931.

[fol. 2058]

	"Cummer" Scale				Cement			
		Revenue				Revenue		
Miles	Rates in cents per 100 pounds	Per ton-mile (mills)	Per car 60,000 pounds	Per car-mile (cents)	Rates in cents per 100 pounds	Per ton-mile (mills)	Per car 74,000 pounds	Per car-mile (cents)
5	1.71	68.4	$10.26	205.1	5	200.0	$37.00	740.0
10	1.71	34.2	10.26	102.6	6	120.0	44.40	444.0
15	1.71	22.8	10.26	68.4	7½	100.0	55.50	370.0
20	1.71	17.1	10.26	51.3	8½	85.0	62.90	314.5
30	1.71	11.4	10.26	34.2	10	66.7	74.00	246.7
40	1.71	8.6	10.26	25.7	10½	52.5	77.70	193.5
50	2.10	8.4	12.60	25.2	11	44.0	81.40	162.8
60	2.10	7.0	12.60	21.0	11½	38.3	85.10	141.7
70	2.30	6.6	13.80	19.7	12½	35.7	92.50	132.1
80	2.30	5.8	13.80	17.3	13	32.5	96.20	120.3
90	2.30	5.1	13.80	15.3	13½	30.0	99.90	111.0
100	2.60	5.2	15.60	15.6	14	28.0	103.60	103.6
110	2.80	5.1	16.80	15.3	15	27.3	111.00	100.9
120	3.20	5.3	19.20	16.0	15	25.0	111.00	92.5
130	3.20	4.9	19.20	14.8	15½	23.8	114.70	88.2
140	3.40	4.9	20.40	14.6	15½	22.1	114.70	81.9
160	3.40	4.3	20.40	12.7	16	20.0	118.40	74.0
170	3.70	4.4	22.20	13.1	16½	19.4	122.10	71.8

Loadings:

Logs: 60,000 pounds: Average referred to in report of prior hearing was 60,200 pounds. Average of all cars of logs originated on Atlantic Coast Line Railroad in Florida, in 1930 amounted to approximately 58,000 pounds.

Cement: 74,000 pounds: Approximate average as stated in No. 15806, Lehigh Portland Cement Company v. Aberdeen & Rockfish Railroad Company, et al., 132 I. C. C. 427, 432.

[fol. 2059] Values:

Logs: $2.80 per ton of 2,000 pounds f. o. b. mill: Based on $14.02, average price of Longleaf Pine lumber logs per thousand feet, during 1929, as furnished by Mr. R. E. Marsh, in Charge, Division of Forest Economics, Forest Service, U. S. Department of Agriculture, Washington, D. C., in letter dated June 2, 1931, and estimated weight of 10,000 pounds per thousand feet for pine logs, as provided in various notes in "Exceptions No. 8 to Southern Classification", Agent E. H. Dulaney's I. C. C. No. 35.

Cement: $7.48 per ton of 2,000 pounds (composite price, plant): Based on $1.422 per barrel and weight of 380 pounds per barrel as used in complainant's reply to defendant's exceptions in No. 15806, (Florida portion).

Authority: "Wholesale Prices of Commodities—April, 1931", issued by Bureau of Labor Statistics, U. S. Department of Labor, Washington, D. C.

Tariff Authority: Agent J. H. Glenn's "Southern Lumber Tariff", I. C. C. No. A-659.

[fol. 2060] DEFENDANT'S EXHIBIT NO. 71

I. C. C. Docket No. 18364

Witness: Perrin

Statement Showing "Cummer" Scale, in Cents per 100 Pounds, and per Ton-Mile and Per Car and Per Car-Mile Revenue Derived Therefrom, in Comparison With Rates on Old, Worn-out Bags (see Note) and Per Ton-Mile and Per Car and Per Car-Mile Revenue Thereunder.

NOTE: Rates on Old, Worn-out Bags shown prescribed in No. 20873, Ware Brothers Agency v. Atlantic Coast Line Railroad et al, syllabus of which reads, as follows:

"Rates on old worn-out bags having no greater value than for conversion into second hand cotton-bale covering, in carloads, from Ybor City, Fla., to Tuscumbia, Ala., found unreasonable." 167 I. C. C. 87. 10th Class rates prescribed as reasonable.

Wilmington, N. C., June 6, 1931.

[fol. 2061]

					Bags (old, worn-out)			
		Revenue				Revenue		
Miles	"Cummer" scale	Per ton-mile (mills)	Per car 60,000 pounds (dollars)	Per car-mile (cents)	Rates in cents per 100 pounds	Per ton-mile (mills)	Per car 33,000 pounds (dollars)	Per car-mile (cents)
10	1.71	34.2	10.26	102.6	9	180.0	29.70	297.0
15	1.71	22.8	10.26	68.4	10	133.3	33.00	220.0
25	1.71	13.7	10.26	41.1	11	88.0	36.30	145.2
30	1.71	11.4	10.26	34.2	12	80.0	39.60	132.0
40	1.71	8.6	10.26	25.7	13	65.0	42.90	107.3

Miles	"Cummer" scale	Revenue: Per ton-mile (mills)	Revenue: Per car 60,000 pounds (dollars)	Revenue: Per car-mile (cents)	Bags (old, worn-out): Rates in cents per 100 pounds	Revenue: Per ton-mile (mills)	Revenue: Per car 33,000 pounds (dollars)	Revenue: Per car-mile (cents)
45	2.10	9.3	12.60	28.0	14	62.2	46.20	102.7
50	2.10	8.4	12.60	25.2	15	60.0	49.50	99.0
60	2.10	7.0	12.60	21.0	16	53.3	52.80	88.0
70	2.30	6.6	13.80	19.7	17	48.6	56.10	80.3
80	2.30	5.8	13.80	17.3	18	45.0	59.40	74.2
90	2.30	5.1	13.80	15.3	19	42.2	62.70	69.6
95	2.60	5.5	15.60	16.4	19	40.0	62.70	66.0
100	2.60	5.2	15.60	15.6	20	40.0	66.00	66.0
110	2.80	5.1	16.80	15.3	20	36.4	66.00	60.0
120	3.20	5.3	19.20	16.0	21	35.0	69.30	57.7
130	3.20	4.9	19.20	14.8	22	33.8	72.60	55.8
140	3.40	4.9	20.40	14.6	23	32.9	75.90	54.2
160	3.40	4.3	20.40	12.7	24	30.0	79.20	49.5
170	3.70	4.4	22.20	13.1	25	29.4	82.50	47.9

[fol. 2062] Loadings:

Logs: 60,000 pounds: Average referred to in report of prior hearing was 60,200 pounds. Average of all cars of logs originated on Atlantic Coast Line Railroad in 1930, amounted to approximately 58,000 pounds.

Old, Worn-out Bags: 33,000 pounds: Approximate average as stated in No. 20873, Ware Brothers Agency v. Atlantic Coast Line Railroad et al., 167 I. C. C. 87.

Values:

Logs: $2.80 per ton of 2,000 pounds f. o. b. mill: Based on $14.02, average price of longleaf pine lumber logs per thousand feet, during 1929, as furnished by Mr. R. E. Marsh, in Charge, Division of Forest Economics, Forest Service, U. S. Department of Agriculture, Washington, D. C., in letter dated June 2, 1931, and estimated weight of 10,000 pounds per thousand feet for pine logs, as provided in various notes in "Exceptions No. 8 to Southern Classification", Agent E. H. Dulaney's I. C. C. No. 35.

Old, Worn-out Bags: $4.00 per ton of 2,000 pounds: Value as stated in No. 20873, Ware Brothers Agency v. Atlantic Coast Line Railroad et al., 167 I. C. C. 87, 88.

Tariff Authority: Agent J. H. Glenn's "Southern Lumber Tariff", I. C. C. No. A-659.

[fol. 2063] DEFENDANT'S EXHIBIT NO. 72

Witness: Perrin

I. C. C. Docket No. 18364

Statement Showing "Cummer" Scale, in Cents Per 100 Pounds, and Per Ton-Mile and Per Car and Per Car-Mile Revenue Derived Therefrom, in Comparison With Rates on Hay (see Note) and Per Ton-Mile and Per Car and Per Car-Mile Revenue Thereunder

NOTE: Rates on Hay shown prescribed in I. & S. Docket No. 3048 Hay, Straw, Excelsior, and Other Commodities between Official Territory and Southern Points, wherein it was said:

"* * * 'the lowest possible lawful rates' which we may prescribe under the Hoch-Smith resolution on any given agricultural traffic as to which depression has been shown must be somewhere within the zone of reasonableness permitted by the flexible limits of discretion reposed in us, and such rates must be put as near the lowest limit or level of that zone as is compatible with the maintenance of ade*quate transportation service.* * * * Upon all the facts of record we are of the view that the ninth-class basis marks the lowest limit of rates which may be lawfully applied on hay and straw, in carloads." 146 I. C. C. 664, 676.

Wilmington, N. C., June 6, 1931

[fol. 2064]

		Revenue			Hay	Revenue		
Miles	"Cummer" scale	Per ton-mile (mills)	Per car 60,000 pounds (dollars)	Per car-mile (cents)	Rates in cents per 100 pounds	Per ton-mile (mills)	Per car 24,000 pounds (dollars)	Per car-mile (cents)
5	1.71	68.4	10.26	205.1	10	400.0	24.00	480.0
10	1.71	34.2	10.26	102.6	11	220.0	26.40	264.0
20	1.71	17.1	10.26	51.3	12	120.0	28.80	144.0
25	1.71	13.7	10.26	41.1	13	104.0	31.20	124.8
35	1.71	9.8	10.26	29.3	14	80.0	33.60	96.0
40	1.71	8.6	10.26	25.7	15	75.0	36.00	90.0
50	2.10	8.4	12.60	25.2	16	64.0	38.40	76.8
55	2.10	7.6	12.60	22.9	17	61.8	40.80	74.2
60	2.10	7.0	12.60	21.0	18	60.0	43.20	72.0
70	2.30	6.6	13.80	19.7	19	54.3	45.60	65.1
80	2.30	5.8	13.80	17.3	20	50.0	48.00	60.0
90	2.30	5.1	13.80	15.3	21	46.7	50.40	56.0
100	2.60	5.2	15.60	15.6	22	44.0	52.80	52.8
110	2.80	5.1	16.80	15.3	23	41.8	55.20	50.4
120	3.20	5.3	19.20	16.0	24	40.0	57.60	48.0
130	3.20	4.9	19.20	14.8	25	38.5	60.00	46.2
140	3.40	4.9	20.40	14.6	25	35.7	60.00	42.9
150	3.40	4.5	20.40	13.6	26	34.7	62.40	41.6
160	3.40	4.3	20.40	12.7	27	33.8	64.80	40.5
170	3.70	4.4	22.20	13.1	28	32.9	67.20	39.5

[fol. 2065] Loadings:

Logs: 60,000 pounds: Average referred to in report of prior hearing was 60,200 pounds. Average of all cars of logs originated on Atlantic Coast Line Railroad in Florida in 1930, amounted to approximately 58,000 pounds.

Hay: 24,000 pounds: Average as stated in I. & S. Docket No. 3048, Hay, Straw, Excelsior, and Other Commodities between Official Territory and Southern Points, 146 I. C. C. 664, 666.

Values:

Logs: $2.80 per ton of 2,000 pounds f. o. b. mill: Based on $14.02, average price of longleaf pine lumber logs per thousand feet, during 1929, as furnished by Mr. R. E. Marsh, in Charge, Division of Forest Economics, Forest Service, U. S. Department of Agriculture, Washington, D. C., in letter dated June 2, 1931, and estimated weight of 10,000 pounds per thousand feet for pine logs, as provided in various notes in "Exceptions No. 8 to Southern Classification", Agent E. H. Dulaney's I. C. C. No. 35.

Hay: $19.375 per ton of 2,000 pounds for Timothy, No. 1, at Chicago, Illinois: Average for April, 1931, as per "Wholesale Prices of Commodities—April, 1931", issued by Bureau of Labor Statistics, U. S. Department of Labor, Washington, D. C.

Tariff Authority: Agent J. H. Glenn's "Southern Lumber Tariff", I. C. C. No. A659.

[fol. 2066]

DEFENDANT'S EXHIBIT No. 73

I. C. C. Docket No. 18364

Witness: Perrin

Statement Showing "Cummer" Scale, in Cents Per 100 Pounds, and Per Ton-Mile and Per Car and Per Car-Mile Revenue Derived Therefrom, in Comparison With Rates on Fertilizer (see Note), (in Cents Per Ton of 2,000 Pounds, but Reduced to Cents Per 100 Pounds), and Per Ton-Mile and Per Car and Per Car-Mile Revenue Thereunder

NOTE: Rates on Fertilizer shown prescribed in No. 16295, Fertilizers and Fertilizer Materials between Southern Points, where it was stated:
"* * * Fertilizer is a low-grade traffic, subject to no great risk in transit and requiring no special service for its transportation in the sense that 'special service' is generally understood * * * it is entitled to comparatively low rates." 113 I. C. C. 389, 420.

Wilmington, N. C., June 6, 1931

[fol. 2067]

		Revenue			Fertilizer Rates in cents		Revenue		
Miles	"Cummer" scale	Per ton Mile (mills)	Per car 60,000 pounds (dollars)	Per car mile (cents)	Per ton 2,000 pounds	Per 100 pounds	Per ton mile (mills)	Per car 48,000 pounds (dollars)	Per car mile (cents)
10	1.71	34.2	10.26	102.6	100	5.00	100.0	24.00	240.0
15	1.71	22.8	10.26	68.4	110	5.50	73.3	26.40	176.0

Miles	"Cummer" scale	Revenue: Per ton Mile (mills)	Revenue: Per car 60,000 pounds (dollars)	Revenue: Per car mile (cents)	Fertilizer Rates in cents: Per ton 2,000 pounds	Fertilizer Rates in cents: Per 100 pounds	Fertilizer Revenue: Per ton mile (mills)	Fertilizer Revenue: Per car 48,000 pounds (dollars)	Fertilizer Revenue: Per car mile (cents)
20	1.71	17.1	10.26	51.3	120	6.00	60.0	28.80	144.0
25	1.71	13.7	10.26	41.1	125	6.25	50.0	30.00	120.0
30	1.71	11.4	10.26	34.2	135	6.75	45.0	32.40	108.0
35	1.71	9.8	10.26	29.3	140	7.00	40.0	33.60	96.0
40	1.71	8.6	10.26	25.7	150	7.50	37.5	36.00	90.0
45	2.10	9.3	12.60	28.0	155	7.75	34.5	37.20	82.7
50	2.10	8.4	12.60	25.2	165	8.25	33.0	39.60	79.2
55	2.10	7.6	12.60	22.9	170	8.50	30.9	40.80	74.2
60	2.10	7.0	12.60	21.0	180	9.00	30.0	43.20	72.0
65	2.30	7.1	13.80	21.2	185	9.25	28.5	44.40	68.3
70	2.30	6.6	13.80	19.7	195	9.75	27.9	46.80	66.8
75	2.30	6.1	13.80	18.4	200	10.00	26.7	48.00	64.0
80	2.30	5.8	13.80	17.3	205	10.25	25.6	49.20	61.5
85	2.30	5.4	13.80	16.2	210	10.50	24.7	50.40	59.3
90	2.30	5.1	13.80	15.3	215	10.75	23.9	51.60	57.3
95	2.60	5.5	15.60	16.4	220	11.00	23.2	52.80	55.6
100	2.60	5.2	15.60	15.6	225	11.25	22.5	54.00	54.0
110	2.80	5.1	16.80	15.3	235	11.75	21.4	56.40	51.2
120	3.20	5.3	19.20	16.0	245	12.25	20.4	58.80	49.0
130	3.20	4.9	19.20	14.8	255	12.75	19.6	61.20	47.2
140	3.40	4.9	20.40	14.6	265	13.25	18.9	63.60	45.4
150	3.40	4.5	20.40	13.6	275	13.75	18.3	66.00	44.0
160	3.40	4.3	20.40	12.7	285	14.25	17.8	68.40	42.7
170	3.70	4.4	22.20	13.1	295	14.75	17.4	70.80	41.6

[fol. 2068] Loadings:

Logs: 60,000 pounds: Average referred to in report of prior hearing was 60,200 pounds. Average of all cars of logs originated on Atlantic Coast Line Railroad in Florida in 1930, amounted to approximately 58,000 pounds.

Fertilizer: 48,000 pounds: Approximately the average referred to in No. 16295, Fertilizers and Fertilizer Materials between Southern Points, 113 I. C. C. 389.

Values:

Logs: $2.80 per ton of 2,000 pounds f. o. b. mill: Based on $14.02 average price of longleaf pine lumber logs per thousand feet, during 1929, as furnished by Mr. R. [redacted] Marsh, in Charge, Division of Forest Economics, Forest Service, U. S. Department of Agriculture, Washington, D. C., in letter dated June 2, 1931, and estimated weight of 10,000 pounds per thousand feet for pine logs, as provided

in various notes in "Exceptions No. 8 to Southern Classification", Agent E. H. Dulaney's I. C. C. No. 35.

Fertilizer: Mixed, per ton, (composite price):

South Atlantic, 8-3-3: $20.75.

South Atlantic, other: 22.70.

Authority: "Wholesale Prices of Commodities—April, 1931", issued by Bureau of Labor Statistics, U. S. Department of Labor, Washington, D. C.

Tariff Authority: Agent J. H. Glenn's "Southern Lumber Tariff", I. C. C. No. A-659.

[fol. 2069] DEFENDANT'S EXHIBIT No. 74

I. C. C. Docket No. 18364

Witness: Perrin

Statement Showing "Cummer" Scale, in Cents Per 100 Pounds, and Per Ton-Mile and Per Car and Per Car-Mile Revenue Derived Therefrom, in Comparison With Rates on Cullet (see Note) and Per Ton-Mile and Per Car and Per Car-Mile Revenue Thereunder

NOTE: Rates on Cullet shown prescribed in I. & S. Docket No. 3459, Cullet (Broken Glass), from, to and between Points in Southern Territory, wherein it was said:

"* * * Considering actual rates instead of percentages of first class, it appears that the 17.5 per cent basis in the South is but slightly higher than 85 per cent of the sixth-class rates prescribed in Eastern Class-Rate Investigation, 164 I. C. C. 314, in no case exceeding the latter by more than 2 cents, although, as pointed out, it is generally recognized that rates may properly be on a higher level in southern than in official territory." 169 I. C. C. 153, 155.

[fol. 2070] Wilmington, N. C., June 6, 1931

		Revenue			Cullet (Broken Glass) Revenue			
Miles	"Cummer" scale	Per ton-mile (mills)	Per car 60,000 pounds (dollars)	Per car-mile (cents)	Rates in cents per 100 pounds	Per ton-mile (mills)	Per car 60,000 pounds (dollars)	Per car-mile (cents)
10	1.71	34.2	10.26	102.6	6	120.0	36.00	360.0
20	1.74	17.1	10.26	51.3	7	70.0	42.00	210.0
30	1.71	11.4	10.26	34.2	8	53.3	48.00	160.0
40	1.71	8.6	10.26	25.7	9	45.0	54.00	135.0
50	2.10	8.4	12.60	25.2	10	40.0	60.00	120.0
60	2.10	7.0	12.60	21.0	11	36.7	66.00	110.0
70	2.30	6.6	13.80	19.7	12	34.3	72.00	102.9
85	2.30	5.4	13.80	16.2	13	30.6	78.00	91.8
90	2.30	5.1	13.80	15.3	14	31.1	84.00	93.4
100	2.60	5.2	15.60	15.6	14	28.0	84.00	84.0
110	2.80	5.1	16.80	15.3	15	27.3	90.00	81.8
130	3.20	4.9	19.20	14.8	15	23.1	90.00	69.2
140	3.40	4.9	20.40	14.6	15	21.4	90.00	64.3
160	3.40	4.3	20.40	12.7	16	20.0	96.00	60.0
170	3.70	4.4	22.20	13.1	17	20.0	102.00	60.0

[fol. 2071] Loadings:

Logs: 60,000 pounds: Average referred to in report of prior hearing was 60,200 pounds. Average of all cars of logs originated on Atlantic Coast Line Railroad in Florida in 1930, amounted to approximately 58,000 pounds.

Cullet: 60,000 pounds: Approximate average referred to in I. & S. Docket No. 3459, Cullet (Broken Glass), from, to and between Points in Southern Territory, 169 I. C. C. 153, 154, 157.

Values:

Logs: $2.80 per ton of 2,000 pounds f. o. b. mill: Based on $14.02, average price of longleaf pine lumber logs per thousand feet, during 1929, as furnished by Mr. R. E. Marsh, in Charge, Division of Forest Economics, Forest Service, U. S. Department of Agriculture, Washington, D. C., in letter dated June 2, 1931, and estimated weight of 10,000 pounds per thousand feet for pine logs, as provided in various notes in "Exceptions No. 8 to Southern Classification", Agent E. H. Dulaney's I. C. C. No. 35.

Cullet: With reference to value, it was stated in I. & S. Docket No. 3459, Cullett (Broken Glass), from, to and between Points in Southern Territory, as follows:

"* * * It * * * is valued at approximately $8 per ton at the shipping point, although one protestant stated that for a period of twelve months ending June 1, 1930, its average purchase price was $2.48 per ton, ranging from 50 cents to $4.10." 169 I. C. C. 153.

Tariff Authority: Agent J. H. Glenn's "Southern Lumber Tariff", I. C. C. No. A-659.

[fol. 2072] DEFENDANT'S EXHIBIT No. 75

I. C. C. Docket No. 18364

Witness: Perrin

Statement Showing "Cummer" Scale (in Cents Per 100 Pounds) and Per Ton-Mile and Per Car and Per Car-Mile Revenue Derived Therefrom, in Comparison With Rates On Common Brick Generally Applicable for Single-Line Hauls Between Points in the Southeast (see Note) and Per Ton-Mile and Per Car and Per Car-Mile Revenue Thereunder

NOTE: Rates on Common Brick shown prescribed in I. and S. Docket No. 1885, Brick and Clay Products from, to, and Between Points in Southern Territory, wherein it was stated:

"* * * Respondents contend that the proposed rates are lower than those that obtain on other low-grade commodities in the South * * * and that if permitted to become effective they will be among the lowest rates on any commodities in Southern territory. It is their position * * * that the rates suggested for the South are as low as those in official classification territory, whereas, generally the rate level in the South should be higher. * * *" 88 I. C. C. 543, 552, 553.

[fol. 2073] Wilmington, N. C., June 8th, 1931

	"Cummer" Scale				Brick (common)			
		Revenue				Revenue		
Miles	Rates in cents per 100 pounds	Per ton-mile (mills)	Per car 60,000 pounds	Per car-mile (cents)	Rates in cents per 100 pounds	Per ton-mile (mills)	Per car 80,000 pounds	Per car-mile (cents)
10	1.71	34.2	$10.26	102.6	3	60.0	$24.00	240.0
20	1.71	17.1	10.26	51.3	3½	35.0	28.00	140.0
30	1.71	11.4	10.26	34.2	4	26.7	32.00	106.7
40	1.71	8.6	10.26	25.7	4½	22.5	36.00	90.0
60	2.10	7.0	12.60	21.0	5	16.7	40.00	66.7
70	2.30	6.6	13.80	19.7	5½	15.7	44.00	62.9
80	2.30	5.8	13.80	17.3	6	15.0	48.00	60.0
90	2.30	5.1	13.80	15.3	6½	14.5	52.00	57.8
100	2.60	5.2	15.60	15.6	6½	13.0	52.00	52.0
110	2.80	5.1	16.80	15.3	7	12.7	56.00	50.9
130	3.20	4.9	19.20	14.8	7	10.8	56.00	43.1
140	3.40	4.9	20.40	14.6	7	10.0	56.00	40.0
160	3.40	4.3	20.40	12.7	7½	9.38	60.00	37.5
170	3.70	4.4	22.20	13.1	8	9.41	64.00	37.6

Loadings:

Logs: 60,000 pounds: Average referred to in report of prior hearing was 60,200 pounds. Average of all cars of logs originated on Atlantic Coast Line Railroad in Florida in 1930, amounted to approximately 58,000 pounds.

Common Brick: 80,000 pounds: In I. and S. Docket No. 1885, Brick and Clay Products, from, to, and between Points in Southern Territory, 155 I. C. C. 742, loadings of

both 80,000 and 90,000 pounds are used for comparative purposes, the lower having been used herein.

[fol. 2074] Values:

Logs: $2.80 per ton of 2,000 pounds f. o. b. mill: Based on $14.02, average price of Longleaf Pine lumber logs per thousand feet, during 1929, as furnished by Mr. R. E. Marsh, in Charge, Division of Forest Economics, Forest Service, U. S. Department of Agriculture, Washington, D. C., in letter dated June 2, 1931, and estimated weight of 10,000 pounds per thousand feet for pine logs, as provided in various notes in "Exceptions No. 8 to Southern Classification", Agent E. H. Dulaney's I. C. C. No. 35.

Common Brick: Approximately $5.00 to $6.25 per ton of 2,000 pounds (composite price, plant): Based on $12.517 per thousand, and estimated weight of 2 and 2.5 tons per 1,000 brick, (68 I. C. C. 217).

Authority: "Wholesale Prices of Commodities—April, 1931", issued by Bureau of Labor Statistics, U. S. Department of Labor, Washington, D. C.

Tariff Authority: Agent J. H. Glenn's "Southern Lumber Tariff", I. C. C. No. A-659.

[fol. 2075] DEFENDANT'S EXHIBIT No. 76

I. C. C. Docket No. 18364

Witness: Perrin

Statement Showing "Cummer" Scale, in Cents Per 100 Pounds, and Per Ton-Mile and Per Car and Per Car-Mile Revenue Derived Therefrom, in Comparison With Rates on Sand, Gravel, Et Cetera (see Note) (In Cents Per Ton of 2,000 Pounds, But Reduced to Cents Per 100 Pounds), On the Interstate basis fixed in Docket No. 17517 For Application to, from and Between Points in the Florida Peninsula, and Per Ton-Mile and Per Car and Per Car-Mile Revenue Thereunder

NOTE: Rates on Sand, Gravel, et cetera, shown prescribed in No. 17517, Rates on Chert, Clay, Sand, and Gravel, Within the State of Georgia, wherein it was stated:

"* * * The commodities considered are among the lowest valued offered for transportation and will not move except at comparatively low rates. They are transported generally in open-top cars, load to capacity of the car, and move with little risk of damage or loss. * * * While we shall not prescribe minimum rates, we shall prescribe a scale which takes into consideration the very low values of these commodities and all characteristics, transportation and otherwise, which entitle them to relatively low rates." 122 I. C. C. 133, 137, 148.

[fol. 2076]

Wilmington, N. C., June 8th, 1931

"Cummer" Scale

Miles	Rate per 100 pounds	Revenue: Per ton-mile (mills)	Revenue: Per car 60,000 pounds	Revenue: Per car-mile (cents)
10	1.71	34.2	$10.26	102.6
20	1.71	17.1	10.26	51.3
30	1.71	11.4	10.26	34.2
40	1.71	8.6	10.26	25.7
60	2.10	7.0	12.60	21.0
80	2.30	5.8	13.80	17.3
90	2.30	5.1	13.80	15.3
100	2.60	5.2	15.60	15.6
110	2.80	5.1	16.80	15.3
125	3.20	5.1	19.20	15.4
130	3.20	4.9	19.20	14.8
150	3.40	4.5	20.40	13.6
160	3.40	4.3	20.40	12.7
170	3.70	4.4	22.20	13.1

Sand and Gravel

Per ton-2000 lbs.	Per 100 lbs.	Revenue: Per ton-mile (mills)	Revenue: Per car 100,000 pounds	Revenue: Per car-mile (cents)
70	3.50	70.0	$35.00	350.0
75	3.75	37.5	37.50	187.5
80	4.00	26.7	40.00	133.3
100	5.00	25.0	50.00	125.0
110	5.50	18.3	55.00	91.7
130	6.50	16.3	65.00	81.3
140	7.00	15.6	70.00	77.8
140	7.00	14.0	70.00	70.0
160	8.00	14.5	80.00	72.7
160	8.00	12.8	80.00	64.0
170	8.50	13.1	85.00	65.4
170	8.50	11.3	85.00	56.7
190	9.50	11.9	95.00	59.4
190	9.50	11.2	95.00	55.9

Loadings:

Logs: 60,000 pounds: Average referred to in report of prior hearing was 60,200 pounds. Average of all cars of logs originated on Atlantic Coast Line Railroad in Florida in 1930, amounted to approximately 58,000 pounds.

Sand, Gravel, et cetera: 100,000 pounds: Average as stated in No. 17517, Rates on Chert, Clay, Sand, and Gravel within the State of Georgia, 122 I. C. C. 133, 137, 157.

Valued:

[fol. 2077] Logs: $2.80 per ton of 2,000 pounds f. o. b. mill: Based on $14.02, average price of Longleaf Pine lumber logs per thousand feet, during 1929, as furnished by Mr. R. E. Marsh, in Charge, Division of Forest Economics, Forest Service, U. S. Department of Agriculture, Washington, D. C., in letter dated June 2, 1931, and estimated weight of 10,000 pounds per thousand feet for pine logs, as provided in various notes in "Exceptions No. 8 to Southern Classification", Agent E. H. Dulaney's I. C. C. No. 35.

Sand, Gravel, et cetera: Sand $0.35, Washed Gravel $0.60, Slag (crushed and screened) $0.75, and Crushed Rock $1.35, per ton of 2,000 pounds: As stated in Docket No. 17517, Rates on Chert, Clay, Sand, and Gravel Within the State of Georgia, 122 I. C. C. 133, 138.

Tariff Authority: Agent J. H. Glenn's "Southern Lumber Tariff", I. C. C. No. A-659.

[fol. 2078]

DEFENDANT'S EXHIBIT No. 77

I. C. C. Docket No. 18364

Witness: Perrin

Statement Showing "Cummer" Scale (in Cents Per 100 Pounds), also Present Interstate Scale on Logs, in Comparison With Various Scales Approved or prescribed by the Interstate Commerce Commission

Miles	"Cummer" scale	Interstate scale	Chattanooga scale 30 I.C.C. 36 35 I.C.C. 163	Nashville Scale 68 I.C.C. 181	Mobile scale 146 I.C.C. 317 A	Mobile scale 146 I.C.C. 317 B	Barbourville scale 159 I.C.C. 749
5	1.71	2.5	2.5	2.5	3.0	4.0	2.5
10	1.71	2.5	2.5	3.5	3.0	4.0	2.5
15	1.71	3.0	3.5	3.5	3.5	4.5	3.0
20	1.71	3.0	3.5	4.5	3.5	4.5	3.0
25	1.71	3.5	4.5	5.0	4.0	5.0	3.5
30	1.71	3.5	4.5	6.0	4.0	5.0	3.5
40	1.71	4.0	4.5	6.5	4.5	5.5	4.0
50	2.10	4.5	5.0	6.5	5.0	6.0	4.5
55	2.10	4.5	6.0	7.0	5.0	6.0	4.5
60	2.10	5.0	6.0	7.0	5.5	6.5	5.0
70	2.30	5.0	6.5	8.0	5.5	6.5	5.0
75	2.30	5.5	6.5	8.5	6.0	7.0	5.5
80	2.30	5.5	7.0	8.5	6.0	7.0	5.5
85	2.30	5.5	7.0	9.0	6.0	7.0	5.5
90	2.30	6.0	7.0	9.0	6.5	8.0	...
100	2.60	6.0	8.0	10.5	6.5	8.0	...
110	2.80	6.5	8.0	10.5	7.0	8.5	...
120	3.20	6.5	8.5	11.0	7.0	8.5	...
130	3.20	7.0	8.5	11.0	7.5	9.0	...
140	3.40	7.0	8.5	11.0	7.5	9.0	...
160	3.40	7.5	9.0	11.0	8.0	9.5	...
170	3.70	8.0	9.0	11.5	8.5	10.0	...
180	...	8.0	10.5	11.5	8.5	10.0	...
195	...	8.5	10.5	11.5	9.0	10.5	...
200	...	8.5	10.5	13.0	9.0	10.5	...
210	...	9.0	11.0	13.0	9.5	11.5	...
220	...	9.0	11.0	13.5	9.5	11.5	...
230	...	9.5	11.0	14.0	10.0	12.0	...
240	...	9.5	11.5	14.0	10.0	12.0	...
260	...	10.0	11.5	14.0	10.5	12.5	...

[fol. 2079]

275	...	10.5	11.5	14.0	11.0	13.0	...
280	...	10.5	...	14.0	11.0	13.0	...
300	...	11.0	...	14.0	11.5	13.5	...
320	...	11.5	...	14.0	...	...	...
330	...	12.0	...	14.0	...	...	...
340	...	12.0	...	...	...	...	...
360	...	12.5	...	...	...	...	...
380	...	13.0	...	...	...	...	...
400	...	13.5	...	...	...	...	...
420	...	14.0	...	...	...	...	...

DEFENDANT'S EXHIBIT NO. 77

Witness: Perrin

I. C. C. Docket No. 18364

Statement Showing "Cummer" Scale (in Cents Per 100 Pounds), also Present Interstate Scale on Logs, in Comparison With Various Scales Approved or prescribed by the Interstate Commerce Commission

Miles	"Cummer" scale	Interstate scale	Chattanooga scale 30 I.C.C. 36 35 I.C.C. 163	Nashville Scale 68. I.C.C. 181	Mobile scale 146 I.C.C. 317 A	Mobile scale 146 I.C.C. 317 B	Barbourville. scale 159 I.C.C. 749
440	...	14.5	...	...	...	...	...
460	...	15.0	...	...	...	...	...
480	...	15.5	...	...	...	...	...
500	...	16.0	...	...	...	...	...
520	...	16.5	...	...	...	...	...
540	...	17.0	...	...	...	...	...
550	...	17.5	...	...	...	...	...

Explanation of "S" and "B" shown above:

A. Single-line scale.

B. Single-line scale plus weak-line arbitraries.

Tariff Authority:

Agent J. H. Glenn's "Southern Lumber Tariff", I. C. C. No. A-659.

Wilmington, N. C., June 8th, 1931

(Here follow Exhibits 78, 79, 80, 81, side folios 2080–2083)

[fol. 2080]

I. C

W

Atlantic C

Property Investment and Operating In

	1926	
1. Property Investment as at End of Year:		
2. Investment in Road and Equipment (Account 701)	$270,564,508	$277,
3. Material and Supplies (Account 716)	8,699,718	8,
4. Total	279,264,226	285,
5. Cash (Account 708)	8,494,003	17,
6. Grand Total	287,758,229	303,
7. Operating Income Account:		
8. Average Mileage Operated	4,931.09	
9. Total Operating Revenues	$97,086,547	$80,
10. Freight (Account 101)	68,001,687	58,
11. Passenger (Account 102)	21,257,077	14,
12. Mail (Account 106)	1,619,618	1,
13. Express (Account 107)	2,827,798	2,
14. All other Revenues	3,380,337	2,
15. Total Operating Expenses	$70,701,770	$64,
16. Maintenance of Way and Structures	13,018,939	13,
17. Maintenance of Equipment	18,518,916	16,
18. Traffic	1,878,173	1,
19. Transportation	34,469,600	29,
20. General	2,049,718	2,
21. All other Expenses	766,424	
22. Operating Ratios, Per cent	72.82	
23. Net Operating Revenues	$26,384,747	$16,
24. Railway Tax Accruals	6,725,000	6,
25. Uncollectible Railway Revenues	22,630	
26. Railway Operating Income	19,637,117	9,
27. Hire of Equipment—Net Balance	2,015,237R	
28. Joint Facility Rents—Net Balance	36,073R	
29. Net Railway Operating Income	17,585,807	10,
30. Rate of Return on:		
31. Investment in Road and Equipment—Per cent	6.50	
32. Investment in Road and Equipment, including Materials and Supplies	6.30	
33. Investment in Road and Equipment, including Materials and Supplies and Cash	6.11	

NOTE: "R" Denotes Red Figures.

Wilmington, N. C., June 4th, 1931-1.

EXHIBIT No. 78

I. C. C. Docket No. 18364

Witness: Geo. W. Lamb

ntic Coast Line Railroad Company

ng Income Account for Calendar Years 1926 to 1930, Inclusive

1927	1928	1929	1930	Increase or decrease 1930 over 1926	Per cent of increase or decrease
$277,401,102	$280,862,653	$282,918,571	$285,343,512	$14,779,004	5.46
8,111,051	6,612,169	6,386,742	6,701,666	1,998,052R	.....
285,512,153	287,474,822	289,305,313	292,045,178	12,780,952	.....
17,759,205	16,068,919	17,133,937	13,932,421	5,438,418	.....
303,271,358	303,543,741	306,439,250	305,977,599	18,219,370	.....
5,065.15	5,117.54	5,151.60	5,156.98	225.89	.....
$80,426,296	$71,393,174	$72,371,894	$63,019,957	$34,066,560R	35.09R
58,839,071	52,019,283	53,188,639	46,428,030	21,573,657R	31.73R
14,955,528	13,065,377	12,132,623	10,538,341	10,718,736R	50.42R
1,523,180	1,617,120	1,773,381	1,692,088	.....	.....
2,527,955	2,309,711	2,627,742	1,942,017	.....	.....
2,580,562	2,381,683	2,649,509	2,419,481	.....	.....
$64,330,235	$55,966,059	$53,431,589	$49,685,460	$21,016,310R	29.73R
13,229,875	10,935,260	10,181,059	9,787,465	.....	.....
16,842,646	14,812,873	13,874,060	12,513,108	.....	.....
1,983,340	2,125,845	1,991,845	2,015,054	.....	.....
29,539,992	25,403,746	24,667,140	22,643,245	.....	.....
2,139,332	2,160,249	2,095,193	2,099,810	.....	.....
595,050	588,086	662,292	626,778	.....	.....
79.99	78.39	73.83	78.84	.....	.....
$16,096,061	$15,427,115	$18,940,305	$13,334,497	$13,050,250R	49.46R
6,050,000	5,800,000	6,240,000	5,525,000	.....	.....
58,566	40,666	45,793	29,851	.....	.....
9,987,495	9,586,449	12,654,512	7,779,646	.....	.....
326,527	280,468	164,449	557,377R	.....	.....
42,688R	28,447	55,246	19,035	.....	.....
10,271,334	9,895,364	12,874,207	7,241,304R	10,344,503R	58.82R
3.70	3.52	4.55	2.54	3.96R	60.92R
3.60	3.44	4.45	2.48	.....	.....
3.39	3.26	4.20	2.37	.....	.....

[fol. 2081]

Atla

Property Investmen

	1926	
1. Property Investment as at End of Year:		
2. Investment in Road and Equipment (Account 701)	$88,419,031.57	$
3. Material and Supplies (Account 716)	3,418,989.17	
4. Total	91,838,020.74	
5. Cash	3,338,143.18	
6. Grand Total	95,176,163.92*	
7. Operating Income Account:		
8. Average Mileage Operated	1,880.46	
9. Total Operating Revenues	$30,330,194.04	$
10. Freight (Account 101)	21,0[illegible]014.55	
11. Passenger (Account 102)	5,955,199.64	
12. Mail (Account 106)	397,745.73	
13. Express (Account 107)	1,079,753.62	
14. All other Revenues	1,294,480.50	
15. Total Operating Expenses	$22,087,233.09	$
16. Maintenance of Way and Structures	4,067,116.63	
17. Maintenance of Equipment	5,785,309.41	
18. Traffic	586,741.26	
19. Transportation	10,768,303.13	
20. General	640,331.87	
21. All other Expenses	239,430.79	
22. Operating Ratio—Per cent	72.82	
23. Net Operating Revenue	$8,242,960.95	
24. Railway Tax Accruals	2,272,103.76	
25. Uncollectible Railway Revenues	10,720.86	
26. Railway Operating Income	$5,960,136.33	
27. Hire of Equipment—Net Balance	$659,989.93R	
28. Joint Facility Rents—Net Balance	148,819.62R	
29. Net Railway Operating Income	$5,151,326.78	
30. Rate of Return on:		
31. Investment in Road and Equipment—Per cent	5.83	
32. Investment in Road and Equipment—Incl. M. & S.	5.61	
33. Investment in Road and Equipment—Inc. M. & S. & Cash	5.41	

Wilmington, N. C., June 5th, 1931-1. "R

NOTE: The investment used on line 2 of this exhibit is based on the tentativ
the Interstate Commerce Commission, Valuation Section, to which has been added

EXHIBIT No. 79

I. C. C. Docket No. 18364

Witness: Geo. W. Lamb

Atlantic Coast Line Railroad Company

tment and Operating Income Account, State of Florida

1927	1928	1929	1930	Increase or decrease 1930 over 1926	Per cent of increase or decrease
$90,558,415.21	$91,735,345.27	$92,783,587.42	$94,512,182.59	$6,093,151.02	6.89
3,221,709.46	2,658,091.94	2,573,857.03	2,678,655.89	.....	.....
93,780,124.67	94,393,437.21	95,357,444.45	97,190,838.48	.....	.....
7,053,956.23	6,459,705.44	6,904,976.61	5,568,788.75	.....	.....
100,834,080.90	100,853,142.65	102,262,421.06	102,759,627.23	7,583,463.31	7.97
1,985.70	2,022.37	2,055.40	2,061.38	180.92	9.62
$22,180,597.92	$18,107,653.51	$18,610,308.72	$16,334,490.05	$13,995,703.99R	46.14R
16,163,617.95	12,986,975.47	13,489,212.07	11,960,371.20	9,642,643.35R	44.64R
3,583,454.38	2,801,559.74	2,479,252.45	2,105,892.97	3,849,306.67R	64.64R
374,767.91	401,397.57	439,408.30	431,819.21	34,073.48	8.57
992,216.45	913,178.41	1,048,357.66	777,134.49	302,619.13R	28.03R
1,066,541.23	1,004,542.32	1,154,078.24	1,059,272.18	235,208.32R	18.17R
$17,741,635.48	$14,101,671.51	$13,739,933.06	$12,878,471.23	$9,208,761.86R	41.69R
3,648,667.30	2,773,509.92	2,618,059.20	2,536,910.89	1,530,205.74R	37.62R
4,645,033.21	3,756,988.04	3,567,714.61	3,243,397.51	2,541,911.90R	43.94R
546,985.29	539,177.94	512,202.93	522,302.03	64,439.23R	10.98R
8,146,834.40	6,443,152.21	6,343,155.05	5,869,129.08	4,899,174.05R	45.50R
590,006.48	532,686.08	538,778.94	544,270.66	96,061.21R	15.00R
164,108.80	149,156.42	160,022.33	162,461.06	76,969.73R	32.15R
80.00	78.39	73.83	78.84	6.02	8.27
$1,438,962.44	$3,912,982.00	$4,870,375.66	$3,456,018.82	$4,786,942.13R	58.07R
2,072,726.23	2,028,162.18	2,317,632.38	2,051,985.00	220,118.76R	9.69R
28,678.52	25,294.95	30,321.84	20,871.02	10,150.16	94.68
$2,337,557.69	$1,859,524.87	$2,522,421.44	$1,383,162.80	$4,576,973.53R	76.79R
R 100,668.12	83,404.16	50,630.94	169,790.71R	490,199.22	.....
R 134,467.53R	75,988.64R	88,907.28R	9,450.44R	139,369.18	.....
$2,303,758.28	$1,866,940.39	$2,484,145.10	$1,203,921.65	$3,947,405.13R	76.63R
2.54	2.04	2.68	1.27	.....	.....
2.46	1.98	2.61	1.24	.....	.....
2.28	1.85	2.43	1.17	.....	.....

"R" Denotes Red Figures.

tative valuation of Atlantic Coast Line Railroad properties in the State of Florida as of July 1, 1917, as found by added the actual expenditures for additions and betterments subsequent thereto as made in each year.

[fol. 2082]

Atlantic

Statement of Logs

System

	Number of Cars (1)	Number of Tons (2)	Revenue (3)
1926—Logs(*)	79,114	2,196,971	
—Total	944,101	27,025,422	
1927—Logs(*)	78,532	2,056,593	Not Available
—Total	839,049	23,134,496	
1928—Logs	51,801	1,422,874	$997,139
—Total	752,778	20,402,922	52,019,283
1929—Logs	37,206	949,840	794,334
—Total	718,549	18,951,802	53,188,639
1930—Logs	25,738	667,612	615,393
—Total	621,232	16,784,331	46,428,030
Total Logs	272,391	7,293,890	$2,406,866
Grand Total all Traffic	3,875,709	106,298,973	$151,635,952

Wilmington, N. C., June 5th, 1931-1.

(*) No

[fol. 2083]

Atlantic

Statement of Freight

A Comparison Between Fl

Entire system excluding Florida

	Interstate	Intrastate	Total
Revenue			
1926	$38,348,411.96	$8,050,260.89	$46,398,672.
1927	34,838,129.29	7,837,324.22	42,675,453.
Decrease 1927 vs. 1926	3,510,282.67	212,936.67	3,723,219.
1928	31,753,859.80	7,278,447.67	39,032,307.
Decrease 1928 vs. 1926	6,594,552.16	771,813.22	7,366,365.
1929	33,305,581.31	6,393,845.24	39,699,425.
Decrease 1929 vs. 1926	5,042,830.65	1,656,415.65	6,699,246.
1930	28,541,399.79	5,926,259.39	34,467,659.
Decrease 1930 vs. 1926	9,807,012.17	2,124,001.50	11,931,013.
Revenue tons			
1926	24,986,590	5,047,577	30,034,1
1927	21,592,458	5,199,042	26,791,5

EXHIBIT No. 80

I. C. C. Docket #18364

Witness: Geo. W. Lamb

antic Coast Line Railroad Company

Logs Handled and Revenue Derived Therefrom

	Ratio of Logs to Total Traffic			Florida		Ratio of Logs to Total Traffic		Ratio of Florida to System	
ue	Cars (4)	Tons (5)	Revenue (6)	Number of Cars (7)	Number of Tons (8)	Cars (9)	Tons (10)	Cars (11)	Tons (12)
	8.4%	8.1%(*)	.....	36,799	1,214,361	7.9%	8.0%	46.51%	55.27%
				466,071	15,111,117				
t									
ble	9.4%	8.9%(*)	.....	35,415	1,052,927	9.9%	9.6%	45.10%	51.20%
				356,795	10,982,964				
7,139	6.9%	7.0%	1.9%	27,119	814,777	9.4%	9.4%	52.35%	57.26%
9,283				289,984	8,622,556				
4,334	5.2%	5.0%	1.5%	13,207	366,426	4.5%	4.3%	35.50%	38.58%
8,639				293,902	8,547,924				
5,393	4.1%	4.0%	1.3%	9,376	272,150	3.7%	3.6%	36.43%	40.76%
8,030				254,078	7,660,058				
5,866	7.0%	6.9%	1.6%	421,916	3,720,641	7.3%	7.3%	.....	.....
5,952				1,660,830	50,924,619				

(*) NOTE: Years 1926 and 1927 include posts, poles and cordwood.

EXHIBIT No. 81

I. C. C. Docket No. 18364

Witness: Geo. W. Lamb

antic Coast Line Railroad Company

ight Revenues (Account 101) and Revenue Tons

en Florida and the Entire System, Excluding Florida

	Percent of decrease as compared with year 1926		Florida			Percent of decrease as compared with year 1926	
al	Interstate	Intrastate	Interstate	Intrastate	Total	Interstate	Intrastate
672.85			$11,305,416.29	$10,297,598.26	$21,603,014.55		
453.51			8,393,973.03	7,769,644.92	16,163,617.95		
219.34	9.15	2.65	2,911,443.26	2,527,953.34	5,439,396.60	25.75	24.55
307.47			7,047,000.47	5,939,975.00	12,986,975.47		
365.38	17.20	9.59	4,258,415.82	4,357,623.26	8,616,039.08	37.67	42.32
426.55			8,075,641.74	5,413,570.33	13,489,212.07		
246.30	13.15	20.58	3,229,774.55	4,884,027.93	8,113,802.48	28.57	47.43
559.18			7,108,188.05	4,852,183.15	11,960,371.20		
013.67	25.57	26.38	4,197,228.24	5,445,415.11	10,642,643.35	37.13	52.88
34,167			7,088,891	8,022,226	15,111,117		
01,500			4,458,639	6,524,325	10,982,964		

Decrease 1930 vs. 1926	9,807,012.17	2,124,001.50	11,931,013.67	2
Revenue tons				
1926	24,986,590	5,047,577	30,034,167	
1927	21,592,458	5,199,042	26,791,500	
Decrease 1927 vs. 1926	3,394,132	151,465X	3,242,667	1
1928	20,035,159	5,023,231	25,058,390	
Decrease 1928 vs. 1926	4,951,431	24,346	4,975,777	1
1929	20,086,015	4,126,631	24,212,646	
Decrease 1929 vs. 1926	4,900,575	920,946	5,821,521	1
1930	17,154,945	3,792,975	20,947,920	
Decrease 1930 vs. 1926	7,831,645	1,254,602	9,086,247	3

Wilmington, N. C., June 3rd, 1931-1.

Note: "X" denotes increase.

25.57	26.38	4,197,228.24	5,445,415.11	10,642,643.35	37.13	52.88
		7,088,891	8,022,226	15,111,117		
		4,458,639	6,524,325	10,982,964		
13.58	3.00X	2,630,252	1,497,901	4,128,153	37.10	18.67
		4,000,693	4,621,863	8,622,556		
19.82	0.48	3,088,198	3,400,363	6,488,561	43.56	42.39
		4,418,535	4,129,389	8,547,924		
19.61	18.25	2,670,356	3,892,837	6,563,193	37.67	48.53
		4,183,159	3,476,899	7,660,058		
31.34	24.86	2,905,732	4,545,327	7,451,059	40.99	56.66

[fol. 2084]

I.

Statement Showing Density
Southern Florida For Cale

1. Average number of miles	
2. Passenger	
3. Freight	
4. Average number of miles operated:	
5. Passenger	
6. Freight	
7. Revenue Passenger Mile	
8. Total number (thousand	
9. Average per mile of road	
10. Average per mile of main	
11. Revenue Ton-Miles:	
12. Total number (thousand	
13. Average per mile of road	
14. Average per mile of main	

NOTE: (1) Northern Florida
Junction line of
River-Junction-P
Company.
(2) Southern Florida.

Source: Statement No. 28
on replies to order of the I. C

EXHIBIT No. 82

I. C. C. Docket No. 18364

Witness: Geo. W. Lamb

ity of Traffic For Northern Florida Compared With
alendar Year 1927

	Northern Florida (1)	Southern Florida (2)	Percentage Southern Florida to Northern Florida
es of rd. operated:			
	846.49	4,049.38	478.37
	894.54	4,183.01	467.62
les of main track			
	923.65	4,503.21	487.55
	970.34	4,636.84	477.86
iles:			
nds)	84,721	284,217	335.47
ad operated	100,085	70,188	70.13
in trk. operated	91,724	63,114	68.81
nds)	550,426	2,331,131	423.51
ad operated	615,318	557,286	90.57
in trk. operated	567,251	502,741	88.63

la. All points on and north of the Jacksonville-River
f the Seaboard Air Line Railway Company and the
Pensacola line of the Louisville & Nashville Railroad

la. All points south of aforesaid line.
8015 (File No. 18-B-1) issued by I. C. C., 1928, based
C. C. dated November 22, 1927, to Class I Railroads.

[fol. 2085]

EXHIBIT No. 83

I. C. C. Docket 18364

Witness: Geo. W. Lamb

Atlantic Coast Line Railroad Company

Traffic Density Statistics, State of Florida Compared with System and System Excluding Florida, Calendar Years 1921 to 1930 Inclusive

Year	System			State of Florida						System—Exclusive Florida				Pe F m s ex F
	Average miles operated (1)	Revenue ton miles (thous.) (2)	Tons 1 mile per mile of road (3)	Average miles operated (4)	Revenue ton miles (thous.) (5)	Tons 1 mile per mile of road (6)	Percent of Florida operated miles to system (7)	Percent of rev. ton miles Fla. to system (8)	Percent Fla. tons 1 mile per mile of road to system (9)	Average miles operated (10)	Revenue ton miles (thous.) (11)	Tons 1 mile per mile of road (12)	Percent of Fla. mileage operated to system excl. Florida (13)	
1921	4,814.67	2,479,340	514,955	1,798.97	613,722	341,152	37.4	24.8	66.2	3,015.70	1,865,618	618,635	59.7	
1922	4,852.21	3,031,173	624,700	1,821.66	745,106	409,026	37.5	24.6	65.[illegible]	3,030.55	2,286,067	754,341	60.1	
1923	4,857.39	3,712,154	764,228	1,827.00	936,346	512,505	37.6	25.2	67.[illegible]	3,030.39	2,775,808	915,990	60.3	
1924	4,862.39	3,763,631	774,029	1,833.20	1,045,992	570,583	37.7	27.8	73.7	3,029.19	2,717,639	897,150	60.5	
1925	4,890.49	4,440,361	907,958	1,843.85	1,365,616	740,633	37.7	30.8	81.6	3,046.64	3,074,745	1,009,225	60.5	
Average—5 years	4,855.43	3,485,334	717,822	1,824.94	941,356	515,828	37.6	26.6	70.7	3,030.49	2,543,975	839,460	60.2	
1926	4,931.09	4,751,444	963,569	1,880.46	1,634,892	869,411	38.1	34.4	90.2	3,050.63	3,116,553	1,021,610	61.6	
1927	5,065.15	3,787,301	747,717	1,985.70	1,133,700	570,932	39.2	29.9	76.4	3,079.45	2,653,601	861,713	64.5	
1928	5,117.54	3,313,824	647,542	2,022.37	894,383	442,245	39.5	27.0	68.3	3,095.17	2,419,441	781,682	65.3	
1929	5,151.60	3,281,770	637,039	2,055.40	822,164	400,002	39.9	25.1	62.8	3,096.20	2,459,606	794,395	66.4	
1930	5,156.98	2,871,257	556,771	2,061.38	762,668	369,979	40.0	26.6	66.5	3,095.60	2,008,589	648,395	66.6	
Average—5 years	5,084.47	3,601,119	708,258	2,001.06	1,049,561	524,503	39.3	28.6	72.8	3,083.41	2,531,558	821,025	64.9	

[fol. 2086]

EXHIBIT No. 83½

I. C. C. Docket 18364

Witness: Geo. W. Lamb

Seaboard Air Line Railway

L. R. Powell, Jr., and E. W. Smith, Receivers

Comparative Traffic Density Statistics—System and State of Florida 1921-1930

Year	System			State of Florida						System—Exclusive Florida				Pe Fl mi sy exc Fl (
	Average miles operated (1)	Revenue ton miles (thous.) (2)	Tons 1 mile per mile of road (3)	Average miles operated (4)	Revenue ton miles (thous.) (5)	Tons 1 mile per mile of road (6)	Percent of Florida operated miles to system (7)	Percent of rev. ton miles Fla. to system (8)	Percent Fla. tons 1 mile per mile of road to system (9)	Average miles operated (10)	Revenue ton miles (thous.) (11)	Tons 1 mile per mile of road (12)	Percent of Fla. mileage operated to system excl. Florida (13)	
1921	3,563.21	1,858,505	521,582	1,036.65	389,271	375,508	29.09	20.95	71.99	2,526.56	1,469,234	581,516	41.03	2
1922	3,576.11	2,250,338	629,270	1,023.77	575,462	562,101	28.63	25.57	89.33	2,552.34	1,674,876	656,212	40.11	3
1923	3,576.11	2,627,222	734,659	1,023.77	553,299	540,453	28.63	21.06	73.57	2,552.34	2,073,923	812,557	40.11	2
1924	3,571.19	2,782,272	779,088	1,019.44	678,784	665,840	28.55	24.40	85.46	2,551.75	2,103,489	824,332	39.95	3
1925	3,784.38	3,298,929	871,722	1,230.68	1,003,902	815,729	32.52	30.43	93.58	2,553.70	2,295,027	898,707	48.19	4
Average—5 years	3,614.20	2,563,453	709,273	1,066.86	640,144	600,026	29.52	24.97	84.60	2,547.34	1,923,309	755,026	41.88	3
1926	3,943.39	3,637,056	922,317	1,388.43	1,245,486	897,046	35.21	34.24	97.26	2,554.96	2,391,570	936,050	54.34	5
1927	4,291.35	3,391,224	790,246	1,736.39	808,544	465,647	40.46	23.84	58.92	2,544.96	2,582,680	1,010,849	68.23	3
1928	4,498.61	3,177,122	706,245	1,836.08	850,267	463,089	40.81	26.76	65.57	2,662.53	2,326,854	873,926	68.96	3
1929	4,490.38	3,195,455	711,622	1,834.94	847,571	461,907	40.86	26.52	64.91	2,655.44	2,347,884	884,179	69.10	3
1930	4,495.12	2,941,105	654,288	1,824.63	831,805	455,876	40.59	28.28	69.68	2,670.49	2,109,300	789,855	68.33	3
Average—5 years	4,343.77	3,268,392	747,828	1,724.09	961,735	531,721	39.69	28.22	71.10	2,619.68	2,351,657	897,689	65.81	4

EXHIBIT No. 83

I. C. C. Docket 18364

Witness: Geo. W. Lamb

Atlantic Coast Line Railroad Company

Traffic Density Statistics, State of Florida Compared with System and System Excluding Florida, Calendar Years 1921 to 1930 Inclusive

	System			State of Florida						System—Exclusive Florida					
	Average miles operated (1)	Revenue ton miles (thous.) (2)	Tons 1 mile per mile of road (3)	Average miles operated (4)	Revenue ton miles (thous.) (5)	Tons 1 mile per mile of road (6)	Percent of Florida operated miles to system (7)	Percent of rev. ton miles Fla. to system (8)	Percent Fla. tons 1 mile per mile of road to system (9)	Average miles operated (10)	Revenue ton miles (thous.) (11)	Tons 1 mile per mile of road (12)	Percent of Fla. mileage operated to system excl. Florida (13)	Percent of Fla. ton miles to system excluding Florida (14)	Percent of tons 1 mile per mile of road Fla. to system excl. Fla. (15)
....	4,814.67	2,479,340	514,955	1,798.97	613,722	341,152	37.4	24.8	66.2	3,015.70	1,865,618	618,635	59.7	32.9	55.1
....	4,852.21	3,031,173	624,700	1,821.66	745,106	409,026	37.5	24.6	65.5	3,030.55	2,286,067	754,341	60.1	32.6	54.2
....	4,857.39	3,712,154	764,228	1,827.00	936,346	512,505	37.6	25.2	67.1	3,030.39	2,775,808	915,990	60.3	33.7	56.0
....	4,862.39	3,763,631	774,029	1,833.20	1,045,992	570,583	37.7	27.8	73.7	3,029.19	2,717,639	897,150	60.5	38.5	63.6
....	4,890.49	4,440,361	907,958	1,843.85	1,365,616	740,633	37.7	30.8	81.6	3,046.64	3,074,745	1,009,225	60.5	44.4	73.4
....	4,855.43	3,485,334	717,822	1,824.94	941,356	515,828	37.6	26.6	70.7	3,030.49	2,543,975	839,460	60.2	37.0	61.4
....	4,931.09	4,751,444	963,569	1,880.46	1,634,892	869,411	38.1	34.4	90.2	3,050.63	3,116,553	1,021,610	61.6	52.5	85.1
....	5,065.15	3,787,301	747,717	1,985.70	1,133,700	570,932	39.2	29.9	76.4	3,079.45	2,653,601	861,713	64.5	42.7	66.3
....	5,117.54	3,313,824	647,542	2,022.37	894,383	442,245	39.5	27.0	68.3	3,095.17	2,419,441	781,682	65.3	37.0	56.6
....	5,151.60	3,281,770	637,039	2,055.40	822,164	400,002	39.9	25.1	62.8	3,096.20	2,459,606	794,395	66.4	33.4	50.4
....	5,156.98	2,871,257	556,771	2,061.38	762,668	369,979	40.0	26.6	66.5	3,095.60	2,008,589	648,395	66.6	38.0	57.0
....	5,084.47	3,601,119	708,258	2,001.06	1,049,561	524,503	39.3	28.6	72.8	3,083.41	2,531,558	821,025	64.9	41.5	63.9

EXHIBIT No. 83½

I. C. C. Docket 18364

Witness: Geo. W. Lamb

Seaboard Air Line Railway

L. R. Powell, Jr., and E. W. Smith, Receivers

Comparative Traffic Density Statistics—System and State of Florida 1921-1930

	System			State of Florida						System—Exclusive Florida					
	Average miles operated (1)	Revenue ton miles (thous.) (2)	Tons 1 mile per mile of road (3)	Average miles operated (4)	Revenue ton miles (thous.) (5)	Tons 1 mile per mile of road (6)	Percent of Florida operated miles to system (7)	Percent of rev. ton miles Fla. to system (8)	Percent Fla. tons 1 mile per mile of road to system (9)	Average miles operated (10)	Revenue ton miles (thous.) (11)	Tons 1 mile per mile of road (12)	Percent of Fla. mileage operated to system excl. Florida (13)	Percent of Fla. ton miles to system excluding Florida (14)	Percent of tons 1 mile per mile of road Fla. to system excl. Fla. (15)
..	3,563.21	1,858,505	521,582	1,036.65	389,271	375,508	29.09	20.95	71.99	2,526.56	1,469,234	581,516	41.03	26.49	64.57
..	3,576.11	2,250,338	629,270	1,023.77	575,462	562,101	28.63	25.57	89.33	2,552.34	1,674,876	656,212	40.11	34.36	85.66
...	3,576.11	2,627,222	734,659	1,023.77	553,299	540,453	28.63	21.06	73.57	2,552.34	2,073,923	812,557	40.11	26.68	66.51
...	3,571.19	2,782,272	779,088	1,019.44	678,784	665,840	28.55	24.40	85.46	2,551.75	2,103,489	824,332	39.95	32.27	80.77
..	3,784.38	3,298,929	871,722	1,230.68	1,003,902	815,729	32.52	30.43	93.58	2,553.70	2,295,027	898,707	48.19	43.74	90.77
..	3,614.20	2,563,453	709,273	1,066.86	640,144	600,026	29.52	24.97	84.60	2,547.34	1,923,309	755,026	41.88	33.28	79.47
..	3,943.39	3,637,056	922,317	1,388.43	1,245,486	897,046	35.21	34.24	97.26	2,554.96	2,391,570	936,050	54.34	52.08	95.83
..	4,291.35	3,391,224	790,246	1,736.39	808,544	465,647	40.46	27.84	58.92	2,544.96	2,582,680	1,010,849	68.23	31.31	46.06
..	4,498.61	3,177,122	706,245	1,836.08	850,267	463,089	40.81	26.76	65.57	2,662.53	2,326,854	873,926	68.96	36.54	52.99
..	4,490.38	3,195,455	711,622	1,834.94	847,571	461,907	40.86	26.52	64.91	2,655.44	2,347,884	884,179	69.10	36.10	52.24
..	4,495.12	2,941,105	654,288	1,824.63	831,805	455,876	40.59	28.28	69.68	2,670.49	2,109,300	789,855	68.33	39.44	57.72
..	4,343.77	3,268,392	747,828	1,724.09	961,735	531,721	39.69	28.22	71.10	2,619.68	2,351,657	897,689	65.81	40.90	59.23

[fol. 2087]

EXHIBIT No. 84

I. C. C. Docket No. 18364

Witness: Geo. W. Lamb

Atlantic Coast Line Railroad Company

FREIGHT PROPORTION OF YARD ACCOUNTS AND OTHER ACCOUNTS ELIMINATED. YEAR ENDED DECEMBER 31, 1929

(202)	Roadway maintenance—yard	$55,476
(203)	Roadway—Depreciation—Yard	.....
(204)	Underground power tubes—Yard	.....
(205)	Underground power tubes—Depreciation—Yard	.....
(206)	Tunnels and subways—Yard	.....
(207)	Tunnels and subways—Depreciation—Yard	.....
(208)	Bridges, trestles & culverts—Yard	24,108
(209)	Bridges, trestles & culverts—Depreciation—Yard	.....
(210)	Elevated structures—Yard	.....
(211)	Elevated structures—Depreciation—Y	.....
(212)	Ties—Yard	285,489
(213)	Ties—Depreciation—Yard	.....
(214)	Rails—Yard	51,587
(215)	Rails—Depreciation—Yard	.....
(216)	Other track material—Yard	54,870
(217)	Other track material—Depreciation—Yard	.....
(218)	Ballast—Yard	8,969
(219)	Ballast—Depreciation—Yard	.....
(220)	Track laying and surfacing—Yard	338,231
(221)	Right-of-way fences—Yard	727
(222)	Right-of-way fences—Depreciation—Yard	.....
(223)	Snow & sand fences & snowsheds—Yard	.....
(224)	Snow & sand fences & snowsheds—Depreciation—Yard	.....
(225)	Crossings and signs—Yard	30,498
(226)	Crossings and signs—Depreciation—Yard	.....
(278)	Maintaining joint tracks yards & other facilities—Dr.	73,840
(279)	Maintaining joint tracks yards & other facilities—Cr.	249,378
(377)	Yardmasters and yard clerks	866,496
(378)	Yard conductors and brakemen	1,234,111
(379)	Yard switch and signal tenders	24,853
(380)	Yard enginemen	861,178
(381)	Yard motormen	.....
(382)	Fuel for yard locomotives	613,207
(383)	Yard switching power produced	.....
(384)	Yard switching power purchased	.....
(385)	Water for yard locomotives	24,562
(386)	Lubricants for yard locomotives	7,998
(387)	Other supplies for yard locomotives	10,109
(388)	Enginehouse expenses—Yard	233,346
(389)	Yard supplies and expenses	59,486
(390)	Operating joint yards & terminals—Dr.	117,324
(391)	Operating joint yards and terminals—Cr.	176,688
	Total Yard Accounts	$4,550,039

[fol. 2088]

	Total Yard Accounts—Brought Forward		$4,550,039
(201)	Superintendence—(proportion)	$62,577.95	
(241)	Wharves and Docks	135,980.07	
(267)	Paving	1,825.26	
(273)	Assessment for Public Improvements	10,681.14	
(323)	Floating Equipment	29,434.59	
(324)	Floating Equipment—Depreciation	4,046.04	
(329)	Miscellaneous Equipment—Repairs	415.83	
(330)	Miscellaneous Equipment—Depreciation	267.37	
(351)	Superintendence—Traffic	456,246.73	
(352)	Outside Agencies	488,739.58	
(353)	Advertising	4,578.80	
(354)	Traffic Associations	46,802.39	
(356)	Industrial and Immigration Bureaus	16,637.06	
(373)	Station Employees	3,281,352.20	
(376)	Station Supplies and Expenses	126,351.55	
	Total Other Accounts		$4,665,936
	Total Accounts Eliminated		$9,215,975
	*Add proportion General Expenses (4.4897%)		413,769
	Grand Total Eliminated		$9,629,744
	Total Operating Expenses—Freight	$36,308,813	
	Less Eliminated Accounts	9,629,744	
	Total Haulage Expenses Used	26,679,069	
	Deduct "Out-of-Pocket Expenses"	6,920,684	
			$19,758,385
	"Out of Pocket Expenses":		
(401)	Trainmen	$2,048,715	
(392)	Train Enginemen	1,571,324	
(394)	Fuel for Train Locomotives	2,281,332	
(397)	Water for Train Locomotives	96,575	
(398)	Lubricants for Train Locomotives	42,283	
(399)	Other Supplies for Train Locomotives	29,281	
(400)	Engine-house Expenses—Train	450,414	
(402)	Train Supplies Expenses	400,760	
	Total Out of Pocket Expenses	$6,920,684	
	Ratio to Haulage Expenses Used	35.027%	
	*Total Operating Expenses—Freight	$36,308,813	
	Total General Expenses	1,560,126	
	Total Expenses Less General Expenses	$34,748,687	
	Percentage of General Expenses to Total	4.4897%	
	Proportion of General Expenses	$413,769	

[fol. 2089]

EXHIBIT No. 85

I. C. C. Docket No. 18364

Witness: Geo. W. Lamb

Atlantic Coast Line Railroad Company

Statement Showing Method of Assigning Taxes and 5-¾% Return on Investment

Taxes

Page 312, Schedule 350, "Taxes on Railway Property," Annual Report to I. C. C. Dec. 31, 1929

Line No.			
1.	Virginia		$190,188.21
2/3	North Carolina		1,431,494.96
4/5	South Carolina		1,038,272.01
6.	Georgia		705,047.52
7.	Florida	$2,115,155.97	
10.	" Outside Agencies	104.79	2,115,260.76
8.	Alabama		189,407.37
9.	District of Columbia		34.00
11.	Louisiana		12.05
12.	Massachusetts		14.00
13.	Missouri		5.39
14.	New York		25.50
15.	Ohio		3.24
16.	Tennessee		159.22
20.	Total		$5,669,924.23
	U. S. Government Taxes:		
30.	Corporation Income		570,075.77
50.	Grand Total		$6,240,000.00

		Percent
Page 301, Schedule 300-I I. C. C. Report Line 4, "Ner Revenue from Railway Operation	$18,940,305.33	
Line 80, Page 312, Schedule 350, Corporate Income Tax	570,075.77	3.00985%
Line 247, Page 707, Report to Florida Railroad Commission Grand Total Railway Operating Expenses	$13,739,933.06	
Page 312, Schedule 350, Lines 7 and 10, I. C. C. Report, Florida Taxes	2,115,260.76	15.3950%

5-3/4% Return On Investment:

1.	Property Investment, Dec. 31, 1929, Line 6, Exhibit #—	$306,439,250
2.	Total Operating Expenses (P. 309 Line 247 I. C. C. Report)	53,431,589
3.	Assignable to Freight (P. 309, Line 247, Cols. C. & E.)	36,308,813
4.	Freight percentage of Total Operating Expenses (3÷2)	67.95%
5.	5¾% on Investment 1 x 5¾%	17,620,257
6.	Freight Proportion (5 x 4)	11,972,965
7.	Ratio to Freight Operating Expenses (6÷3)	32.97536%

Wilmington, N. C., June 5th, 1931-1.

[fol. 2090] EXHIBIT No. 86

I. C. C. Docket No. 18364

Witness: Geo. W. Lamb

Atlantic Coast Line Railroad Company

Estimated Cost of Handling Logs in Florida, Based On "Out-of-Pocket" Expenses Actually Assigned to Third Division of the Atlantic Coast Line Railroad Company Operating Entirely Within the State of Florida.

Based On Cost Per Gross Ton-Mile

	"A"	"B"	So-called Cummer Scale
Average Haul:			
1. Miles	81.36		
2. Average Revenue per Car			$15.12
3. Average Billing Weight—pounds	56,754		
4. Average Tare Weight—pounds	33,000		
5. Average Tare Weight—Empty Haul —lbs.	33,000		
6. Gross Weight—pounds	122,754		
7. Gross Tons	61.377		
8. Gross ton-miles—7x1	4,994		
9. Out of pocket expenses per gross ton-mile		.0882888¢	
10. Out of pocket expenses per gross ton-mile (100%)	.252059¢*a*	.374912¢*b*	
11. Operating Costs—8x10	$12.59	$18.72	
12. Income Taxes—3.00985% of 2—11*	.08	x	
13. Florida Taxes—15.3950% of 11*	1.93	2.88	
14. Operating expenses—Taxes—11 plus 12 plus 13	14.60	21.60	
15. 5¾% Return on Investment—11x 32.97536%	4.15	6.17	
16. Total Cost including Return on Invest.	18.75	27.77	

* See Exhibit No. —

NOTE: *a* Item 9 "A" equals 35.027% of Total Freight Haulage Expenses only
b Item 9 "B" equals 23.5492% of Total Freight Expenses.
Raised to 100% on line 10 "A" and "B" respectively.

[fol. 2091] EXHIBIT No. 87

I. C. C. Docket No. 18364

Witness: Geo. W. Lamb

Atlantic Coast Line Railroad Company

Estimated Cost of Handling Logs in Florida, Based On "Out-of-Pocket" Expenses Actually Assigned to the Third Division of the Atlantic Coast Line Railroad Company Operating Entirely Within the State of Florida.

Based On Cost Per Loaded and Empty Car-Mile

	"A"	"B"	So-called Cummer Scale
Average Haul:			
1. Miles		81.36	
2. Average Revenue per Car			$15.12
3. Empty Haul—Miles		81.36	
4. Total Car Miles—1 plus 3		162.72	
5. Out of pocket expenses per loaded and empty car-mile		2.95176c	
6. Out of pocket expenses per loaded and empty car mile (100%)	8.4271c*a*	12.5344c*b*	
7. Operating Costs—4x6	$13.74	$20.43	
8. Income Taxes—3.00985% of 2—7* (A $8.28, B $5.36), ($1.38)	.04		
9. Florida Taxes—15.3950% of 7*	2.12	3.14	
10. Operating Expenses—Taxes—7 plus 8 plus 9	15.90	23.57	
11. 5¾% Return on Investment—7x 32.97536%	4.53	6.74	
12. Total Cost including Return on Invest.	20.43	30.31	

*See Exhibit No. —

NOTE: *a* Item 5 "A" equals 35.027% of Total Freight Haulage Expenses only.
b Item 5 "B" equals 23.5492% of Total Freight Expenses.
Raised to 100% on line 6 "A" and "B" respectively.

[fol. 2092] EXHIBIT No. 88

I. C. C. Docket No. 18364

Witness: Geo. W. Lamb

Atlantic Coast Line Railroad Company

Estimated Cost of Handling Logs in Florida, Based On "Out-of-Pocket" Expenses Actually Assigned to the Third Division of the Atlantic Coast Line Railroad Company Operating Entirely Within the State of Florida.

Based On Cost Per Gross Ton-Mile

	"A"		"B"	So-called Cummer Scale
From: Perry to Eastport:				
1. Miles		169.00		
2. Average Revenue per Car				$22.10
3. Average Billing Weight—pounds		59,743		
4. Average Tare Weight—pounds		33,000		
5. Average Tare Weight—Empty Haul—lbs.		33,000		
6. Gross Weight—pounds		125,743		
7. Gross Tons		62,871		
8. Gross ton-miles—7x1		10,625		
9. Out of pocket expenses per gross ton-mile			.0882888¢	
10. Out of pocket expenses per gross ton-mile (100%)	.252059¢a		.374912¢b	
11. Operating Costs—8x10	$26.78		$39.83	
12. Income Taxes—3.00985% of 2—11*	x		x	
13. Florida Taxes—15.3950% of 11*	4.12		6.12	
14. Operating expenses—Taxes—11 plus 12 plus 13	30.90		45.95	
15. 5¾% Return on Investment—11x 32.97536%	8.83		13.13	
16. Total Cost including Return on Invest.	39.73		59.08	

*See Exhibit No. —

NOTE: *a* Item 9 "A" equals 35.027% of Total Freight Haulage Expenses only.
b Item 9 "B" equals 23.5492% of Total Freight Expenses.
Raised to 100% on line 10 "A" and "B" respectively.

[fol. 2093] EXHIBIT No. 89

I. C. C. Docket No. 18364

Witness: Geo. W. Lamb

Atlantic Coast Line Railroad Company

Estimated Cost of Handling Logs in Florida, Based On "Out-of-Pocket" Expenses Actually Assigned to the Third Division of the Atlantic Coast Line Railroad Company Operating Entirely Within the State of Florida.

Based On Cost Per Gross Ton-Mile

	"A"	"B"	So-called Cummer Scale
From: Carbur to Eastport:			
1. Miles	152.00		
2. Average Revenue per Car			$20.30
3. Average Billing Weight—pounds	59,717		
4. Average Tare Weight—pounds	33,000		
5. Average Tare Weight—Empty Haul —lbs.	33,000		
6. Gross Weight—pounds	125,717		
7. Gross Tons	62,858		
8. Gross ton miles—7x1	9,554		
9. Out of pocket expenses per gross ton-mile		.0882888¢	
10. Out of pocket expenses per gross ton-mile (100%)	.252059¢a	.374912¢b	
11. Operating Costs—8x10	$24.08	$35.82	
12. Income Taxes—3.00985% of 2—11* ($12.29)			
13. Florida Taxes—15.3950% of 11*	3.71	5.51	
14. Operating expenses—Taxes—11 plus 12 plus 13	27.79	41.33	
15. 5¾% Return on Investment 11x 32.97536%	7.94	11.81	
16. Total Cost including Return on Invest.	35.73	53.14	

* See Exhibit No. —

NOTE: a Item 9 "A" equals 35.027% of Total Freight Haulage Expenses only.
b Item 9 "B" equals 23.5492% of Total Freight Expenses.
Raised to 100% on line 10 "A" and "B" respectively.

[fol. 2094]

EXHIBIT No. 90

I. C. C. Docket No. 18364

Witness: Geo. W. Lamb

Atlantic Coast Line Railroad Company

Estimated Cost of Handling Logs in Florida, Based On "Out-of-Pocket" Expenses Actually Assigned to the Third Division of the Atlantic Coast Line Railroad Company Operating Entirely Within the State of Florida.

Based On Cost Per Gross Ton-Mile

	"A"	"B"	So-called Cummer Scale
From: Homosassa to Perry:			
1. Miles	130.00		
2. Average Revenue per car			$20.62
3. Average Billing Weight—pounds	64,179		
4. Average Tare Weight—pounds	33,000		
5. Average Tare Weight—Empty Haul —lbs.	33,000		
6. Gross Weight—pounds	130,179		
7. Gross Tons	65,089		
8. Gross ton-miles—7x1	8,462		
9. Out of pocket expenses per gross ton-mile		.0882888¢	
10. Out of pocket expenses per gross ton-mile (100%)	.252059¢*a*	.374912¢*b*	
11. Operating Costs—8x10	$21.33	$31.73	
12. Income Taxes—3.00985% of 2—11* (A $16.56, B $5.91)	x	x	
13. Florida Taxes—15.3950% of 11*	3.28	4.88	
14. Operating expenses—taxes 11 plus 12 plus 13	24.61	36.61	
15. 5¾% Return on Investment—11x 32.97536%	7.03	10.46	
16. Total Cost including Return on Invest.	31.64	47.07	

*See Exhibit No. —

NOTE: *a* Item 9 "A" equals 35.027% of Total Freight Haulage Expenses only.
b Item 9 "B" equals 23.5492% of Total Freight Expenses.
Raised to 100% on line 10 "A" and "B" respectively.

[fol. 2095]

EXHIBIT No. 91

I. C. C. Docket No. 18364

Witness: Geo. W. Lamb

Atlantic Coast Line Railroad Company

Estimated Cost of Handling Logs in Florida, Based On "Out-of-Pocket" Expenses Actually Assigned to the Third Division of the Atlantic Coast Line Railroad Company Operating Entirely Within the State of Florida.

Based On Cost Per Gross Ton-Mile

From: Hines to Palatka:	"A"	"B"	So-called Cummer Scale
1. Miles	119.00		
2. Average Revenue per Car			$19.96
3. Average Billing Weight—pounds	62,325		
4. Average Tare Weight—pounds	33,000		
5. Average Tare Weight—Empty Haul —lbs.	33,000		
6. Gross Weight—pounds	128,325		
7. Gross tons	64.162		
8. Gross ton-miles—7x1	7,635		
9. Out of pocket expenses per gross ton-mile		.0882888¢	
10. Out of pocket expenses per gross ton-mile (100%)	.252059¢*a*	.374912¢*b*	
11. Operating Costs—8x10	$19.24	$28.62	
12. Income Taxes—3.00985% of 2—11* (A $14.56, B $4.96)	x	x	
13. Florida Taxes—15.3950% of 11*	2.96	4.41	
14. Operating Expenses—Taxes—11 plus 12 plus 13	22.20	32.03	
15. 5¾% Return on Investment—11x 32.97536%	6.34	9.44	
16. Total Cost including Return on Invest.	28.54	41.47	

*See Exhibit No. —

NOTE: *a* Item 9 "A" equals 35.027% of Total Freight Haulage Expenses only.
b Item 9 "B" equals 23.5492% of Total Freight Expenses.
Raised to 100% on line 10 "A" and "B" respectively.

[fol. 2096]

EXHIBIT No. 92

I. C. C. Docket No. 18364

Witness: Geo. W. Lamb

Atlantic Coast Line Railroad Company

Estimated Cost of Handling Logs in Florida, Based On "Out-of-Pocket" Expenses Actually Assigned to the Third Division of the Atlantic Coast Line Railroad Company Operating Entirely Within the State of Florida.

Based On Cost Per Gross Ton-Mile

	"A"	"B"	So-called Cummer Scale
From: Astor to Groveland:			
1. Miles	99.00		
2. Average Revenue per Car			$13.78
3. Average Billing Weight—pounds	49,983		
4. Average Tare Weight—pounds	33,000		
5. Average Tare Weight—Empty Haul —lbs.	33,000		
6. Gross Weight—pounds	115,983		
7. Gross Tons	57,991		
8. Gross ton-miles—7x1	5,741		
9. Out of pocket expenses per gross ton-mile		.0882888¢	
10. Out of pocket expenses per gross ton-mile (100%)	.252059¢a	.374912¢b	
11. Operating Costs—8x10	$14.47	$21.62	
12. Income Taxes—3.00985% of 2—11* (A $10.44, B $3.22)	x	x	
13. Florida Taxes—15.3950% of 11*	2.27	3.33	
14. Operating Expenses—Taxes—11 plus 12 plus 13	16.74	24.95	
15. 5¾% Return on Investment—11x 32.97536%	4.77	7.13	
16. Total Cost including Return on Invest.	21.51	32.08	

*See Exhibit No. —

NOTE: *a* Item 9 "A" equals 35.027% of Total Freight Haulage Expenses only.
b Item 9 "B" equals 23.5492% of Total Freight Expenses.
Raised to 100% on line 10 "A" and "B" respectively.

[fol. 2097] EXHIBIT No. 93

I. C. C. Docket No. 18364

Witness: Geo. W. Lamb

Atlantic Coast Line Railroad Company

Estimated Cost of Handling Logs in Florida, Based On "Out-of-Pocket" Expenses Actually Assigned to the Third Division of the Atlantic Coast Line Railroad Company Operating Entirely Within the State of Florida.

Based On Cost Per Gross Ton-Mile

From Homasassa to Lacoochee:	"A"	"B"	So-called Cummer Scale
1. Miles	68.00		
2. Average revenue per Car			$12.44
3. Average Billing Weight—pounds	51,320		
4. Average Tare Weight—pounds	33,000		
5. Average Tare Weight—Empty Haul—pounds	33,000		
6. Gross Weight—pounds	117,320		
7. Gross Tons	58.66		
8. Gross ton miles—7x1	3,989		
9. Out of pocket expenses per gross ton mi		.0882888¢	
10. Out of pocket expenses per gross ton mi. (100%)	.252059¢ *a*	.374912¢ *b*	
11. Operating Costs—8x10	$10.05	$14.96	
12. Income Taxes—3.00985% of 2-11# ($2.39) (A $8.74, B $3.72)	.07		
13. Florida Taxes—15.3950% of 11#	1.54	2.30	
14. Operating Expenses—Taxes—11 plus 12 plus 13	11.66	17.26	
15. 5-3/4% Return on Investment—11x32.97536%	3.30	4.93	
16. Total Cost including Return on Investment	14.96	22.19	

See Exhibit No. —

NOTE: *a* Item 9 "A" equals 35.027% of Total Freight Haulage Expenses only.
b Item 9 "B" equals 23.5492% of Total Freight Expenses.
Raised to 100% on line 10 "A" and "B" respectively.

[fol. 2098]

EXHIBIT No. 94

I. C. C. Docket No. 18364

Witness: Geo. W. Lamb

Atlantic Coast Line Railroad Company

Estimated Cost of Handling Logs in Florida, Based On "Out-of-Pocket" Expenses Actually Assigned to the Third Division of the Atlantic Coast Line Railroad Company Operating Entirely Within the State of Florida.

Based On Cost Per Gross Ton-Mile

	"A"	"B"	So-called Cummer Scale
From Homosassa to Otter Creek:			
1. Miles	52.00		
2. Average Revenue per Car			$12.02
3. Average Billing Weight—pounds	56,053		
4. Average Tare Weight—pounds	33,000		
5. Average Tare Weight—Empty Haul —pounds	33,000		
6. Gross Weight—pounds	122,053		
7. Gross Tons	61,027		
8. Gross ton miles—7x1	3,173		
9. Out of pocket expenses per gross ton mi		.0882888¢	
10. Out of pocket expenses per gross ton mile (100%)	.252059¢ *a*	.374912¢ *b*	
11. Operating Costs—8x10	$8.00	$11.90	
12. Income Taxes—3.06985% of 2-11* ($4.02) (A $14.52, B $10.53)	.12		
13. Florida Taxes—15.3950% of 11*	1.23	1.83	
14. Operating Expenses—Taxes—11 plus 12 plus 13	9.35	13.73	
15. 5-3/4% Return on Investment—14x 32.97536%	2.64	3.92	
16. Total Cost including Return on Invest.	11.99	17.65	

* See Exhibit No. —

NOTE: *a* Item 9 "A" equals 35.027% of Total Freight Haulage Expenses only.
b Item 9 "B" equals 23.5492% of Total Freight Expenses,
Raised to 100% on line 10 "A" and "B" respectively.

[fol. 2099]

EXHIBIT No. 95

I. C. C. Docket No. 18364

Witness: Geo. W. Lamb

Atlantic Coast Line Railroad Company

Estimated Cost of Handling Logs in Florida, Based On "Out-of-Pocket" Expenses Actually Assigned to the Third Division of the Atlantic Coast Line Railroad Company Operating Entirely Within the State of Florida.

Based On Cost Per Loaded and Empty Car Mile

	"A"		"B"	So-called Cummer Scale
From Perry to Eastport:				
1. Miles		169.00		
2. Average Revenue per Car				$22.10
3. Empty Haul—Miles		169		
4. Total Haul—1 plus 3		338		
5. Out of pocket expenses per loaded and empty car mile			2.95176¢	
6. Out of pocket expenses per loaded and empty car mile (100%)	8.4271¢ *a*		12.5344¢ *b*	
7. Operating Costs—4x6	$28.48		$42.37	
8. Income Taxes—3.00985% of 2-7# (A $1.17)				
9. Florida Taxes—15.3950% of 7#	4.38		6.51	
10. Operating Expenses—Taxes—7 plus 8 plus 9	32.86		48.88	
11. 5-3/4% Return on Investment 7x 32.97536%	9.39		13.97	
12. Total Cost including Return on Invest.	42.25		62.85	

#See Exhibit No. —

NOTE: *a* Item 5 "A" equals 35.027% of Total Freight Haulage Expenses only.
b Item 5 "B" equals 23.5492% of Total Freight Expenses.
Raised to 100% on line 6 "A" and "B" respectively.

[fol. 2100] EXHIBIT No. 96

I. C. C. Docket No. 18364

Witness: Geo. W. Lamb

Atlantic Coast Line Railroad Company

Estimated Cost of Handling Logs in Florida, Based On "Out-of-Pocket" Expenses Actually Assigned to the Third Division of the Atlantic Coast Line Railroad Company Operating Entirely Within the State of Florida.

Based On Cost Per Loaded and Empty Car Mile

	"A"	"B"	So-called Cummer Scale
From Carbur to Eastport:			
1. Miles	152.00		
2. Average Revenue per Car			$20.30
3. Empty Haul Miles	152.00		
4. Total Car Miles 1 plus 3	304		
5. Out of pocket expenses per loaded and empty car mile		2.95176¢	
6. Out of pocket expenses per loaded and empty car mile (100%)	8.4271¢ *a*	12.5344¢ *b*	
7. Operating Costs 4x6	$25.61	$38.10	
8. Income Taxes 3.00985% of 2-7# (A $2.89)			
9. Florida Taxes 15.3950% of 7#	3.94	5.87	
10. Operating Expenses Taxes 7 plus 8 plus 9	29.55	43.97	
11. 5-3/4% Return on Investment 7x 32.97536%	8.44	12.56	
12. Total Cost including Return on Invest.	37.99	56.53	

See Exhibit No. —

NOTE: *a* Item 5 "A" equals 35.027% of Total Freight Haulage Expenses only.
b Item 5 "B" equals 23.5492% of Total Freight Expenses.
Raised to 100% on line 6 "A" and "B" respectively.

[fol. 2101] EXHIBIT No. 97

I. C. C. Docket No. 18364

Witness: Geo. W. Lamb

Atlantic Coast Line Railroad Company

Estimated Cost of Handling Logs in Florida, Based On "Out-of-Pocket" Expenses Actually Assigned to the Third Division of the Atlantic Coast Line Railroad Company Operating Entirely Within the State of Florida.

Based On Cost Per Loaded and Empty Car-Mile

	"A"		"B"	So-called Cummer Scale
From Hines to Palatka:				
1. Miles		119.00		
2. Average Revenue per Car				$19.96
3. Empty Haul—Miles		119.00		
4. Total Car Miles—7x1		238		
5. Out of pocket expenses per loaded and empty car mile	*		1.95176¢	
6. Out of pocket expenses per loaded and empty car mile (100%)	8.4271¢a		12.5344¢b	
7. Operating Costs—4x6	$20.05		$29.83	
8. Income Taxes—3.00985% of 2—7* (A $7.73, B $3.45)				
9. Florida Taxes—15.3950% of 7*	3.08		4.59	
10. Operating Expenses—Taxes—7 plus 8 plus 9	23.13		34.42	
11. 5-3/4% Return on Investment—7x 32.97536%	6.60		9.84	
12. Total Cost including Return on Invest.	29.73		44.26	

*See Exhibit No. —

NOTE: *a* Item 5 "A" equals 35.027% of Total Freight Haulage Expenses only
b Item 5 "B" equals 23.5492% of Total Freight Expenses.
Raised to 100% on line 6 "A" and "B" respectively.

fol. 2102] EXHIBIT No. 98

I. C. C. Docket No. 18364

Witness: Geo. W. Lamb

Atlantic Coast Line Railroad Company

Estimated Cost of Handling Logs in Florida, Based On "Out-of-Pocket" Expenses Actually Assigned to the Third Division of the Atlantic Coast Line Railroad Company Operating Entirely Within the State of Florida.

Based On Cost Per Loaded and Empty Car-Mile

	"A"		"B"	So-called Cummer Scale
From Astor to Groveland:				
1. Miles		99.00		
2. Average Revenue per Car				$13.78
3. Empty Haul—Miles		99.00		
4. Total Car Miles—1 plus 3		198		
5. Out of pocket expenses per loaded and empty car mile			2.95176¢	
6. Out of pocket expenses per loaded and empty car mile (100%)	8.4271¢a		12.5344¢b	
7. Operating Costs—4x6	$16.69		$24.81	
8. Income Taxes—3.00985% of 2—7# (A $2.68)				
9. Florida Taxes—15.3950% of 7#	2.57		3.82	
10. Operating Expenses—Taxes—7 plus 8 plus 9	19.26		28.63	
11. 5-3/4% Return on Investments—7x 32.97536%	5.50		8.18	
12. Total Cost including Return on Invest.	24.76		36.81	

See Exhibit No. —

NOTE: *a* Item 5 "A" equals 35.027% of Total Freight Haulage Expenses only.
b Item 5 "B" equals 23.5492% of Total Freight Expenses.
Raised to 100% on line 6 "A" and "B" respectively.

[fol. 2103] EXHIBIT No. 99

I. C. C. Docket No. 18364

Witness: Geo. W. Lamb

Atlantic Coast Line Railroad Company

Estimated Cost of Handling Logs in Florida, Based On "Out-of-Pocket" Expenses Actually Assigned to the Third Division of the Atlantic Coast Line Railroad Company Operating Entirely Within the State of Florida.

Based On Cost Per Loaded and Empty Car-Mile

	"A"	"B"	So-called Cummer Scale
From Homosassa to Other Creek:			
1. Miles	52.00		
2. Average Revenue per Car			$12.02
3. Empty Haul—Miles	52.00		
4. Total Car Miles—1 plus 3	104		
5. Out of Pocket expenses per loaded and empty car mile		2.95176¢	
6. Out of pocket expenses per loaded and empty car mile (100%)	8.4271¢a	12.5344¢b	
7. Operating Costs—4x6	$8.76	$13.04	
8. Income Taxes—3.00985% of 2—7* (A $10.98, B $9.11) ... ($3.26)	.10		
9. Florida Taxes—15.3950% of 7*	1.35	2.01	
10. Operating expenses—Taxes—7 plus 8 plus 9	10.21	15.05	
11. 5-3/4% Return on Investment—7x 32.97536%	2.89	4.28	
12. Total Cost including Return on Invest.	13.10	19.33	

*See Exhibit No. —

NOTE: *a* Item 5 "A" equals 35.027% of Total Freight Haulage Expenses only.
b Item 5 "B" equals 23.5492% of Total Freight Expenses.
Raised to 100% on line 6 "A" and "B" respectively.

[fols. 2104–2329] BEFORE INTERSTATE COMMERCE COMMISSION

No. 18364

[Title omitted]

ORDER—July 7, 1931

Upon consideration of motion of intervener Wilson Lumber Company, made during the progress of the further hearing had on June 10, 11, and 12, 1931, that defendant be required to furnish information showing the number of cars of logs transported by it intrastate in Florida during the years 1926, 1927, and 1928, and the revenue received by it for such transportation:

It is ordered, That said motion be, and it is hereby, denied.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 2330]

EXHIBIT No. 101

I. C. C. Docket 18364

Witness—Pettijohn.

Property Investment and Operating Income Account

Atlantic Coast Line Railroad Company, Florida East Coast Railway Company, and Seaboard Air Line Railway Company for Calendar Years 1921 to 19

	1921	1922	1923	1924	1925	1926	1927	1928	
1. Property Investment As At End of Year:									
2. Investment in Road and Equipment (Acct 701)	$453,136,288.94	$462,815,488.84	$489,231,726.92	$508,772,081.68	$547,225,669.64	$609,828,816.77	$622,133,412.60	$627,946,106.95	$63
3. Material and Supplies (Acct 716)	13,773,874.89	12,607,766.04	16,637,166.19	13,824,969.79	17,107,312.49	20,372,344.20	17,312,304.79	13,282,665.02	1
4. Total	466,910,163.83	475,423,254.88	505,868,893.11	522,597,051.47	564,332,982.13	630,201,160.97	639,445,717.39	641,228,771.97	64
5. Cash (Acct 708)	17,430,279.68	27,020,445.54	18,270,480.66	25,873,936.82	27,712,515.86	18,406,684.15	22,785,409.24	19,811,827.89	2
6. Grand Total	484,340,443.51	502,443,700.42	524,139,373.77	548,470,988.29	592,045,497.99	648,607,845.12	662,231,126.63	661,040,599.86	66
7. Operating Income Account:									
8. Average Mileage Operated—Miles	9,221.01	9,192.90	9,201.58	9,200.15	9,450.92	9,183.69	10,207.96	10,472.52	
9. Total Operating Revenues	$123,154,810.29	$129,930,017.79	$149,155,419.07	$155,277,904.65	$185,995,146.23	$193,538,830.50	$160,076,081.59	$142,513,104.28	$14
10. Freight (Acct 101)	81,590,967.00	88,854,367.08	102,564,775.19	107,535,965.93	124,601,255.73	134,021,439.71	116,136,418.04	103,598,323.76	10
11. Passenger (Acct 102)	30,551,907.38	28,579,395.59	32,940,399.38	33,284,835.85	44,949,405.15	42,249,799.64	29,638,970.73	25,382,711.20	2
12. Mail (Acct 106)	2,826,189.23	2,843,044.00	2,812,034.08	2,866,362.76	2,977,660.60	3,177,746.22	3,011,840.98	3,131,890.52	
13. Express (Acct 107)	3,375,258.86	5,224,765.98	5,647,623.75	6,114,424.93	6,158,742.30	6,330,479.25	5,412,856.40	5,037,716.86	
14. All Other Revenues	4,810,487.82	4,428,445.14	5,190,586.67	5,475,415.18	7,308,082.45	7,759,365.68	5,875,995.44	5,362,461.94	
15. Total Operating Expenses	$106,249,268.73	$97,688,157.03	$110,982,017.46	$114,992,855.57	$131,627,335.79	$140,361,370.53	$125,579,375.94	$108,758,229.82	$10
16. Maintenance of Way and Structures	17,865,756.22	15,956,566.09	19,733,835.68	21,483,471.93	23,525,136.45	26,908,258.98	24,771,968.77	20,272,611.13	1
17. Maintenance of Equipment	25,601,864.59	25,190,567.47	28,958,890.99	29,260,478.07	31,644,359.04	32,965,494.74	29,419,711.86	26,503,210.97	2
18. Traffic	2,778,168.74	2,916,058.59	3,181,123.19	3,457,211.02	4,215,632.75	4,669,503.51	4,926,102.45	4,926,560.76	
19. Transportation	55,371,938.50	48,886,100.64	54,014,241.38	55,516,886.33	66,182,017.25	69,913,361.51	59,690,710.19	50,888,369.13	4
20. General	3,781,823.69	3,932,726.53	4,145,675.87	4,273,741.15	4,427,039.53	5,068,614.91	5,273,987.43	4,864,297.20	
21. All Other Expenses	849,716.99	806,137.71	948,247.35	1,001,067.07	1,633,150.77	836,136.88	1,496,895.24	1,303,180.63	1
22. Operating Rates—Percent	85.32	74.34	72.82	72.43	70.62	71.87	78.78	74.87	
23. Net Operating Revenues	$16,905,541.56	$32,241,860.76	$38,173,401.61	$40,284,149.08	$54,367,810.44	$53,177,459.97	$34,496,705.65	$33,754,874.46	$3
24. Railway Tax Accruals	$5,742,505.35	$7,168,609.13	$8,981,522.28	$9,386,427.05	$11,131,979.62	$11,766,936.46	$11,218,470.78	$11,085,716.96	$1
25. Uncollectable Railway Revenues	105,316.19	91,733.87	58,941.31	83,501.54	51,584.51	55,761.07	108,681.91	100,857.36	
26. Railway Operating Income	$11,057,720.02	$24,981,517.76	$29,132,938.02	$30,814,220.49	$43,184,246.31	$41,354,762.44	$23,169,552.96	$22,568,300.14	$2
27. Hire of Equipment—Net Balance	$2,618,914.40R	$3,375,932.90R	$2,806,248.80R	$1,954,281.78R	$6,611,481.04R	$6,327,932.53R	$1,698,511.73R	$1,094,007.20R	$1
28. Joint Facility Rents—Net Balance	245,765.12R	259,385.43R	206,205.24R	255,724.55R	228,436.29R	259,364.91R	218,742.96R	96,893.28R	
29. Net Railway Operating Income	$8,193,040.50	$21,346,199.43	$26,620,483.98	$28,604,214.16	$36,344,328.98	$34,767,465.00	$21,252,298.27	$21,377,399.66	$2

R indicates red figures.

Authority: Annual Reports to Railroad Commission, State of Florida.

EXHIBIT No. 101

I. C. C. Docket 18364

Witness—Pettijohn.

Property Investment and Operating Income Account

Coast Line Railroad Company, Florida East Coast Railway Company, and Seaboard Air Line Railway Company for Calendar Years 1921 to 1930, Inc.

2	1923	1924	1925	1926	1927	1928	1929	1930	Increase or Decrease 1921 vs 1930 Amount	Percentage
488.84	$489,231,726.92	$508,772,081.18	$547,225,669.64	$609,828,816.77	$622,133,412.60	$627,946,106.95	$631,310,036.91	$634,425,121.45	$181,288,832.51	40.01
766.04	16,637,166.19	13,824,969.79	17,107,312.49	20,372,344.20	17,342,304.79	13,282,665.02	12,373,362.64	11,993,667.80	1,780,207.09R	12.92R
251.88	505,868,893.11	522,597,051.47	564,332,982.13	630,201,160.97	639,445,717.39	641,228,771.97	643,683,399.55	646,418,789.25	179,508,625.42	38.44
445.54	18,270,480.66	25,873,936.82	27,712,515.86	18,406,684.15	22,785,409.24	19,811,827.89	20,012,309.98	17,801,532.53	371,252.85	2.13
700.42	524,139,373.77	548,470,988.29	592,045,497.99	648,607,845.12	662,231,126.63	661,040,599.86	663,695,709.53	664,220,321.78	179,879,878.27	37.14
192.90	9,201.58	9,200.15	9,450.92	9,183.69	10,207.96	10,472.52	10,496.70	10,515.47	1,294.46	14.04
017.79	$149,155,419.07	$155,277,004.65	$185,995,146.23	$193,538,830.50	$160,076,081.59	$142,513,104.28	$143,969,817.21	$124,428,816.71	$1,274,006.42	1.03
367.08	102,564,775.19	107,535,965.93	124,601,255.73	134,021,439.71	116,136,418.04	103,598,323.76	105,423,365.87	92,193,899.95	10,602,932.95	13.00
395.59	32,940,399.38	33,284,835.85	44,949,405.15	42,249,799.64	29,638,970.73	25,382,711.26	23,408,608.18	19,741,067.36	10,810,840.02R	35.39R
044.00	2,812,034.08	2,866,362.76	2,977,660.60	3,177,746.22	3,011,840.98	3,131,890.52	3,876,619.14	3,248,824.79	422,635.56	14.95
765.98	5,647,623.75	6,114,424.93	6,158,742.30	6,330,479.25	5,412,856.40	5,037,716.86	5,701,121.05	4,186,971.91	811,713.05	24.02
445.14	5,190,586.67	5,475,415.18	7,308,082.45	7,759,365.68	5,875,995.44	5,362,461.94	5,560,102.97	5,058,052.70	247,564.88	5.15
157.03	$110,982,017.46	$114,992,855.57	$131,627,335.79	$140,361,370.53	$125,579,375.94	$108,758,229.82	$105,456,811.82	$97,949,538.57	$8,299,730.16R	7.81R
566.09	19,733,835.68	21,483,471.93	23,525,136.45	26,908,258.98	24,771,968.77	20,272,611.13	19,700,864.97	18,686,231.92	820,475.70	4.59
567.47	28,958,890.99	29,260,478.07	31,644,359.04	32,965,494.74	29,419,711.86	26,503,210.97	26,361,039.27	24,055,464.91	1,546,399.68R	6.04R
058.59	3,181,123.19	3,457,211.02	4,215,632.75	4,669,503.51	4,926,102.45	4,926,560.76	4,723,906.96	4,715,829.96	1,938,881.22	69.75
100.64	54,014,244.38	55,516,886.33	66,182,017.25	69,913,361.51	59,690,710.19	50,888,369.13	48,665,464.67	44,685,492.50	10,686,446.00R	19.30R
726.53	4,145,675.87	4,273,741.15	4,427,039.53	5,068,614.91	5,273,987.43	4,864,297.20	4,793,385.54	4,658,340.22	876,516.53	23.18
137.71	948,247.35	1,001,067.07	1,643,150.77	836,136.88	1,496,895.24	1,303,180.63	1,212,150.41	1,148,179.06	298,462.07	35.12
74.34	72.82	72.43	70.62	71.87	78.78	74.87	72.42	77.36	7.96R	9.30R
360.76	$38,173,401.61	$40,284,149.08	$54,367,810.44	$53,177,459.97	$34,496,705.65	$33,754,874.46	$38,513,005.39	$26,479,278.14	$9,573,736.58	56.63
309.13	$8,981,522.28	$9,386,427.05	$11,131,979.62	$11,766,936.46	$11,218,470.78	$11,085,716.96	$11,499,868.72	$10,253,055.66	$4,510,550.31	78.55
733.87	58,941.31	83,501.54	51,584.51	55,761.07	108,681.91	100,857.36	126,878.53	57,759.02	47,557.17R	45.16R
517.76	$29,132,938.02	$30,814,220.49	$43,184,246.31	$41,354,762.44	$23,169,552.96	$22,568,300.14	$26,886,258.14	$16,168,463.46	$5,110,743.44	46.22
932.90R	$2,306,248.80R	$1,954,281.78R	$6,611,481.04R	$6,327,932.53R	$1,698,511.73R	$1,094,007.20R	$1,294,326.55R	$1,906,962.58R	711,951.82R	27.19R
385.43R	206,205.24R	255,724.55R	228,436.29R	259,364.91R	218,742.96R	96,893.28R	114,039.17R	163,004.43R	82,760.69R	33.67R
199.43	$26,620,483.98	$28,604,214.16	$36,344,328.98	$34,767,465.00	$21,252,298.27	$21,377,399.66	$25,477,892.42	$14,098,496.45	$5,905,455.95	72.08

[fol. 2331]

EXHIBIT No. 102

I. C. C. Docket 18364

Witness—Pettijohn.

Atlantic Coast Line Railroad Company

Property Investment and Operating Income Account for Calendar Years 1921 to 1930, Inclusive

(a)	1921 (b)	1922 (c)	1923 (d)	1924 (e)	1925 (f)	1926 (g)	1927 (h)	1928 (i)	
1. Property Investment As At End of Year:									
2. Investment in Road and Equipment (Acct 701)	$205,157,102.56	$207,599,638.56	$223,066,333.45	$230,642,074.17	$241,242,724.24	$260,174,445.35	$265,283,013.00	$268,559,897.13	$2
3. Material and Supplies (Acct 716)	7,454,612.23	6,178,497.58	9,259,393.12	6,613,154.08	7,391,200.54	8,699,718.20	8,111,050.84	6,612,168.92	
4. Total	212,611,714.79	213,778,136.14	232,325,726.57	237,255,228.25	248,633,924.78	268,874,163.55	273,394,063.84	275,172,066.05	2
5. Cash	14,022,407.48	23,126,495.07	12,205,194.94	13,340,753.21	18,579,417.00	8,494,003.27	17,759,204.73	16,068,918.60	
6. Grand Total	226,634,122.27	236,904,631.21	244,530,921.51	250,595,981.46	267,213,341.78	277,368,166.82	291,153,268.57	291,240,984.65	2
7. Operating Income Account:									
8. Average Mileage Operated—Miles	4,893.05	4,852.21	4,860.95	4,865.95	4,890.49	4,931.09	5,065.15	5,117.54	
9. Total Operating Revenues	$66,730,767.82	$70,823,344.82	$80,882,310.75	$81,785,921.31	$93,997,697.79	$97,086,517.07	$80,426,296.32	$71,393,174.35	$
10. Freight (Acct 101)	44,556,741.27	48,857,557.94	56,580,484.44	57,288,726.36	64,657,121.06	68,001,687.40	58,839,071.46	52,019,282.94	
11. Passenger (Acct 102)	16,787,056.28	15,871,367.42	17,995,083.27	17,755,927.08	22,042,717.53	21,257,076.85	14,955,527.71	13,065,377.43	1
12. Mail (Acct 106)	1,355,220.72	1,382,955.55	1,239,673.77	1,281,724.08	1,347,207.88	1,619,617.77	1,523,180.10	1,617,119.65	
13. Express (Acct 107)	1,798,367.83	2,581,626.23	2,658,978.17	3,026,193.07	2,835,343.71	2,827,798.32	2,527,954.56	2,309,710.94	
14. All Other Revenues	2,233,381.72	2,129,837.68	2,408,091.10	2,433,350.72	3,115,307.61	3,380,336.73	2,580,562.49	2,381,683.39	
15. Total Operating Expenses	$58,005,832.69	$52,033,448.02	$59,868,428.39	$60,335,125.77	$64,966,121.44	$70,701,770.46	$64,330,234.85	$55,966,058.85	$
16. Maintenance of Way and Structures	9,859,444.65	8,434,956.13	10,191,289.40	10,660,589.98	10,820,231.22	13,018,939.26	13,229,875.25	10,935,259.70	1
17. Maintenance of Equipment	15,234,781.77	14,297,180.55	17,349,030.22	16,833,082.10	17,544,833.96	18,518,916.17	16,842,645.52	14,812,872.84	1
18. Traffic	1,161,023.75	1,276,123.35	1,367,841.72	1,531,249.23	1,724,862.71	1,878,173.05	1,983,339.81	2,125,844.50	
19. Transportation	29,703,406.41	26,018,260.29	28,814,875.67	29,063,108.53	32,310,002.17	31,469,600.31	29,539,992.03	25,403,746.44	2
20. General	1,669,648.80	1,649,687.04	1,756,208.48	1,837,373.79	1,844,432.39	2,049,717.87	2,139,332.38	2,100,248.69	
21. All Other Expenses	377,527.31	357,240.66	389,182.90	409,722.14	721,758.99	766,423.80	595,049.86	588,086.68	
22. Operating Ratios—Percent	86.93	73.47	74.02	73.77	69.11	72.82	79.99	78.39	
23. Net Operating Revenues	$8,724,935.13	$18,789,896.80	$21,013,882.36	$21,450,795.54	$29,031,576.35	$26,384,746.61	$16,096,061.47	$15,427,115.50	$1
24. Railway Tax Accruals	$3,075,000.00	$4,275,000.00	$5,425,000.00	$5,625,000.00	$6,600,000.00	$6,725,000.00	$6,050,000.00	$5,800,000.00	$
25. Uncollectable Railway Revenues	69,650.09	81,873.00	42,457.35	59,234.08	20,033.11	22,630.12	58,566.04	40,666.49	
26. Railway Operating Income	$5,580,285.04	$14,433,023.80	$15,546,425.01	$15,766,561.46	$22,411,543.24	$19,637,116.49	$9,987,495.43	$9,586,449.01	$1
27. Hire of Equipment—Net Balance	$466,559.92*	$86,249.61	$14,414.86	$500,193.38*	$2,187,549.15*	$2,015,236.74*	$326,526.53	$280,467.58	
28. Joint Facility Rents—Net Balance	$74,157.79*	$102,905.68*	$64,230.42*	$87,183.21*	$39,445.00*	$36,072.57*	$42,688.42*	$28,447.38	
29. Net Railway Operating Income	$5,039,567.33	$14,416,367.73	$15,496,609.45	$15,179,184.87	$20,184,549.09	$17,585,807.18	$10,271,338.54	$9,895,363.97	$1

* indicates red figures.

Authority: Annual Report to Railroad Commission, State of Florida.

EXHIBIT No. 102

I. C. C. Docket 18364

Witness—Pettijohn.

Atlantic Coast Line Railroad Company

Property Investment and Operating Income Account for Calendar Years 1921 to 1930, Inclusive

	1923 (d)	1924 (e)	1925 (f)	1926 (g)	1927 (h)	1928 (i)	1929 (j)	1930 (k)	Increase or Decrease 1921 vs 1930 Amount (l)	Percentage (m)
8.56	$223,066,333.45	$230,642,074.17	$241,242,724.24	$260,174,445.35	$265,283,013.00	$268,559,897.13	$270,433,428.88	$272,762,457.76	$67,605,355.20	32.95
7.58	9,259,393.12	6,613,154.08	7,391,200.54	8,699,718.20	8,111,050.84	6,612,168.92	6,386,742.01	6,701,665.97	752,946.26*	10.10*
6.14	232,325,726.57	237,255,228.25	248,633,924.78	268,874,163.55	273,394,063.84	275,172,066.05	276,820,170.89	279,464,123.73	66,852,408.94	31.44
5.07	12,205,194.94	13,340,753.21	18,579,417.00	8,494,003.27	17,759,204.73	16,068,918.60	17,133,936.88	13,932,421.20	84,986.28*	.64*
1.21	244,530,921.51	250,595,981.46	267,213,341.78	277,368,166.82	291,153,268.57	291,240,984.65	293,954,107.77	293,396,544.93	66,762,422.66	29.46
2.21	4,860.95	4,865.95	4,890.49	4,931.09	5,065.15	5,117.54	5,151.60	5,156.98	263.93	5.39
4.82	$80,882,310.75	$81,785,921.31	$93,997,697.79	$97,086,517.07	$80,426,296.32	$71,393,174.35	$72,371,894.14	$63,019,956.88	$3,710,810.94*	5.56*
7.94	56,580,484.44	57,288,726.36	64,657,121.06	68,001,687.40	58,839,071.46	52,019,282.94	53,188,638.62	46,428,030.38	1,871,289.11	4.20
7.42	17,995,083.27	17,755,927.08	22,042,717.53	21,257,076.85	14,955,527.71	13,065,377.43	12,132,622.83	10,538,341.06	6,248,715.22*	37.22*
5.55	1,239,673.77	1,281,724.08	1,347,207.88	1,619,617.77	1,523,180.10	1,617,119.65	1,773,380.71	1,692,088.26	336,867.54	24.86
6.23	2,658,978.17	3,026,193.07	2,835,343.71	2,827,798.32	2,527,954.56	2,309,710.94	2,627,742.33	1,942,017.12	143,649.29	7.99
7.68	2,408,091.10	2,433,350.72	3,115,307.61	3,380,336.73	2,580,562.49	2,381,685.80	2,649,509.65	2,419,480.06	186,098.34	8.33
8.02	$59,868,428.39	$60,335,125.77	$64,966,121.44	$70,701,770.46	$64,330,234.85	$55,966,058.85	$53,431,588.81	$49,685,460.01	$8,320,372.68*	14.34*
6.13	10,191,289.40	10,660,589.98	10,820,231.22	13,018,939.26	13,229,875.25	10,935,259.70	10,181,058.53	9,787,464.79	71,979.86*	.73*
0.55	17,349,030.22	16,833,982.10	17,544,833.96	18,518,916.17	16,842,645.52	14,812,872.84	13,874,060.31	12,513,107.69	2,721,674.08*	17.86*
3.35	1,367,841.72	1,531,249.23	1,724,862.71	1,878,173.05	1,983,339.81	2,125,844.50	1,991,844.94	2,015,054.15	854,030.40	73.56
0.29	28,814,875.67	29,063,108.53	32,310,002.17	31,469,600.31	29,539,992.03	25,403,746.44	24,667,139.99	22,643,244.93	7,060,161.48*	23.77*
7.04	1,756,208.48	1,837,373.79	1,844,432.39	2,019,717.87	2,139,332.38	2,100,248.69	2,095,193.28	2,099,809.66	430,160.86	25.71
0.66	389,182.90	409,722.14	721,758.99	766,423.89	595,049.86	588,086.68	622,291.76	626,778.79	249,251.48	66.02
3.47	74.02	73.77	69.11	72.82	79.99	78.39	73.83	78.84	8.09*	9.31*
3.80	$21,013,882.36	$21,450,795.54	$29,031,576.35	$26,384,746.61	$16,096,061.47	$15,427,115.50	$18,940,305.33	$13,334,496.87	$4,609,561.74	52.83
0.00	$5,425,000.00	$5,625,000.00	$6,600,000.00	$6,725,000.00	$6,050,000.00	$5,800,000.00	$6,240,000.00	$5,525,000.00	$2,450,000.00	79.67
3.00	42,457.35	59,234.08	20,033.11	22,630.12	58,566.04	40,666.49	45,793.07	29,850.87	39,799.22*	57.14*
3.80	$15,546,425.01	$15,766,561.46	$22,411,543.24	$19,637,116.49	$9,987,495.43	$9,586,449.01	$12,654,512.26	$7,779,646.00	$2,199,360.96	39.41
0.61	$14,414.86	$500,193.38*	$2,187,549.15*	$2,015,236.74*	$326,526.53	$280,467.58	$164,448.77	$557,377.44*	$90,817.52*	19.47*
5.68*	$64,230.42*	$87,183.21*	$39,445.00*	$36,072.57*	$42,688.42*	$28,447.38	$55,245.56	$19,035.08	$93,192.87	
7.73	$15,496,609.45	$15,179,184.87	$20,184,549.09	$17,585,807.18	$10,271,333.54	$9,895,363.97	$12,874,206.59	$7,241,303.64	$2,201,736.31	43.69

[fol. 2332]

EXHIBIT No. 103

I. C. C. Docket 18364

Witness—Pettijohn.

Atlantic Coast Line Railroad Company

Property Investment and Operating Revenues, State of Florida

(a)	1921 (b)	1922 (c)	1923 (d)	1924 (e)	1925 (f)	1926 (g)	1927 (h)	1928 (i)
Investment in Road and Equipment	$67,481,636.21	$68,188,006.72	$73,686,664.83	$75,248,335.31	$78,136,141.53	$88,324,452.12	$91,936,144.76	$93,711,842.68
Total Operating Revenues	16,953,924.41	17,851,388.48	20,708,644.36	22,316,164.11	27,644,421.00	30,330,194.04	22,180,597.92	18,107,653.51
Freight (101)	10,981,175.51	11,959,891.14	14,193,934.13	15,433,895.97	18,941,677.97	21,603,014.55	16,163,617.95	12,986,975.47
Passenger (102)	4,273,723.21	3,847,467.42	4,396,905.51	4,546,124.07	6,147,239.15	5,955,199.64	3,583,454.38	2,801,559.74
Mail (106)	359,531.30	359,507.27	321,981.42	333,262.08	350,260.77	397,745.73	374,767.91	401,397.57
Express (107)	661,209.07	962,164.07	999,688.56	1,140,109.48	1,068,989.22	1,079,753.62	992,216.45	913,178.41
All Other Revenue	678,285.32	722,418.58	796,134.74	862,772.51	1,136,253.89	1,294,480.50	1,066,541.23	1,004,542.32
Total Intrastate Operating Revenues	$7,761,902.99	$7,956,985.43	$8,925,147.02	$9,979,118.71	$11,756,745.54	$13,885,116.40	$10,222,535.89	$7,993,740.66
Freight (101)	4,585,213.37	5,027,825.86	5,755,532.84	6,752,137.93	8,146,410.54	10,297,598.26	7,769,644.92	5,939,975.00
Passenger (102)	2,481,415.08	2,209,202.85	2,388,532.51	2,328,520.87	2,559,810.39	2,440,941.40	1,400,621.26	976,405.32
Mail (106)	107,859.39	107,852.18	96,594.43	99,978.62	105,078.23	119,323.71	112,430.36	120,319.29
Express (107)	198,362.72	288,649.21	299,906.57	342,032.84	320,696.76	323,926.08	297,664.93	216,866.68
All Other Revenues	389,052.43	323,455.33	384,580.67	456,448.45	624,749.62	703,326.95	642,174.42	740,174.37
Total Interstate Operating Revenues	$9,192,021.42	$9,894,403.05	$11,783,497.34	$12,337,045.40	$15,887,675.46	$16,445,077.64	$11,958,062.03	$10,113,912.85
Freight (101)	6,395,962.14	6,932,065.28	8,438,401.29	8,681,758.04	10,795,267.43	11,305,416.29	8,393,973.03	7,047,000.47
Passenger (102)	1,792,308.13	1,638,204.57	2,008,373.00	2,217,603.20	3,587,428.76	3,514,258.24	2,182,833.12	1,825,154.42
Mail (106)	251,671.91	251,655.09	225,386.99	233,283.46	245,182.54	278,422.02	262,337.55	281,078.28
Express (107)	462,846.35	673,514.86	699,781.99	798,076.64	748,292.46	755,827.54	694,551.52	696,311.73
All Other Revenue	289,232.89	398,963.25	411,554.07	406,324.06	511,504.27	591,153.55	424,366.81	264,367.95

* Indicates a decrease.

Authority: Annual Reports to Railroad Commission, State of Florida.

EXHIBIT No. 103

I. C. C. Docket 18364

Witness—Pettijohn.

Atlantic Coast Line Railroad Company

Property Investment and Operating Revenues, State of Florida

2	1923 (d)	1924 (e)	1925 (f)	1926 (g)	1927 (h)	1928 (i)	1929 (j)	1930 (k)	Increase or Decrease 1930 Over 1921 Amount (l)	Percentage (m)
006.72	$73,686,664.83	$75,248,335.31	$78,136,141.53	$88,324,452.12	$91,936,144.76	$93,711,842.68	$94,709,630.37	$96,077,116.21	$28,595,480.00	42 38
388.48	20,708,644.36	22,316,164.11	27,644,421.00	30,330,194.04	22,180,597.92	18,107,653.51	18,610,308.72	16,334,490.05	619,434.36*	3 65*
891.14	14,193,934.13	15,433,895.97	18,941,677.97	21,603,014.55	16,163,617.95	12,986,975.47	13,489,212.07	11,960,371.20	979,195.69	8 92
107.42	4,396,905.51	4,546,124.07	6,147,239.15	5,955,199.64	3,583,454.38	2,801,559.74	2,479,252.45	2,105,892.97	2,167,830.24*	50.72*
507.27	321,981.42	333,262.08	356,260.77	397,745.73	374,767.91	401,397.57	439,408.30	431,819.21	72,287.91	20 11
164.07	999,688.56	1,140,109.48	1,068,989.22	1,079,753.62	992,216.45	913,178.41	1,048,357.66	777,134.49	115,925.42	17.53
118.58	796,134.74	862,772.51	1,136,253.89	1,294,480.50	1,066,541.23	1,004,542.32	1,154,078.24	1,059,272.18	380,986.86	56.17
085.43	$8,925,147.02	$9,979,118.71	$11,756,745.54	$13,885,116.40	$10,222,535.89	$7,993,740.66	$7,476,181.17	$6,560,653.37	$1,201,249.62*	15 48*
325.86	5,755,532.84	6,752,137.93	8,146,410.54	10,297,598.26	7,769,644.92	5,939,975.00	5,413,570.33	4,852,183.15	266,969.78	5.93
202.85	2,388,532.58	2,328,520.87	2,559,810.39	2,440,941.40	1,400,621.26	976,405.32	737,987.51	540,847.67	1,940,567.41*	78.21*
352.18	96,594.43	99,978.62	105,078.23	119,323.71	112,430.36	120,319.29	131,832.48	129,545.74	21,686.35	20 11
49.21	299,906.57	342,032.84	320,696.76	323,926.08	297,664.93	216,866.68	247,936.59	159,711.76	38,650.96*	19 48*
55.33	384,580.67	456,448.45	624,749.62	703,326.95	642,174.42	740,174.37	944,854.26	878,365.05	489,312.62	125 77
03.05	$11,783,497.34	$12,337,045.40	$15,887,675.46	$16,445,077.64	$11,958,062.03	$10,113,912.85	$11,134,127.55	$9,773,836.68	$581,815.26	6.33
65.28	8,438,401.29	8,681,758.04	10,795,267.43	11,305,416.29	8,393,973.03	7,047,000.47	8,075,641.74	7,108,188.05	712,225.91*	11 14
04.57	2,008,373.00	2,217,603.20	3,587,428.76	3,514,258.24	2,182,833.12	1,825,154.42	1,741,264.94	1,565,045.30	227,262.83*	12.68*
55.09	225,386.99	233,283.46	245,182.54	278,422.02	262,337.55	281,078.28	307,575.82	302,273.47	50,601.56	20.11
14.86	699,781.99	798,076.64	748,292.46	755,827.54	694,551.52	696,311.73	800,421.07	617,422.73	154,576.38	33.40
33.25	411,554.07	406,324.06	511,504.27	591,153.55	424,366.81	264,367.95	209,223.98	180,907.13	108,325.76*	37.45*

[fol. 2333]

EXHIBIT No. 104

I. C. C. Docket 18364

Witness—Pettijohn

Atlantic Coast Line Railroad Company

Comparitive Statement of Revenue Tons by General Commodities, 1921 to 1930, Inclusive. System and State of Florida

System Commodities (a)	1921 (b)	1922 (c)	1923 (d)	1924 (e)	1925 (f)	1926 (g)	1927 (h)	1928 (i)	1929 (j)	1930 (k)	Comparison 1930 vs 1921 (l)
Total Products of Agriculture	2,264,930	2,381,084	2,469,275	2,596,652	2,847,191	2,840,353	2,679,438	2,429,604	2,636,594	2,528,376	263,446
Total Animals and Products	152,747	175,736	192,465	232,150	204,166	222,939	230,136	197,104	183,401	160,252	7,505*
Total Products of Mines	3,175,757	4,027,249	5,665,197	6,161,478	7,876,915	10,650,403	8,579,037	6,979,675	6,000,154	5,819,740	2,643,983
Total Products of Forests	3,764,980	5,224,562	6,317,114	6,305,848	6,292,967	6,089,290	5,541,615	5,147,678	4,738,637	3,388,876	376,104*
Total Manufactures and Miscellaneous	2,863,388	3,606,618	4,106,662	4,377,866	5,566,746	5,997,843	5,036,177	4,748,049	4,570,278	4,162,389	1,299,001
Total All L. C. L. Freight	958,312	1,022,709	1,124,268	1,060,720	1,152,663	1,224,594	1,068,093	900,812	822,788	724,698	233,614*
Grand Total	13,180,114	16,437,958	19,874,981	20,734,714	23,940,650	27,025,422	23,134,496	20,402,922	18,951,802	16,784,331	3,604,217
Percentage Relation to 1921		124.72	150.80	157.32	181.64	205.05	175.53	154.80	143.79	127.27	
State of Florida											
Total Products of Agriculture	869,254	1,011,672	1,039,917	1,092,279	1,109,268	1,059,057	1,074,010	961,553	1,237,519	1,077,516	208,262
Total Animals and Products	86,931	94,520	103,416	147,822	108,113	123,176	119,527	102,604	82,576	70,812	16,119*
Total Products of Mines	1,591,628	2,151,480	2,920,640	3,692,056	5,279,789	8,099,176	5,565,834	3,941,129	4,006,633	3,792,048	2,200,420
Total Products of Forests	1,514,759	1,892,996	2,289,364	2,519,982	2,614,787	2,384,563	1,953,216	1,814,432	1,487,553	1,158,650	356,109*
Total Manufactures and Miscellaneous	1,130,873	1,242,430	1,467,004	1,804,232	2,747,389	3,077,262	2,058,165	1,593,455	1,554,932	1,395,416	264,543
Total All L. C. L. Freight	262,152	271,515	294,656	291,842	348,075	367,883	212,212	209,383	178,711	165,616	96,536*
Grand Total	5,455,597	6,664,613	8,114,997	9,548,213	12,207,421	15,111,117	10,982,964	8,622,556	8,547,924	7,660,058	2,204,461
Percentage Relation to 1921		122.16	148.75	175.02	223.76	276.98	201.32	158.05	156.68	140.41	

Authority: Annual Reports to Railroad Commission, State of Florida.

* Indicates a decrease.

[fol. 2334]

EXHIBIT No. 105

I. C. C. Docket 18364

Witness—Pettijohn

Atlantic Coast Line Railroad Company

62—342

Statement of Freight Revenues (Account 101). Comparison of Revenue, Revenue Increases and Percentage Increases, System, State of Florida, and Interstate and Intrastate, State of Florida Only, Calendar Years 1921 to 1930, Inclusive

Revenue (a)	Entire System Acct. 101, Page 302 Total (b)	Percentage (c)	Florida Interstate (d)	Florida Intrastate (e)	Florida Total (f)	Percentage of Increase as Compared with Year 1921: Interstate (g)	Intrastate (h)	Florida total (i)
1921	$44,556,741.27		$6,395,962.14	$4,585,213.37	$10,981,175.51			
1922	48,857,558.01		6,932,065.28	5,027,825.86	11,959,891.14			
Increase 1922 vs. 1921	4,300,816.67	9.65	536,103.14	442,612.49	978,715.63	8.38	9.65	8.91
1923	56,580,484.44		8,438,401.29	5,755,532.84	14,193,934.13			
Increase 1923 vs. 1921	12,023,743.17	26.99	2,042,439.15	1,170,319.47	3,212,758.62	31.93	25.52	29.26
1924	57,288,726.36		8,681,758.04	6,752,137.93	15,433,895.97			
Increase 1924 vs. 1921	12,731,985.09	28.57	2,285,795.90	2,166,924.56	4,452,720.46	35.74	47.26	40.49
1925	64,657,121.06		10,795,267.43	8,146,410.54	18,941,677.97			
Increase 1925 vs. 1921	20,100,379.79	45.11	4,399,305.29	3,561,197.17	7,960,502.46	68.76	77.67	72.49
1926	68,001,687.40		11,305,416.29	10,297,598.26	21,603,014.55			
Increase 1926 vs. 1921	23,444,946.13	52.62	4,909,454.15	5,712,384.89	10,621,839.04	76.76	124.58	96.73
1927	58,839,071.46		8,393,973.03	7,769,644.92	16,163,617.95			
Increase 1927 vs. 1921	14,282,330.19	32.05	1,998,010.89	3,184,431.55	5,182,442.44	31.24	69.45	47.19
1928	52,019,282.94		7,047,000.47	5,939,975.00	12,986,975.47			
Increase 1928 vs. 1921	7,462,541.67	16.75	651,038.33	1,354,761.63	2,005,799.96	10.18	29.55	18.27
1929	53,188,638.62		8,075,641.74	5,413,570.33	13,489,212.07			
Increase 1929 vs. 1921	8,631,897.35	19.37	1,679,679.60	828,356.96	2,508,036.56	26.26	18.07	22.93
1930	46,428,030.38		7,108,188.05	4,852,183.15	11,960,371.20			
Increase 1930 vs. 1921	1,871,289.11	4.20	712,225.91	266,969.78	979,195.69	11.14	5.82	8.92

Authority: Annual Report to Railroad Commission, State of Florida.

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[fol. 2335]

EXHIBIT No. 106

I. C. C. Docket 18364

Witness—Pettijohn

Atlantic Coast Line Railroad Company

Statement Showing the Total, Intrastate and Interstate, Tons of Revenue Freight Handled on the System and Within the State of Florida Calendar Years 1926 to 1930, Inclusive

(a)	Total System (b)	Total Florida (c)	Intrastate Total (d)	Intrastate Florida (e)	Interstate Total (f)	Interstate Florida (g)
1926	27,025,422	15,111,117	13,069,803	8,022,226	13,955,619	7,088,891
Percentage of System Total	100.00	55.91	48.36	29.68	51.64	26.23
Percentage of Florida Total	.....	100.00	.....	53.09	.....	46.91
Percentage of Intrastate Total	.....	.....	100.00	61.38	.....	.....
Percentage of Interstate Total	.....	.....	.....	.....	100.00	50.80
1927	23,134,496	10,982,964	11,723,367	6,524,325	11,411,129	4,458,639
Percentage of System Total	100.00	47.47	50.67	28.2	49.33	19.27
Percentage of Florida Total	.....	100.00	.....	59.41	.....	40.59
Percentage of Intrastate Total	.....	.....	100.00	55.65	.....	.....
Percentage of Interstate Total	.....	.....	.....	.....	100.00	39.07
Decrease 1927 vs. 1926	3,890,926	4,128,153	1,346,436	1,497,901	2,544,490	2,630,252
Percentage of Columnar Decrease	14.4	27.32	10.3	18.67	18.23	37.1
Percentage of Total Decrease	14.4	15.27	4.98	5.54	9.42	9.73
1928	20,402,922	8,622,556	9,645,094	4,621,863	10,757,828	4,000,693
Percentage of System Total	100.00	42.26	47.27	22.65	52.73	19.61
Percentage of Florida Total	.....	100.00	.....	53.61	.....	46.39
Percentage of Intrastate Total	.....	.....	100.00	47.92	.....	.....
Percentage of Interstate Total	.....	.....	.....	.....	100.00	37.19
Decrease 1928 vs. 1926	6,622,500	6,488,561	3,424,709	3,400,363	3,197,791	3,088,198
Percentage of Columnar Decrease	24.5	42.93	26.20	42.38	22.91	43.56
Percentage of Total Decrease	24.5	24.00	12.67	12.58	11.83	11.42
1929	18,951,802	8,547,924	8,256,020	4,129,389	10,695,782	4,418,535
Percentage of System Total	100.00	45.10	43.56	21.79	56.44	23.31
Percentage of Florida Total	.....	100.00	.....	48.31	.....	51.69
Percentage of Intrastate Total	.....	.....	100.00	50.02	.....	.....
Percentage of Interstate Total	.....	.....	.....	.....	100.00	41.31
Decrease 1929 vs. 1926	8,073,620	6,563,193	4,813,783	3,892,837	3,259,837	2,670,356
Percentage of Columnar Decrease	29.87	43.43	36.97	48.53	23.36	37.81
Percentage of Total Decrease	29.87	24.28	17.81	14.4	12.06	9.88
1930	16,784,331	7,660,058	7,269,874	3,476,899	9,514,457	4,183,159
Percentage of System Total	100.00	45.63	43.31	20.71	56.69	24.92
Percentage of Florida Total	.....	100.00	.....	45.39	.....	54.61
Percentage of Intrastate Total	.....	.....	100.00	47.82	.....	.....
Percentage of Interstate Total	.....	.....	.....	.....	100.00	43.96
Decrease 1930 vs. 1926	10,241,091	7,451,059	5,799,929	4,545,327	4,441,162	2,905,732
Percentage of Columnar Decrease	37.89	49.3	44.37	56.66	31.82	40.99
Percentage of Total Decrease	37.89	27.57	21.46	16.82	16.43	10.75

Authorities: Columns (b) and (c) Annual Reports to Railroad Commission, State of Florida; Columns (d), (e) and (g), Exhibit No. 81, I. C. C. Docket 18364; Column (f) by deduction, column (b) minus column (d).

[fol. 2336]

I. C

W

Atlantic Co

Comparative Statement of the Revenue Tons of Freight Handled on the Syste

(a)	1926 Interstate (b)	1926 System by States (c)	Int
1. Total Tons Handled		45,145,284	
2. Intrastate Tons Handled		13,069,803	
3. Interstate Tons Handled by States		32,075,481	
4. System Tons—Interstate	13,955,619		11
5. Florida Tons—Interstate	7,088,891		4
6. Other Than Florida Tons—Interstate	6,866,728		6,9
7. Three Times Florida Interstate Tons		21,266,673	
8. Other Than Florida Tons—Interstate	6,866,728	10,808,808	6,9
9. Average Other Than Florida—Interstate		1.57	

Authorities: Lines 1, 2, 3 and 5, Exhibit No. 84, I. C. C. Docket 18364. Line 4, Ex

[fol. 2337]

I. C

W

Atlantic Coas

Traffic Density Statistics, State of Florida, Compared with Sy

Year (a)	System: Average Miles Operated (b)	System: Revenue Ton Miles (thous.) (c)	System: Tons 1 Mile Per Mile of Road (d)	State of Florida: Average Miles Operated (e)	State of Florida: Revenue Ton Miles (thous.) (f)	State of Florida: Tons 1 Mile Per Mile of Road (g)
1921	5,238.17	2,479,340	473,322	1,837.29	613,722	334,03
1922	5,200.59	3,031,173	582,852	1,859.98	745,106	400,59
1923	5,264.93	3,712,154	705,072	1,870.10	936,346	500,69
1924	5,341.85	3,763,631	704,556	1,876.30	1,045,992	557,47
1925	5,494.35	4,440,361	808,169	1,886.95	1,365,646	723,71
Average—Five Years	5,307.98	3,485,332	654,794	1,866.12	941,356	503,30
1926	5,609.77	4,751,444	846,994	1,998.23	1,634,892	818,17
1927	5,755.23	3,787,301	658,063	2,115.02	1,133,700	536,02
1928	5,807.62	3,313,824	570,599	2,151.69	894,383	415,66
1929	5,842.02	3,284,770	561,753	2,185.06	822,164	376,26
1930	5,847.37	2,871,257	491,034	2,191.01	762,668	348,09
Average—Five Years	5,772.40	3,601,119	625,689	2,128.20	1,049,561	498,84

* Comprehends Average Miles Operated Plus Miles of 2nd Main Track at Close of Y

Authority: Annual Reports to Railroad Commission, State of Florida.

EXHIBIT No. 107

I. C. C. Docket 18364

Witness—Pettijohn

Coast Line Railroad Company

System as a Whole and in the Various States, Separated as Between Interstate and Intrastate Tons

1927		1928		1929		1930	
Interstate (d)	System by States (e)	Interstate (f)	System by States (g)	Interstate (h)	System by States (i)	Interstate (j)	System by States (k)
.....	37,774,464	.....	33,680,946	.....	32,760,570	.....	28,607,978
.....	11,723,367	.....	9,645,094	.....	8,256,020	.....	7,269,874
.....	26,051,097	.....	24,035,852	.....	24,504,550	.....	21,338,104
11,411,129	.....	10,757,828	.....	10,695,782	.....	9,514,457	.....
4,458,639	.....	4,000,693	.....	4,418,535	.....	4,183,159	.....
6,952,490	.....	6,757,135	.....	6,277,247	.....	5,331,298	.....
.....	13,575,917	.....	12,002,079	.....	13,255,605	.....	12,549,477
6,952,490	12,675,180	6,757,135	12,033,773	6,277,247	11,248,945	5,331,298	8,788,627
.....	1.82	.....	1.78	.....	1.79	.....	1.65

4. Exhibit No. —, I. C. C. Docket 18364.

EXHIBIT No. 108

I. C. C. Docket 18364

Witness—Pettijohn

Coast Line Railroad Company

ith System and System Excluding Florida, Calendar Years 1921 to 1930, Inclusive

ons 1 le Per ile of Road (g)	Percent of Florida Operated Miles to System (h)	Percent of Rev. Ton Miles Florida to System (i)	Percent Fla. Tons 1 Mile Per Mile of Road to System (j)	System—Exclusive Florida: Average Miles Operated (k)	Revenue Ton Miles (thous.) (l)	Tons 1 Mile Per Mile of Road (m)	Percent of Fla. Mileage Operated to System Excluding Florida (n)	Percent of Fla. Ton Miles to System Excluding Florida (o)	Percent of Tons 1 Mile Per Mile of Road Fla. to System Excl. Fla. (p)
34,036	35.10	24.80	70.60	3,400.88	1,865,618	548,569	54.00	32.90	60.90
00,599	35.80	24.60	68.70	3,340.61	2,286,067	684,326	55.60	32.60	58.50
00,603	35.50	25.20	71.00	3,394.83	2,775,808	817,657	55.10	33.70	61.20
67,476	35.10	27.80	79.10	3,465.55	2,717,639	784,187	54.10	38.50	71.10
83,716	34.30	30.80	89.60	3,607.40	3,074,745	852,344	52.30	44.40	84.90
93,304	35.20	26.60	75.80	3,441.85	2,543,975	737,417	54.20	36.40	67.30
38,170	35.60	34.40	96.60	3,611.54	3,116,552	862,943	55.30	52.50	94.80
36,023	36.70	29.90	81.50	3,640.21	2,653,601	728,969	58.10	42.80	73.50
5,666	37.00	27.00	72.80	3,655.93	2,419,441	661,785	58.80	37.00	62.80
76,266	37.40	25.10	67.00	3,656.96	2,459,606	672,582	59.80	33.40	55.90
38,090	37.50	26.60	70.90	3,656.36	2,108,589	576,691	59.90	36.20	60.40
98,843	36.80	28.60	77.80	3,644.20	2,551,558	700,594	58.40	40.40	69.50

e of Year.

[fol. 2338]

EXHIBIT NO. 109

I. C. C. Docket 18364

Witness—Pettijohn

Atlantic Coast Line Railroad Company

Railway Operating Expenses—Total and Freight, for Calendar Year Ending December 31st, 1929

Maintenance of way and structures (a)	Total (b)	Freight (c)	Eliminated amounts (d)	Amounts treated as haulage expense (e)
(201) Superintendence	$508,947.88	$331,605.96	$62,577.95	$269,028.01
(202) Roadway Maintenance—Yard	59,187.94	55,475.73	55,475.73	
Roadway Maintenance—Other	938,646.63	572,863.10		572,863.10
(208) Bridges, Trestles and Culverts—Yard	25,802.88	24,107.85	24,107.85	
Bridges, Trestles and Culverts—Other	441,104.28	266,299.15		266,299.15
(212) Ties—Yard	307,055.99	285,488.69	285,488.69	
Ties—Other	1,589,999.04	971,086.69		971,086.69
(214) Rails—Yard	55,516.53	51,587.49	51,587.49	
Rails—Other	688,525.96	419,687.36		419,687.36
(216) Other Track Material—Yard	59,049.11	54,870.30	54,870.30	
Other Track Material—Other	395,928.04	253,717.42		253,717.42
(218) Ballast—Yard	10,234.06	8,968.77	8,968.77	
Ballast—Other	791,501.20	482,112.64		482,112.64
(220) Track Laying and Surfacing—Yard	360,356.47	338,231.23	338,231.23	
Track Laying and Surfacing—Other	2,327,927.29	1,418,065.99		1,418,065.99
(221) Right-of-way Fences—Yard	839.03	726.69	726.69	
Right-of-way Fences—Other	37,771.66	23,014.80		23,014.80
(225) Crossings and Signs—Yard	33,356.81	30,498.28	30,498.28	
Crossings and Signs—Other	82,608.76	50,216.69		50,216.69
(227) Station and Office Buildings	441,861.67	319,599.01		319,599.01
(229) Roadway Buildings	115,999.85	75,143.94		75,143.94
(231) Water Stations	163,335.29	107,042.62		107,042.62
(233) Fuel Stations	4,649.79*	3,003.01*		3,003.01*
(235) Shops and Engine-houses	123,083.68	88,271.52		88,271.52
(241) Wharves and Docks	137,019.38	135,980.07	135,980.07	

*Indicates red in figures.

1159

Maintenance of way and structures (a)	Total (b)	Freight (c)	Eliminated amounts (d)	Amounts treated as haulage expense (e)
(247) Telegraph and Telephone Lines	82,367.54	53,788.24		53,788.24
(249) Signals and Interlockers	208,210.84	113,379.83		113,379.83
(265) Miscellaneous Structures	1,721.40	1,117.33		1,117.33
(267) Paving	2,568.43	1,825.26	1,825.26	
(269) Roadway Machines	59,884.46	38,644.03		38,644.03
(271) Small Tools and Supplies	133,227.88	86,360.50		86,360.50
(272) Removing Snow, Ice and Sand	1,361.95	854.30		854.30
(273) Assessments for Public Improvements	16,577.13*	10,681.14*	10,681.14*	
(274) Injuries to Persons	37,192.95	23,962.12		23,962.12
(275) Insurance	61,832.98	43,213.03		43,213.03
(276) Stationery and Printing	11,971.04	7,794.67		7,794.67
(277) Other Expenses	3,825.31	2,480.51		2,480.51
Total of Accounts, Nos. 201 to 277	10,278,597.29	6,724,397.66	1,039,657.17	5,684,740.49
(278) Maintaining Joint Tracks, Yards, Other Facilities—Dr.	288,550.87	73,839.93	73,839.93	
(279) Maintaining Joint Tracks, Yards, Other Facilities—Cr.	386,089.63*	249,378.31*	249,378.31*	
Total Maintenance of Way and Structures	10,181,058.53	6,548,859.28	864,118.79	5,684,740.49
Maintenance of Equipment				
(301) Superintendence	$514,003.58	$383,839.19		$383,839.19
(302) Shop Machinery	258,683.18	191,787.87		191,787.87
(308) Steam Locomotives—Repairs	3,970,215.53	2,557,918.04		2,557,918.04
(309) Steam Locomotives—Depreciation	788,262.87	513,337.20		513,337.20
(310) Steam Locomotives—Retirements	16,405.93*	9,633.60*		9,633.60*
(314) Freight-train Cars—Repairs	5,068,631.36	5,068,631.36		5,068,631.36
(315) Freight-train Cars—Depreciation	1,289,210.72	1,289,210.72		1,289,210.72
(316) Freight-train Cars—Retirements	30,409.13	30,409.13		30,409.13
(317) Passenger-train Cars—Repairs	1,208,965.09			
(318) Passenger-train Cars—Depreciation	218,873.58			
(319) Passenger-train Cars—Retirements	21,484.06			
(323) Floating Equipment—Repairs	37,792.44	29,434.59	29,434.59	
(324) Floating Equipment—Depreciation	4,560.00	4,046.40	4,046.04	

(324) Floating Equipment—Depreciation	0	4,560.00	4,046.40	4,046.04	
(326) Work Equipment—Repairs		249,3[illegible].38	163,001.14		163,001.14
(327) Work Equipment—Depreciation		45,[illegible]34.28	29,800.80		29,800.80
(328) Work Equipment—Retirements		17,351.25	11,300.41		11,300.41
(329) Miscellaneous Equipment—Repairs		560.75	415.83	415.83	
(330) Miscellaneous Equipment—Depreciation		359.00	267.37	267.37	
(332) Injuries to Persons		33,648.02	26,637.69		26,637.69
(333) Insurance		63,533.22	51,531.62		51,531.62
(334) Stationery and Printing		20,399.68	15,244.97		15,244.97
(335) Other Expenses		13,177.03	9,797.84		9,797.84
Total of Accounts, Nos. 301 to 335		13,838,810.22	10,366,978.21	34,163.83	10,332,814.38
(336) Maintaining Joint Equipment—Dr		39,203.03	2,803.46		2,803.46
(337) Maintaining Joint Equipment—Cr		3,952.94*	3,223.19*		3,223.19*
Total Maintenance of Equipment		13,874,060.31	10,366,558.48	34,163.83	10,332,394.65

[fol. 2339]

Traffic

(a)

(351) Superintendence		$756,607.28	$576,571.13	$456,246.73	$120,324.40
(352) Outside Agencies		840,990.27	488,739.58	488,739.58	
(353) Advertising		142,530.92	4,578.80	4,578.80	
(354) Traffic Associations		56,303.55	46,802.39	46,802.39	
(356) Industrial and Immigration Bureaus		25,753.89	16,637.06	16,637.06	
(357) Insurance		245.30	103.33		103.33
(358) Stationery and Printing		169,413.73	146,728.49		146,728.49
Total of Accounts, Nos. 351 to 359		1,991,844.94	1,280,160.78	1,013,004.56	267,156.22

Transportation—Rail Line

(371) Superintendence		$998,392.61	$697,819.94		$697,819.94
(372) Dispatching Trains		683,692.43	298,921.81		298,921.81
(373) Station Employees		4,179,054.42	3,281,352.20	$3,281,352.20	
(374) Weighing, Inspection and Demurrage Bureaus		130,917.42	130,917.42		130,917.42
(376) Station Supplies and Expenses		189,876.04	126,351.55	126,351.55	
(377) Yardmasters and Yard Clerks		928,620.31	866,495.95	866,495.95	

*Indicates red in figures.

EXHIBIT No. 109—Continued

Maintenance of way and structures (a)	Total (b)	Freight (c)	Eliminated amounts (d)	Amounts treated as haulage expense (e)
(378) Yard Conductors and Brakemen	1,837,343.39	1,234,111.05	1,234,111.05	
(379) Yard Switch and Signal Tenders	28,258.55	24,852.68	24,852.68	
(380) Yard Enginemen	931,508.20	861,177.71	861,177.71	
(382) Fuel for Yard Locomotives	673,242.86	613,206.79	613,206.79	
(385) Water for Yard Locomotives	27,990.16	24,562.26	24,562.26	
(386) Lubricants for Yard Locomotives	8,805.96	7,997.94	7,997.94	
(387) Other Supplies for Yard Locomotives	10,856.20	10,109.22	10,109.22	
(388) Enginehouse Expenses—Yard	252,114.25	233,345.58	233,345.58	
(389) Yard Supplies and Expenses	64,900.21	59,486.32	59,486.32	
(392) Train Enginemen	2,786,808.25	1,571,323.64		1,571,323.64
(394) Fuel for Train Locomotives	3,745,315.19	2,281,331.78		2,281,331.78
(397) Water for Train Locomotives	158,697.40	96,574.80		96,574.80
(398) Lubricants for Train Locomotives	91,842.84	42,283.07		42,283.07
(399) Other Supplies for Train Locomotives	54,006.23	29,281.34		29,281.34
(400) Enginehouse Expenses—Train	721,177.36	400,414.01		400,414.01
(401) Trainmen	3,345,585.89	2,048,715.27		2,048,715.27
(402) Train Supplies and Expenses	922,480.19	400,759.84		400,759.84
(404) Signal and Interlocker Operation	240,480.90	130,747.26		130,747.26
(405) Crossing Protection	134,078.18	71,195.71		71,195.71
(406) Drawbridge Operation	28,827.86	19,754.44		19,754.44
(407) Telegraph and Telephone Operation	107,757.49	72,327.20		72,327.20
(408) Operating Floating Equipment	46,966.65	33,542.99		33,542.99
(410) Stationery and Printing	168,580.18	128,970.61		128,970.61
(411) Other Expenses	60,803.51	48,541.35		48,541.35
(414) Insurance	50,089.57	47,268.11		47,268.11
(415) Clearing Wrecks	55,462.62	47,342.19		47,342.19
(416) Damage to Property	77,196.61	47,087.20		47,087.20
(417) Damage to Live Stock on Right-of-way	88,088.44	42,644.00		42,644.00
(418) Loss and Damage—Freight	581,727.36	581,727.36		581,727.36
(419) Loss and Damage—Baggage	2,222.92			
(420) Injuries to Persons	331,346.10	144,620.32		144,620.32
Total of Accounts, Nos. 371-389, 392-411, 414-420	24,242,114.75	16,757,160.91	7,343,049.25	9,414,111.66
(390) Operating Joint Yards and Terminals—Dr.	849,034.64	117,323.93	117,323.93	

(390) Operating Joint Yards and Terminals—Dr.	24,242,111.75	16,757,160.91	7,343,049.25	9,414,111.66	
	849,034.64	117,323.93	117,323.93		
(391) Operating Joint Yards and Terminals—Cr.					144,620.32
(412) Operating Joint Tracks and Facilities—Dr.	256,495.94*	176,688.41*	176,688.41*		
(413) Operating Joint Tracks and Facilities—Cr.	42,140.04	20,383.65			20,383.65
Total Transportation—Rail Line	209,653.50*	132,885.67*			132,885.67*
	24,667,139.99	16,585,294.41	7,283,684.77	9,301,609.64	
Miscellaneous Operations					
(441) Dining and Buffet Service	$654,564.10				
Total Miscellaneous Operations	654,564.10				

[fol. 2340]

General

(a)

(451) Salaries and Expenses of General Officers	$231,810.33	$162,640.10		
(452) Salaries and Expenses of Clerks and Attendants	955,864.61	792,339.00		
(453) General Office Supplies and Expenses	49,729.96	37,788.63		
(454) Law Expenses	342,996.94	240,281.37		
(455) Insurance	929.61	610.10		
(456) Relief Department Expenses	69,780.62	47,259.06		
(457) Pensions	143,687.19	97,313.06		
(458) Stationery and Printing	94,121.67	72,348.13		
(459) Valuation Expenses	76,848.17	52,016.00		
(460) Other Expenses	88,070.05	56,438.45		
Total of Accounts, Nos. 451 to 460	2,053,839.15	1,559,033.90		
(461) General Joint Facilities—Dr.	42,908.90	2,113.68		
(462) General Joint Facilities—Cr.	1,556.77*	1,021.85*		
Total General Expenses	2,095,193.28	1,560,125.73		
Transportation for Investment—Cr.	32,272.34*	32,185.94*	$412,826.72	$1,147,299.01
Grand Total Railway Operating Expenses	53,431,588.81	36,308,812.74	9,607,798.67	32,185.94*
				26,701,014.07

* Indicates red figures.

Authority: Annual Report to Railroad Commission, State of Florida.

EXHIBIT No. 110

I. C. C. Docket 18364

Witness—Pettijohn

Atlantic Coast Line Railroad Company

Train and Car Operating Statistics—System and State of Florida for Year Ending December 31st, 1929

Item No.	Train Miles (a)	System Total (b)	System Freight (c)	System Passenger (d)	State of Florida Total (e)	State of Florida Freight (f)	State of Florida Passenger (g)	Percentage of Florida to System Total (h)	Percentage of Florida to System Freight (i)	Percentage of Florida to System Passenger (j)
13	Freight Total	7,398,961	7,398,961		2,143,745	2,143,745		28.97	28.97	
14	Passenger	9,503,932		9,503,932	2,821,984		2,821,984	29.69		29.69
15	Mixed Train	790,580	610,249	180,331	408,905	309,500	99,405	51.72	50.72	55.42
16	Special*	12,823	9,981	2,842	4,100	3,254	846	31.97	32.60	29.77
17	Total Transportation Service	17,706,296	8,019,191	9,687,105	5,378,734	2,456,499	2,922,235	30.38	30.63	30.15
	Locomotive Miles									
24	Freight Total	7,546,606	7,546,606		2,196,572	2,196,572		29.11	29.11	
28	Passenger	9,719,910		9,719,910	2,899,846		2,899,846	28.81		28.81
32	Mixed Train**	799,896	617,440	182,456	414,224	313,526	100,698	51.79	50.78	55.19
36	Special*	13,422	10,448	2,974	4,348	3,451	897	32.39	33.03	30.16
37	Train Switching	686,919	686,919		261,567	261,567		38.08	38.08	
40	Yard Switching	3,231,626	2,982,134	249,492	949,766	887,432	62,334	29.39	29.76	24.98
41	Total Transportation Service	21,998,379	11,843,547	10,154,832	6,726,323	3,662,548	3,063,775	30.58	30.92	30.71
	Car Miles									
51	Freight Train—Loaded	206,266,705	206,266,705		42,936,667	42,936,667		20.82	20.82	
62	Mixed Train-Freight—Loaded	3,388,487	3,388,487		1,607,989	1,607,989		47.45	47.45	
71	Special Train-Freight—Loaded	180,592	180,592		57,342	57,342		31.75	31.75	
	Total Freight-Loaded	209,835,784	209,835,784		44,601,998	44,601,998		21.25	21.25	

52 Freight Train—Empty	134,730,301	134,730,301		31,782,631	31,782,631		23.59	23.59	
63 Mixed Train—Freight—Empty	2,504,519	2,504,519		1,459,118	1,459,118		58.26	58.26	
72 Special Train—Freight—Empty	571	571		0	0		0	0	
Total Freight—Empty	137,235,391	137,235,391		33,241,749	33,241,749		24.22	24.22	
Total Freight—Loaded and Empty	347,071,175	347,071,175		77,843,747	77,843,747		22.43	22.43	
54 Freight Train—Caboose	7,520,585	7,520,585		2,157,714	2,157,714		28.79	28.79	
64 Mixed Train—Caboose	41,060	41,060		23,171	23,171		56.43	56.43	
*73 Special Train—Caboose	12,823	12,823		4,100	4,100		31.97	31.97	
Total Freight—Caboose	7,574,468	7,574,468		2,184,985	2,184,985		30.17	30.17	
Total Frt Transportation Service	354,645,643	354,645,643		80,028,732	80,028,732		22.57	22.57	
61 Passenger Train—Total	72,125,012		72,125,012	19,355,532		19,355,532	26.84		26.84
66-69 Mixed Train—Passenger	1,759,790		1,759,790	992,516		992,516	56.40		56.40
75-78 Special Train—Passenger	55,227		55,227	15,982		15,982	28.94		28.94
Total Passenger	73,940,029		73,940,029	20,364,030		20,364,030	27.54		27.54
Total Transportation Service	428,585,672	354,645,643	73,940,029	100,392,762	80,028,732	20,364,030	23.42	22.57	27.54

*Assigned on Basis of Special Car Miles.
**Assigned on Basis of Mixed Car Miles.

Authority: Schedule No. 531 and No. 931 Pages 508 509 904 905 of Annual Report, Railroad Commission, State of Florida.

[fol. 2342]

EXHIBIT FLACK No. 111

Recapitulation of Intrastate Log Movement in Florida During Periods February 8, 1929, to January 31, 1930, and February 1, 1930, to January 31, 1931, Respectively, Exclusive of Trainload M

Destination	1 Groveland	2 Loughman	3 Slater	4 Bond's Mill & Glenwood	5 Jacksonville	6 Perry	7 Cross City	8 Eastport	9 Gainesville	10 Live Oak	11 York	12 Buffalo Bluff	13 Lacooche
(a) Cars of logs moved between Feb. 8, 1929, and Jan. 31, 1930, inclusive.....	None	None	None	95	961	2,107	325	224	72	39	509	93	3,004
(b) Revenue collected on logs moved between February 8, 1929, and January 31, 1930, inclusive.....	None	None	None	$2,155.32	23,772.77	55,438.58	6,122.36	10,403.43	2,100.83	854.34	8,778.70	1,711.88	77,082.64
(c) Cars of logs moved between Feb. 1, 1930, and January 31, 1931, inclusive.	191	217	71	121	266	1,078	934	None	None	None	None	1	225
(d) Revenue collected on logs moved between Feb. 1, 1930, and January 31, 1931, inclusive.....	$5,378.68	5,673.83	987.96	2,630.20	7,646.15	21,766.76	19,778.72	None	None	None	None	15.57	3,943.34

[fol. 2343] EXHIBIT FLACK #112

Analysis of Log Movement to Groveland During Period February 8, 1929, to January 31, 1930, Inclusive

None

Analysis of Log Movement to Groveland During Period February 1, 1930, to January 31, 1931, Inclusive

Origin	Cars	Miles	Description of logs	Collected revenue
Altoona	21	82	Cypress	$583.46
Aster	17	99	"	509.82
Astor Park	116	96	"	3,448.92
Auburndale	14	69	"	348.70
Aulls	7	37	"	133.44
Pineola	11	42	"	258.33
Zephyrhills	5	42	"	96.01
	191			$5,378.68

Analysis of Log Movement to Loughman During Period February 8, 1929, to January 31, 1930, Inclusive

None

Analysis of Log Movement to Loughman During Period February 1, 1930, to January 31, 1931, Inclusive

Origin	Cars	Miles	Description of logs	Collected revenue
Altoona	40	93	Cypress	$1,216.37
Aulls	49	52	"	1,153.51
Cassia	14	64	"	349.30
Clydes	21	58	"	563.15
Groveland	1	68	"	27.50
Lisbon	2	91	"	63.78
Okahumpka	5	99	"	162.12
Sanford	25	51	"	640.00
Wagner	60	62	"	1,498.10
	217			$5,673.83

[fol. 2344] EXHIBIT FLACK #113

Analysis of Log Movement to Slater During Period February 8, 1929, to January 31, 1930, Inclusive

None

Analysis of Log Movement to Slater During Period February 1, 1930, to January 31, 1931, Inclusive

Origin	Cars	Miles	Description of logs	Collected revenue
Ammonate	52	21	Pine	$765.04
Estero	7	25	"	98.21
Tice	11	6	"	110.00
Southport	1		"	14.71
	71			$987.96

Analysis of Log Movement to Bond's Mill and Glenwood During Period February 8, 1929, to January 31, 1930, Inclusive

Origin	Cars	Miles	Description of logs	Collected revenue
Markham	27	30	Cypress	$595.24
Walling	60	35	"	1,385.86
Walling Spur	5	35	"	118.50
Wekina	3	31	"	55.72
	95			$2,155.32

Analysis of Log Movement to Bond's Mill and Glenwood During Period February 1, 1930, to January 31, 1931, Inclusive

Origin	Cars	Miles	Description of logs	Collected revenue
Apopka	64	49	Mixed cypress & hardwood	$1,565.57
Markham	12	30	Cypress	264.60
Mt. Plymouth	11	39	"	228.43
Wagner	34	35	Mixed cypress & hardwood	571.60
	121			$2,630.20

[fol. 2345] EXHIBIT FLACK #114

Analysis of Log Movement to Jacksonville During Period February 8, 1929, to January 31, 1930, Inclusive

Origin	Cars	Miles	Description of logs	Collected revenue
Baldwin	330	20	Hardwood	$5,899.75
Chiefland	4	118	"	131.95
Clydes	15	133	"	448.54
Coats	2	157	"	87.90
Deeville	21	15	"	342.87
Dyal	14	24	"	265.09
East Alachua	45	74	"	1,277.25
Edgar	1	77	"	30.86
Fesan	3	63	"	69.20
Ft. White	1	91	"	27.90
Grove Park	29	91	"	858.96
Green Cove Spgs	5	31	"	104.27
Hague	73	75	"	2,063.64
Hazelton	1	83	"	33.60
Herlong	15	97	"	499.92
High Springs	13	81	"	344.72
Hildreth	56	97	"	1,789.20
Hollister	4	68	"	125.40
Johnstown	17	49	"	440.81
Jonesto	12	68	"	364.20
Kendrick	6	121	"	196.70
Leno	21	38	"	397.74
Longwood	128	134	"	3,781.25
Micanopy	5	103	"	135.02
Oakton	10	75	"	327.89
Orange Park	6	15	"	87.66
Oviedo	85	143	"	2,587.74
Palatka	9	57	"	224.30
Paradise	5	82	"	114.02
Raleigh	6	104	"	207.49
Ratcliffe	3	15	"	41.34
Rochelle	9	95	"	289.09
Santa Fe	2	65	"	54.55
Seville	2	84	"	47.63
Walkill	3	34	Cypress	74.32
	961			$23,772.77

Analysis of Log Movement to Jacksonville During Period February 1, 1930, to January 31, 1931, Inclusive

Origin	Cars	Miles	Description of logs	Collected revenue
Aulls	14	136	Cypress	$557.69
Cary	1	12	Hardwood	14.49
Cassia	13	137	Cypress	842.73
"	12	137	Hardwood	
Citronelle	3	141	Cypress	90.00
Clydes	12	133	Hardwood	258.84
Deeville	1	15	"	16.33
Dukes	49	58	"	1,256.90
Dyal	18	24	"	454.44
Gardenia	17	142	"	543.00
Hughe	20	75	"	565.36
Johnson	21	79	"	572.76
Leno	2	38	"	38.92
Longwood		134	"	1,260.31
Ocala		126	"	56.00
Raiford	8	45	"	177.14
Ratcliff	3	15	"	41.34
Rochelle	2	95	"	64.24
Wagner	16	137	Cypress	539.07
Wekiva	9	134	"	296.59
	266			$7,646.15

[fol. 2346] EXHIBIT FLACK #115

Analysis of Log Movement to Perry During Period February 8, 1929 to January 31, 1931, Inclusive

Origin	Cars	Miles	Description of logs	Collected revenue
Carbur	203	17	Hardwood	$3,780.47
Chiefland	2	66	"	43.90
Cross City	200	44	"	5,144.00
Drifton	27	32	"	459.00
Gainesville	38	104	"	1,284.55
Grove Park	11	118	"	350.54
Hague	125	94	"	3,850.04
Hardeetown	2	65	"	42.00
Haynesworth	2	93	"	62.40
Herlong	4	105	"	135.41
High Springs	3	90	"	63.32
Hildreth	162	105	"	5,945.40
Hines	571	34	"	12,304.57
Homosassa	245	130	"	11,112.71
Iddo	4	14	"	53.79
Lamont	293	22	"	4,717.71
Lowell	1	133	"	30.45
Micanopy	34	122	"	1,197.14
Miccosukee	8	54	"	169.96
Monticello	41	36	"	719.21
O'Brien	5	118	"	163.69
Ocala	3	133	"	104.72
Old Town	13	54	"	252.37
Raleigh	10	94	"	324.66
Rochelle	24	114	"	792.96
Santa Fe	14	98	"	407.26
Thompson's Spur	33	107	"	1,013.99
Williston	29	98	"	912.36
	2,107			$55,438.58

Analysis of Log Movement to Perry During Period February 1, 1930 to January 31, 1931, Inclusive

Origin	Cars	Miles	Description of logs	Collected revenue
Baum	24	59	Hardwood	$579.50
Chiefland	6	66	"	131.70
Clara	2	27	"	43.84
Cross City	172	44	"	4,424.01
Drifton	15	32	"	255.00
Francis	5	148	"	157.13
Gainesville	3	104	"	101.41
Grove Park	4	118	"	127.48
Hines	153	34	"	3,297.15
Hollister	3	141	"	93.91
Lacoochee	4	155	"	147.75
Lamont	345	22	"	5,554.50
Lebanon	2	92	"	50.00
Lowell	2	133	"	61.56
Miccosukee	31	54	"	658.63
Mt. Plymouth	2	200	"	*74.32
Monticello	238	36	"	4,174.52
Otter Creek	5	78	"	116.26
Palatka	15	153	"	470.52
Paradise	7	100	"	216.48
Rochelle	17	114	"	561.68
Salem	13	19	"	165.37
Santa Fe	2	98	"	58.20
Thompson's Spur	8	107	"	245.84
	1,078			$21,766.76

* This figure based on minimum load of 40,000 pounds at prescribed rate, because amount paid was unavailable and Ex. 61 showed no shipment from this origin.

[fol. 2347] EXHIBIT FLACK #116

Analysis of Log Movement to Cross City During Period February 8, 1929, to January 31, 1930, Inclusive

Origin	Cars	Miles	Description of logs	Collected revenue
Hines	325	10	Pine	$6,122.36

Analysis of Log Movement to Cross City During Period February 1, 1930, to January 31, 1931, Inclusive

Origin	Cars	Miles	Description of logs	Collected revenue
Carbur	593	27	Cypress	$12,560.76
Chiefland	2	22	Pine	39.56
Clara	1	17	Cypress	17.01
Hines	223	10	Pine	4,201.32
Lebanon	45	48	Cypress	1,216.25
Otter Creek	18	34	"	402.92
Rochelle	52	70	"	1,340.90
	934			$19,778.72

Analysis of Log Movement to Eastport During Period February 8, 1929, to January 31, 1930, Inclusive

Origin	Cars	Miles	Description of logs	Collected revenue
Carbur	79	152	Pine	$3,539.84
Dyal	1	31	"	19.32
Oakton	1	88	"	29.54
Perry	142	169	"	6,786.45
Walkill	1	47	"	28.28
	224			$10,403.43

Analysis of Log Movement to Eastport During Period February 1, 1930, to January 31, 1931, Inclusive

None

[fol. 2348] EXHIBIT FLACK #117

Analysis of Log Movement to Gainesville During Period February 8, 1929, to January 31, 1930, Inclusive

Origin	Cars	Miles	Description of logs	Collected revenue
Clara	15	77	Hardwood	$376.35
Cross City	14	60	"	520.40
East Alachua	1	15	"	22.83
Ft. White	3	32	"	56.32
High Springs	3	23	"	55.73
Hines	16	70	"	618.73
Jonesto	2	36	"	41.40
Hendrick	3	36	"	67.12
Martin	5	33	"	94.00
Monticello	1	140	"	42.00
Oakton	2	29	"	38.89
Okahumpka	3	81	"	90.37
Santa Fe	2	21	"	30.87
Trenton	2	41	"	45.82
	72			$2,100.83

Analysis of Log Movement to Gainesville During Period February 1, 1930, to January 31, 1931, Inclusive

None

Analysis of Log Movement to Live Oak During Period February 8, 1929, to January 31, 1930, Inclusive

Origin	Cars	Miles	Description of logs	Collected revenue
Ft. White	23	37	Hardwood	$490.67
O'Brien	2	18	"	31.86
Roger's Mile Post	14	47	"	331.81
	39			$854.34

Analysis of Log Movement to Live Oak During Period February 1, 1930, to January 31, 1931, Inclusive

None

[fol. 2349] EXHIBIT FLACK #118

Analysis of Log Movement to York During Period February 8, 1929, to January 31, 1930, Inclusive

Origin	Cars	Miles	Description of logs	Collected revenue
Coats	334	39	Pine	$5,833.45
Crystal River	175	28	"	$2,945.25
	509			$8,778.70

Analysis of Log Movement to York During Period February 1, 1930, to January 31, 1931, Inclusive

None

Analysis of Log Movement to Buffalo Bluff During Period February 8, 1929, to January 31, 1930, Inclusive

Origin	Cars	Miles	Description of logs	Collected revenue
Rochelle	32	45	Hardwood	$692.56
Seville	61	22	"	1,019.32
	93			$1,711.88

EXHIBIT FLACK No. 111

Log Movement in Florida During Periods February 8, 1929, to January 31, 1930, and February 1, 1930, to January 31, 1931, Respectively, Exclusive of Trainload Movement from Hines to Palatka.

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
id	Loughman	Slater	Bond's Mill & Glenwood	Jacksonville	Perry	Cross City	Eastport	Gainesville	Live Oak	York	Buffalo Bluff	Lacooche	Otter Creek	Baldwin	Palatka	Total
	None	None	95	961	2,107	325	224	72	39	509	93	3,004	515	9	12	7,965
	None	None	$2,155.32	23,772.77	55,438.58	6,122.36	10,403.43	2,100.83	854.34	8,778.70	1,711.88	77,082.64	13,034.45	133.44	302.46	$201,891.20
	217	71	121	266	1,078	934	None	None	None	None	1	225	6	None	94	3,204
3	5,673.83	987.96	2,630.20	7,646.15	21,766.76	19,778.72	None	None	None	None	15.57	3,943.34	151.92	None	2,301.62	$70,274.75

Analysis of Log Movement to Buffalo Bluff During Period February 1, 1930, to January 31, 1931, Inclusive

Origin	Cars	Miles	Description of logs	Collected revenue
Leno	1	27	Hardwood	$15.57

[fol. 2350] EXHIBIT FLACK #119

Analysis of Log Movement to Lacoochee During Period February 8, 1929, to January 31, 1930, Inclusive

Origin	Cars	Miles	Description of logs	Collected revenue
Homosassa	2,446	68	Cypress	$62,764.36
"	224	68	Pine	5,747.84
"	334	68	Hardwood	8,570.44
	3,004			$77,082.64

Analysis of Log Movement to Lacoochee During Period February 1, 1930, to January 31, 1931, Inclusive

Origin	Cars	Miles	Description of logs	Collected revenue
Homosassa	10	68	Cypress	$256.60
Hooper	7	18	"	96.36
Istachetta	201	17	"	3,447.83
Otter Creek	2	77	"	56.93
Pineola	5	18	"	85.62
	225			$3,943.34

Analysis of Log Movement to Otter Creek During Period February 8, 1929, to January 31, 1930, Inclusive

Origin	Cars	Miles	Description of logs	Collected revenue
Homosassa	513		Hardwood	$12,990.45
Perry	2	78	"	44.00
	515			$13,034.45

Analysis of Log Movement to Otter Creek During Period February 1, 1930, to January 31, 1931, Inclusive

Origin	Cars	Miles	Description of logs	Collected revenue
Homosassa	6	52	Hardwood	$151.92

[fol. 2351] EXHIBIT FLACK #120

Analysis of Log Movement to Baldwin During Period February 8, 1929, to January 31, 1930, Inclusive

Origin	Cars	Miles	Description of logs	Collected revenue
Jacksonville	9	20	Hardwood	$133.44

Analysis of Log Movement to Baldwin During Period February 1, 1930, to January 31, 1931, Inclusive

None

Analysis of Log Movement to Palatka, Exclusive of Trainload Movement from Hines to Palatka, During Period February 8, 1929, to January 31, 1930, Inclusive

Origin	Cars	Miles	Description of logs	Collected revenue
Clydes	7	78	Cypress	$177.16
Longwood	5	79	"	125.30
	12			$302.46

Analysis of Log Movement to Palatka, Exclusive of Trainload Movement from Hines to Palatka, During Period February 1, 1930, to January 31, 1931, Inclusive

Origin	Cars	Miles	Description of logs	Collected revenue
Apopka	6	96	Cypress	$168.84
Aulls	2	81	"	64.46
Cassia	23	82	"	621.25
Grove Park	10	36	"	192.12
Longwood	19	79	"	476.12
Rochelle	34	40	"	778.83
	94			$2,301.62

[fol. 2352] EXHIBIT FLACK #121

Analysis of Florida Intrastate Log Movement, Exclusive of Train Load Movement from Hines to Palatka, During Period from February 8, 1929, to January 31, 1930, Inclusive, Showing Number of Cars of Pine, Cypress and Hardwood Logs Respectively Moving and Amount of Revenue Derived Therefrom

	Description of Logs—Number of Cars					
Destination	Pine	Revenue	Cypress	Revenue	Hardwood	Revenue
Groveland	....	.....	.....	.....	.....	.....
Loughman	....	.....	.....	.....	.....	.....
Slater	....	.....	.....	.....	.....	.....
Bond's Mill and Glenwood	....	.....	95	$2,155.32	.....	.....
Jacksonville	....	.....	3	74.32	958	23,698.45
Perry	....	.....	.....	.....	2,107	55,438.58
Cross City	325	6,122.36	.....	.....	.....	.....
Eastport	224	10,403.43	.....	.....	.....	.....
Gainesville	....	.....	.....	.....	72	2,100.83
Live Oak	....	.....	.....	.....	39	854.34
York	509	8,778.70	.....	.....	.....	.....
Buffalo Bluff	....	.....	.....	.....	93	1,711.88
Lacoochee	224	5,747.84	2,780	71,334.80	.....	.....
Otter Creek	....	.....	.....	.....	515	13,034.45
Baldwin	....	.....	.....	.....	9	133.44
Palatka	....	.....	12	302.46	.....	.....
Total	1,282	$31,052.33	2,890	$73,866.90	3,793	$96,971.97

[fol. 2353] EXHIBIT FLACK #122

Analysis of Florida Intrastate Log Movement, Exclusive of Train Load Movement from H[illegible]es to Palatka. During Period from February 1, 1930, to January 31, 1931, Inclusive, Showing Number of Cars of Pine, Cypress and Hardwood Logs Respectively Moving and Amount of Revenue Derived Therefrom

	Description of Logs—Number of Cars					
Destination	Pine	Revenue	Cypress	Revenue	Hardwood	Revenue
Groveland	....	.....	191	$5,378.68	.....	.....
Loughman	....	.....	217	5,673.83	.....	.....
Slater	71	$987.96	.....	.....	.....	.....
Bond's Mill and Glenwood	....	.....	75	1,630.12	46	1,000.08
Jacksonville	....	.....	55	1,921.58	211	5,724.57
Perry	....	.....	....	.....	1,078	21,766.76
Cross City	225	4,240.88	709	15,537.84	....	.....
Eastport	....	.....	....	.....	....	.....
Gainesville	....	.....	....	.....	....	.....
Live Oak	....	.....	....	.....	....	.....
York	....	.....	....	.....	....	.....
Buffalo Bluff	....	.....	....	.....	1	15.57
Lacoochee	....	.....	225	3,943.34	....	.....
Otter Creek	....	.....	....	.....	6	151.92
Baldwin	....	.....	....	.....	....	.....
Palatka	....	.....	94	2,301.62	....	.....
Total	296	$5,228.84	1,566	$36,387.01	1,342	$28,658.90

[fol. 2354] EXHIBIT FLACK # 123

Copy

Atlantic Coast Line Railroad Company

File 41-B

Jacksonville, Fla.,
April 10th 1931-bm.

Gress Manufacturing Company, City.

GENTLEMEN: Until further notice the Atlantic Coast Line Railroad Company will transport logs (except cedar and except ash, gum, hickory, oak, pine and cypress logs, not over six feet in length) for distances 170 miles and under, presently collecting therefor on basis of the mileage scale of rates (Cummer scale) formerly published at top of page 413 of Agent Glenn's I. C. C. A-659 (Southern Lumber Tariff) A. C. L. R. R.'s Freight Tariff No. 10930, but you are now advised if the scale of rates just referred to is not the applicable rate or rates now in effect, the Atlantic Coast Line Railroad Company will later make demand for revenue based on the applicable rates.

[fol. 2355]

EXHIBIT No. 124

I. C. C. Docket 18364

Witness: J. W. Perrin

Statement Comparing Atlantic Coast Line Railroad Per Car Revenue On Logs, Interstate, and in Florida, Intrastate, With Per Car Revenue On other Commodities Moving Between Atlantic Coast Line Railroad Stations in Georgia, on the One Hand, and, on the Other Hand, Stations on Atlantic Coast Line Railroad in Florida North of High Springs, Fla. Carload Rates Expressed in Cents Per 100 Pounds. Weights Per Car Are Actual Average on Atlantic Coast Line Railroad for Year 1925.

	Rates						Revenue Per Car					
	Logs		Georgia-Florida Interstate				Logs		Georgia-Florida Interstate			
Miles	Interstate	Florida Intrastate	Common brick	Gravel and sand	Lime	Cement	Interstate 55,000 lbs	Florida Intrastate 55,000 lbs	Brick 66,580 lbs	Gravel Sand 92,540 lbs	Lime 50,000 lbs	Cement 70,740 lbs
5	2.5	1.71	3	2.5	2.8	4	$13.75	$9.41	$19.97	$23.14	$14.00	$28.30
10	2.5	1.71	3	2.5	3.6	5	13.75	9.41	19.97	23.14	18.00	35.37
15	3	1.71	3.5	2.75	4	6	16.50	9.41	23.30	25.45	20.00	42.44
20	3	1.71	3.5	2.75	4.4	7	16.50	9.41	23.30	25.45	22.00	49.52
25	3.5	1.71	4	3	4.8	8	19.25	9.41	26.63	27.76	24.00	56.59
30	3.5	1.71	4	3	5.2	8	19.25	9.41	26.63	27.76	26.00	56.59
35	4	1.71	4.5	3.5	5.6	8.5	22.00	9.41	29.96	32.39	28.00	60.13
40	4	1.71	4.5	3.5	6	8.5	22.00	9.41	29.96	32.39	30.00	60.13
45	4.5	2.10	5	4	6.4	9	24.75	11.55	33.29	37.02	32.00	63.67
50	4.5	2.10	5	4	6.8	9	24.75	11.55	33.29	37.02	34.00	63.67
55	4.5	2.10	5	4	7.2	9.5	24.75	11.55	33.29	37.02	36.00	67.20
60	5	2.10	5	4	7.6	9.5	27.50	11.55	33.29	37.02	38.00	67.20
65	5	2.30	5.5	4.5	8	10	27.50	12.65	36.62	41.64	40.00	70.74
70	5	2.30	5.5	4.5	8.4	10	27.50	12.65	36.62	41.64	42.00	70.74
75	5.5	2.30	6	4.5	8.8	10.5	30.25	12.65	39.95	41.64	44.00	74.28
80	5.5	2.30	6	4.5	8.8	10.5	30.25	12.65	39.95	41.64	44.00	74.28
85	5.5	2.30	6.5	5	9.2	11	30.25	12.65	43.28	46.27	46.00	77.81
90	6	2.30	6.5	5	9.2	11	33.00	12.65	43.28	46.27	46.00	77.81
95	6	2.60	6.5	5	9.6	11.5	33.00	14.30	43.28	46.27	48.00	81.35
100	6	2.60	6.5	5	9.6	11.5	33.00	14.30	43.28	46.27	48.00	81.35

EXHIBIT No. 124—Continued

Miles	Rates: Logs: Interstate	Rates: Logs: Florida Intrastate	Rates: Georgia-Florida Interstate: Common brick	Rates: Georgia-Florida Interstate: Gravel and sand	Rates: Georgia-Florida Interstate: Lime	Rates: Georgia-Florida Interstate: Cement	Revenue Per Car: Logs: Interstate 55,000 lbs	Revenue Per Car: Logs: Florida Intrastate 55,000 lbs	Revenue Per Car: Georgia-Florida Interstate: Brick 66,580 lbs	Revenue Per Car: Georgia-Florida Interstate: Gravel Sand 92,540 lbs	Revenue Per Car: Georgia-Florida Interstate: Lime 50,000 lbs	Revenue Per Car: Georgia-Florida Interstate: Cement 70,740 lbs
110	6.5	2.80	7	5.5	10	12	35.75	15.40	46.61	50.90	50.00	84.89
120	6.5	3.20	7	5.5	10	12	35.75	17.60	46.61	50.90	50.00	84.89
130	7	3.20	7	6	10.4	12.5	38.50	17.60	46.61	55.52	52.00	88.43
140	7	3.40	7	6	10.4	12.5	38.50	18.70	46.61	55.52	52.00	88.43
150	7.5	3.40	7.5	6	10.8	13	41.25	18.70	49.94	55.52	54.00	91.96
160	7.5	3.40	7.5	6.5	10.8	13	41.25	18.70	49.94	60.15	54.00	91.96
170	8	3.70	8	6.5	11.2	13.5	44.00	20.35	53.26	60.15	56.00	95.50
180	8	8.33	8	6.75	11.2	13.5	44.00	45.82	53.26	62.46	56.00	95.50
190	8.5	8.33	8.5	6.75	11.6	14	46.75	45.82	56.59	62.46	58.00	99.04
200	8.5	8.33	8.5	6.75	11.6	14	46.75	45.82	56.59	62.46	58.00	99.04
210	9	8.67	9	7	12	14.5	49.50	47.69	59.92	64.78	60.00	102.57
220	9	8.67	9	7	12	14.5	49.50	47.69	59.92	64.78	60.00	102.57
230	9.5	9	9	7	12.4	15	52.25	49.50	59.92	64.78	62.00	106.11
240	9.5	9	9	7.5	12.4	15	52.25	49.50	59.92	69.41	62.00	106.11
250	10	9.17	9.5	7.5	12.8	15.5	55.00	50.44	63.25	69.41	64.00	109.65
260	10	9.17	9.5	7.5	12.8	15.5	55.00	50.44	63.25	69.41	64.00	109.65
270	10.5	9.50	10	8	13.2	16	57.75	52.25	66.58	74.03	66.00	113.18
280	10.5	9.50	10	8	13.2	16	57.75	52.25	66.58	74.03	66.00	113.18
290	11	9.67	10.5	8	13.6	16.5	60.50	53.19	69.91	74.03	68.00	116.72
300	11	9.83	10.5	8.25	13.6	16.5	60.50	54.07	69.91	76.35	68.00	116.72

Tariff Authorities: Agent J. H. Glenn's I. C. C. No. A-659 (Interstate—Logs)
Agent J. H. Glenn's I. C. C. No. A-730 (Brick); I. C. C. No. A-684 (Lime); I. C. C. No. A-718 (Cement); I. C. C. No. A-655 (Sand and Gravel).
A. C. L. R. R. I. C. C. B-2632 (Florida Intrastate—Logs).

Wilmington, N. C., July 16th, 1931

[fol. 2356]

EXHIBIT No. 125

I. C. C. Docket No. 18364

Witness: J. W. Perrin

Statement Comparing Atlantic Coast Line Railroad Per Car Revenue on Logs, Interstate, and in Florida, Intrastate, With Per Car Revenue on Other Commodities Moving Intrastate in Georgia. Carload Rates Expressed in Cents Per 100 Pounds.

	Rates						Revenue Per Car					
							Weights per car are actual average on A.C. L. R. R. during year 1925					
	Logs		Georgia Intrastate				Logs		Georgia Intrastate			
Miles	Interstate	Florida Intrastate	Common Brick	Gravel and sand	Lime	Cement	Interstate 55,000 lbs.	Florida Intrastate 55,000 lbs.	Brick 66,580 lbs.	Sand and gravel 92,540 lbs.	Lime 50,000 lbs.	Cement 70,740 lbs.
5	2.5	1.71	3	2.5	2.8	5	$13.75	$9.41	$19.97	$23.14	$14.00	$35.37
10	2.5	1.71	3	2.5	3.6	6	13.75	9.41	19.97	23.14	18.00	42.44
15	3	1.71	3.5	2.75	4.4	7.5	16.50	9.41	23.30	25.45	22.00	53.06
20	3	1.71	3.5	2.75	4.8	9	16.50	9.41	23.30	25.45	24.00	63.67
25	3.5	1.71	4	3	5.2	10	19.25	9.41	26.63	27.76	26.00	70.74
30	3.5	1.71	4	3	5.6	10	19.25	9.41	26.63	27.76	28.00	70.74
35	4	1.71	4.5	3.5	5.6	11	22.00	9.41	29.96	32.39	28.00	77.81
40	4	1.71	4.5	3.5	6	11	22.00	9.41	29.96	32.39	30.00	77.81
45	4.5	2.10	5	4	6.4	11	24.75	11.55	33.29	37.02	32.00	77.81
50	4.5	2.10	5	4	6.8	11	24.75	11.55	33.29	37.02	34.00	77.81
55	4.5	2.10	5	4	7.2	12	24.75	11.55	33.29	37.02	36.00	84.89
60	5	2.10	5	4	7.6	12	27.50	11.55	33.29	37.02	38.00	84.89
65	5	2.30	5.5	4.5	8	12.5	27.50	12.65	36.62	41.64	40.00	88.43
70	5	2.30	5.5	4.5	8.4	12.5	27.50	12.65	36.62	41.64	42.00	88.43
75	5.5	2.30	6	4.5	8.8	13	30.25	12.65	39.95	41.64	44.00	91.96
80	5.5	2.30	6	4.5	8.8	13	30.25	12.65	39.95	41.64	44.00	91.96
85	5.5	2.30	6.5	5	9.2	14	30.25	12.65	43.28	46.27	46.00	99.04
90	6	2.30	6.5	5	9.2	14	33.00	12.65	43.28	46.27	46.00	99.04
95	6	2.60	6.5	5	9.6	14	33.00	14.30	43.28	46.27	48.00	99.04

EXHIBIT No. 125—Continued

Miles	Rates: Logs Interstate	Rates: Logs Florida Intrastate	Rates: Georgia-Intrastate Common Brick	Rates: Georgia-Intrastate Gravel and sand	Rates: Georgia-Intrastate Lime	Rates: Georgia-Intrastate Cement	Revenue Per Car (Weights per car are actual average on A.C.L. R. R. during year 1925): Logs Interstate 55,000 lbs.	Logs Florida Intrastate 55,000 lbs.	Georgia Intrastate Brick 66,580 lbs.	Georgia Intrastate Sand and gravel 92,540 lbs.	Georgia Intrastate Lime 50,000 lbs.	Georgia Intrastate Cement 70,740 lbs.
100	6	2.60	6.5	5	9.6	14	33.00	14.30	43.28	46.27	48.00	99.04
110	6.5	2.80	7	5.5	10	15	35.75	15.40	46.61	50.90	50.00	106.11
120	6.5	3.20	7	5.5	10	15	35.75	17.60	46.61	50.90	50.00	106.11
130	7	3.20	7	6	10.4	16	38.50	17.60	46.61	55.52	52.00	113.18
140	7	3.40	7	6	10.4	16	38.50	18.70	46.61	55.52	52.00	113.18
150	7.5	3.40	7.5	6	10.8	16	41.25	18.70	49.94	55.52	54.00	113.18
160	7.5	3.40	7.5	6.5	10.8	16	41.25	18.70	49.94	60.15	54.00	113.18
170	8	3.70	8	6.5	11.2	17	44.00	20.35	53.26	60.15	56.00	120.26
180	8	8.33	8	6.75	11.2	17	44.00	45.82	53.26	62.46	56.00	120.26
190	8.5	8.33	8.5	6.75	11.6	17.5	46.75	45.82	56.50	62.46	58.00	123.80
200	8.5	8.33	8.5	6.75	11.6	17.5	46.75	45.82	56.50	63.46	58.00	123.80
210	9	8.67	9	7	12	18	49.50	47.69	59.92	64.78	60.00	127.33
220	9	8.67	9	7	12	18	49.50	47.69	59.92	64.78	60.00	127.33
230	9.5	9	9	7	12.4	19	52.25	49.50	59.92	64.78	62.00	134.41
240	9.5	9	9	7.5	12.4	19	52.25	49.50	59.92	69.41	62.00	134.41
250	10	9.17	9.5	7.5	12.8	19	55.00	50.44	63.25	69.41	64.00	134.41
260	10	9.17	9.5	7.5	12.8	19	55.00	50.44	63.25	69.41	64.00	134.41
270	10.5	9.50	10	8	13.2	20	57.75	52.25	66.58	74.03	66.00	141.48
280	10.5	9.50	10	8	13.2	20	57.75	52.25	66.58	74.03	66.00	141.48
290	11	9.67	10.5	8	13.6	21	60.50	53.19	69.91	74.03	68.00	148.55
300	11	9.83	10.5	8.25	13.6	21	60.50	54.07	69.91	76.35	68.00	148.55

Tariff authorities: Agent J. H. Glenn's I. C. C. No. A-659
Agent J. H. Glenn's I. C. C. No. A-716
A. C. L. Railroad's I. C. C. No. B-2632

Wilmington, N. C., July 16th, 1931.

(Here follows Exhibit 126, side folio 2357)

[fol. 2357]

EXHIBIT No. 126

I. C. C. Docket No. 18364

Witness: J. W. Perrin

Statement Comparing Atlantic Coast Line Railroad Per Car Revenue on Logs, Interstate, and in Florida Intrastate, with Per Car Revenue on Other Commodities Moving Intrastate in Florida. Carload Rates Expressed in Cents Per 100 Lbs. Weights Per Car Are Actual Average on A. C. L. R. R. During Year 1925.

	Rates							Revenue Per Car						
	Logs		Florida Intrastate					Logs		Florida Intrastate				
Miles	Interstate	Florida Intrastate	Common Brick Peninsula	Limestone	Sand	Lime	Cement	Interstate 55,000 lbs.	Florida Intrastate 55,000 lbs.	Brick 66,580 lbs.	Limestone, 92,540 lbs.	Sand 92,540 lbs.	Lime 50,000 lbs.	Cement 70,740 lbs.
5	2.5	1.71	3.5	2.70	2.38	6.20	4	$13.75	$9.41	$23.30	$24.99	$22.02	$31.00	$28.30
10	2.5	1.71	3.5	3	2.64	6.20	5	13.75	9.41	23.30	27.76	24.43	31.00	35.37
15	3	1.71	4	3.83	3.19	6.75	6	16.50	9.41	26.63	35.44	29.52	33.75	42.44
20	3	1.71	4	3.83	3.19	6.75	7	16.50	9.41	26.63	35.44	29.52	33.75	49.52
25	3.5	1.71	5	3.83	3.47	7.90	8	19.25	9.41	33.29	35.44	32.11	39.50	56.59
30	3.5	1.71	5	3.83	3.47	7.90	8	19.25	9.41	33.29	35.44	32.11	39.50	56.59
35	4	1.71	5.5	4.33	3.75	8.45	8.5	22.00	9.41	36.62	40.07	34.70	42.25	60.13
40	4	1.71	5.5	4.33	3.75	8.45	8.5	22.00	9.41	36.62	40.07	34.70	42.25	60.13
45	4.5	2.10	6	4.50	4.17	9	9	24.75	11.55	39.95	41.64	38.59	45.00	63.67
50	4.5	2.10	6	4.50	4.17	9	9	24.75	11.55	39.95	41.64	38.59	45.00	63.67
55	4.5	2.10	6	5	4.31	9.60	9.5	24.75	11.55	39.95	46.27	39.88	48.00	67.20
60	5	2.10	6	5	4.31	9.60	9.5	27.50	11.55	39.95	46.27	39.88	48.00	67.20
65	5	2.30	6.5	5.17	4.44	10.15	10	27.50	12.65	43.28	47.84	41.09	50.75	70.74
70	5	2.30	6.5	5.17	4.44	10.15	10	27.50	12.65	43.28	47.84	41.09	50.75	70.74
75	5.5	2.30	7	5.33	4.44	10.70	10.5	30.25	12.65	46.61	49.32	41.09	53.50	74.28
80	5.5	2.30	7	5.33	4.44	10.70	10.5	30.25	12.65	46.61	49.32	41.09	53.50	74.28
85	5.5	2.30	8	5.67	4.86	11.25	11	30.25	12.65	53.26	52.47	44.97	56.25	77.81
90	6	2.30	8	5.67	4.86	11.25	11	33.00	12.65	53.26	52.47	44.97	56.25	77.81
95	6	2.60	8	5.83	5.14	11.85	11.5	33.00	14.30	53.26	53.95	47.57	59.25	81.35
100	6	2.60	8	5.83	5.14	11.85	11.5	33.00	14.30	53.26	53.95	47.57	59.25	81.35
110	6.5	2.80	8.5	6	5.14	11.85	12	35.75	15.40	56.50	55.52	47.57	59.25	84.89
120	6.5	3.20	8.5	6.50	5.56	12.40	12	35.75	17.60	56.50	60.15	51.45	62.00	84.89
130	7	3.20	8.5	6.67	5.60	12.40	12.5	38.50	17.60	56.50	61.72	52.66	62.00	88.43
140	7	3.40	8.5	6.83	5.69	12.95	12.5	38.50	18.70	56.50	63.20	52.66	64.75	88.43
150	7.5	3.40	9	6.83	6.11	12.95	13	41.25	18.70	59.92	63.20	56.54	64.75	91.96
160	7.5	3.40	9.5	7.33	6.25	13.50	13	41.25	18.70	63.25	67.83	57.74	67.50	91.96
170	8	3.70	10	7.67	6.67	13.50	13.5	44.00	20.35	66.58	70.98	61.72	67.50	95.50
180	8	8.33	10	7.67	6.67	14.10	13.5	44.00	45.82	66.58	70.98	61.72	70.50	95.50
190	8.5	8.33	10.5	8	6.81	14.10	14	46.75	45.82	69.91	74.03	63.02	70.50	99.04
200	8.5	8.33	10.5	8	6.84	14.10	14	46.75	45.82	69.91	74.03	63.02	70.50	99.04
210	9	8.67	11	8.17	6.94	14.10	14.5	49.50	47.69	73.24	75.61	64.22	70.50	102.57
220	9	8.67	11	8.17	6.94	14.10	14.5	49.50	47.60	73.24	75.61	64.22	70.50	102.57
230	9.5	9	11	8.33	6.94	14.10	15	52.25	49.50	73.24	77.09	64.22	70.50	106.11
240	9.5	9	11	8.33	6.94	14.10	15	52.25	40.50	73.24	77.09	64.22	70.50	106.11
250	10	9.17	11.5	8.33	7.22	14.10	15.5	55.00	50.44	76.57	77.09	66.81	70.50	109.65
260	10	9.17	11.5	8.33	7.22	14.10	15.5	55.00	50.44	76.57	77.09	66.81	70.50	109.65
270	10.5	9.50	12	8.67	7.36	14.10	16	57.75	52.25	79.90	80.23	68.11	70.50	113.18
280	10.5	9.50	12	8.67	7.36	14.65	16	57.75	52.25	79.90	80.23	68.11	73.25	113.18
290	11	9.67	12.5	8.83	7.50	14.65	16.5	60.50	53.19	83.23	81.71	69.41	73.25	116.72
300	11	9.83	12.5	8.83	7.64	14.65	16.5	60.50	54.07	83.23	81.71	70.70	73.25	116.72

Tariff Authorities: Agent J. H. Glenn's I. C. C. No. A-659
Agent J. H. Glenn's I. C. C. No. A-732
A. C. L. Railroad I. C. C. No. B-2632

Wilmington, N. C., July 16th, 1931.

[fol. 2358]

EXHIBIT No. 127

I. C. C. Docket No. 18364

Witness: Perrin

Statement Showing Number of Cars and Tons of Lumber, Shingles, Laths, Box, Crate and Cooperage Material Originated at All Points in Southern District and at All Points in the United States During Each Calendar Year 1920 to 1930, Inclusive; Also for the Same Years Tons Handled by Atlantic Coast Line Railroad, with Its Revenue Derived Therefrom.

	Southern District		United States		Atlantic Coast Line	
	Cars	Tons	Cars	Tons	Tons	Revenue
1920	672,449	17,708,828	1,798,324	48,617,871	2,665,512	$5,503,389.44
1921	514,378	13,079,620	1,340,080	34,877,583	2,165,756	5,354,182.74
1922	676,330	17,500,201	1,653,048	43,506,524	3,263,984	7,615,857.54
1923	838,858	21,954,713	2,000,380	53,540,057	3,884,881	8,772,145.80
1924	805,691	20,576,531	1,848,168	48,604,974	3,632,811	8,000,915.37
1925	797,775	20,311,619	1,864,250	49,015,498	3,751,016	8,092,819.86
1926	746,990	19,070,270	1,748,935	46,065,081	3,353,023	7,960,375.45
1927	713,838	18,208,713	1,625,133	42,858,471	3,045,574	6,962,342.67
1928	702,766	17,872,965	1,618,161	42,508,620	3,093,168	6,641,449.38
1929	677,141	17,403,907	1,534,996	40,565,975	3,109,401	6,750,434.28
1930	446,883	11,395,877	1,048,083	27,584,148	2,211,258	4,711,383.72

Authority for Statistics Shown for the United States and for Southern District

Year — Interstate Commerce Commission

1920 34th Annual Report on the Statistics of Railways in the United States for the year ending December 31.
1921 35th Annual Report on the Statistics of Railways in the United States for the year ending December 31
1922 36th Annual Report on the Statistics of Railways in the United States for the year ending December 31.
1923 37th Annual Report on the Statistics of Railways in the United States for the year ending December 31.
1924 Statement No. 25100, Freight Commodity Statistics Class I Steam Railways in the United States, year ended December 31.
1925 Statement No. 26100, Freight Commodity Statistics Class I Steam Railways in the United States, year ended December 31.
1926 Statement No. 27100 Freight Commodity Statistics Class I Steam Railways in the United States, year ended December 31.

[fol. 2359]

1927 Statement No. 28100, Freight Commodity Statistics Class I Steam Railways in the United States, year ended December 31.
1928 Statement No. 29100, Freight Commodity Statistics Class I Steam Railways in the United States, year ended December 31.
1929 Statement No. 30100, Freight Commodity Statistics Class I Steam Railways in the United States, year ended December 31.
1930 Freight Commodity Statistics of Class I Steam Railways in the United States. Quarterly statements, consolidated statement similar to No. 30100 not yet having been distributed by the Commission.

Wilmington, N. C., July 16, 1931.

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[fol. 2360]

EXHIBIT No. 128

I. C. C. Docket No. 18364

Witness: Perrin

Statement Showing Number of Cars of Long Length Logs Moved Between Points on Atlantic Coast Line Railroad in Florida During the Period February 1, 1931 to June 30, 1931, Inclusive.

To	From	No. Cars
Jacksonville	Dyal	1
"	Rital	1
"	Hague	1
"	Gracys	1
"	Gainesville	22
"	Rochelle	4
"	Gulf Hammock	2
"	Grove Park	2
"	Martin	4
"	Bares Siding	4
"	Astor Park	13
"	Astor	8
"	Raiford	1
"	Lake Butler	67
"	Dukes	1
"	Santa Fe	2
"	Cross City	1
Palatka	Orange Park	1
"	Doctors Inlet	1
"	Sanford	6
"	Hague	2
"	Gainesville	9
"	Rochelle	31
"	Chiefland	7
"	Hollister	1
"	Grove Park	9
"	Deland	8
"	Raiford	1
"	Lake Butler	1
"	Hines	1,831
"	Tarrytown	5
Buffalo Bluff	Russell	3
"	Walkill	3
"	Rochelle	4
Perry	Miccosukee	11
"	Gainesville	1
"	Cross City	73
"	Hines	32
"	Clara	25
"	Carbur	22
"	Lamont	72
"	Lacoochee	8
"	Mt. Plymouth	1
Lake City	Branford	2
"	Half Moon	1
Gainesville	Hildreth	1
Lacoochee	Half Moon	1
"	Hooper	23
"	Istachatta	69
St. Petersburg	Rital	2
Apopka	Rital	1
Tampa	Hague	1
Sanford	Gainesville	1

EXHIBIT No. 128—Continued

To	From	No. Cars
Cross City	Rochelle	21
"	Otter Creek	24
"	Secotan	57
Kissimmee	Brooksville	2
"	Astor Park	1
Loughman	Graf	14
"	Lisbon	30
"	Altoona	5
"	Bares Siding	26
"	Astor Park	66
"	Astor	74
"	Mt. Homer	1
"	Howey	3
"	Bradford Farm	1
"	Minneola	4
"	Mt. Plymouth	1
Leesburg	Walling	5
"	Sorrento	2
Bonds Mill	Cassia	2
"	Mt. Plymouth	6
Nocatee	Gardner	14
Total number cars		2,765

Wilmington, N. C., July 10, 1931.

[fol. 2361]

EXHIBIT No. 131

I. C. C. Docket No. 18364

Witness: Geo. W. Lamb

Property Investment and Operating Income Account

Atlantic Coast Line Railroad Company, Florida East Coast Railway Company, and Seaboard Air Line Railway Company for Calendar Years 1922, 1926, and 1930

	1922	1926	1930	Increase or Decrease 1930 vs 1922		Increase or Decrease 1930 vs 1926	
				Amount	Percent	Amount	Percent
1. Property Investment as at End of Year							
2. Investment in Road and Equipment (Acct. 701)	$462,815,488.84	$609,828,816.77	$634,425,121.45	$171,609,632.61	37.08	$24,596,304.68	4.03
3. Material and Supplies (Acct. 716)	12,607,766.04	20,372,344.20	11,993,667.80	614,098.24R	4.87R	8,378,676.40R	41.13R
4. Total	475,423,254.88	630,201,160.97	646,418,789.25	170,995,534.37	35.97	16,217,628.28	2.57
5. Cash (Acct. 708)	27,020,445.54	18,406,684.15	17,801,532.53	9,218,913.01R	34.12R	605,151.62R	3.29R
6. Grand Total	502,443,700.42	648,607,845.12	664,220,321.78	161,776,621.36	32.20	15,612,476.66	2.41
7. Operating Income Account							
8. Average Mileage Operated—Miles	9,192.90	9,183.69	10,515.47	1,322.57	14.39	1,331.78	14.50
9. Total Operating Revenues	$129,930,017.79	$193,538,830.50	$124,428,816.71	$5,501,201.08R	4.23R	$69,110,013.79R	35.71R
10. Freight (Acct. 101)	88,854,367.08	134,021,439.71	92,193,899.95	3,339,532.87	3.76	41,827,539.76R	31.21R
11. Passenger (Acct. 102)	28,579,395.59	42,249,799.64	19,741,067.36	8,838,328.23R	30.93R	22,508,732.28R	53.28R
12. Mail (Acct. 106)	2,843,044.00	3,177,746.22	3,248,824.79	405,780.79	14.27	71,078.57	2.24
13. Express (Acct. 107)	5,224,765.98	6,330,479.25	4,186,971.91	1,037,794.07R	19.86R	2,143,507.34R	33.86R
14. All other Revenues	4,428,445.14	7,759,365.68	5,058,052.70	629,607.56	14.22	2,701,312.98R	34.81R
15. Total Operating Expenses	$97,688,157.03	$140,361,370.53	$97,949,538.57	$261,381.54	.27	$42,411,831.96R	30.22R
16. Maintenance of Way and Structures	15,956,566.09	26,908,258.98	18,686,231.92	2,729,665.83	17.11	8,222,027.06R	30.56R
17. Maintenance of Equipment	25,190,567.47	32,965,494.74	24,055,464.91	1,135,102.56R	4.51R	8,910,029.83R	27.03R
18. Traffic	2,916,058.59	4,669,503.51	4,715,829.96	1,799,771.37	61.72	46,326.45	0.99
19. Transportation	48,886,100.64	69,913,361.51	44,685,492.50	4,200,608.14R	8.59R	25,227,869.01R	36.08R
20. General	3,932,726.53	5,068,614.91	4,658,340.22	725,613.69	18.45	410,274.69R	8.09R
21. All other Expenses	806,137.71	836,136.88	1,148,179.06	342,041.35	42.43	312,042.18	37.32
22. Operating Ratio—Percent	74.34	71.87	77.36	3.53	4.69	6.20	8.55
23. Net Operating Revenues	$32,241,860.76	$53,177,459.97	$26,479,278.14	$5,762,582.62R	17.87R	$26,698,181.83R	50.21R
24. Railway Tax Accruals	$7,168,609.13	$11,766,936.46	$10,253,055.66	$3,084,446.53	43.03	$1,513,880.80R	12.87R
25. Uncollectible Railway Revenues	91,733.87	55,761.07	57,759.02	33,974.85R	37.03R	1,997.95	3.58
26. Railway Operating Income	$24,981,517.76	$41,354,762.44	$16,168,463.46	$8,813,054.30R	35.28R	$25,186,298.98R	60.90R
27. Hire of Equipment—Net Balance	$3,375,932.90R	$6,327,932.53R	$1,906,962.58R	$1,468,970.32	43.51	$4,420,969.95	69.86
28. Joint Facility Rents—Net Balance	259,385.43R	259,364.91R	163,904.43R	96,381.00	37.16	96,360.48	37.15
29. Net Railway Operating Income	$21,346,199.43	$34,767,465.00	$14,098,496.45	$7,247,702.98R	33.95R	$20,668,968.55R	59.45R

Wilmington, N. C., July 14th, 1931-1. R Indicates red figures or decrease. Authority: Annual Reports to Railroad Commission, State of Florida.

[fol. 2362]

EXHIBIT No. 132

I. C. C. Docket No. 18364

Witness: Geo. W. Lamb

Atlantic Coast Line Railroad Company

Property Investment and Operating Revenues, State of Florida

(a)	1922 (b)	1926 (c)	1930 (d)	Increase or Decrease, 1930 over 1922 Amount (e)	Percent (f)	Increase or Decrease, 1930 over 1926 Amount (g)	Percent (h)
1. Investment in Road and Equipment (Account 701)	$73,861,039.09	$96,628,158.40	$105,514,014.41	$31,652,975.32	42.85	$8,885,856.01	9.20
2. Total Operating Revenues	17,851,388.48	30,330,194.04	16,334,490.05	1,516,898.43x	8.50x	13,995,703.99x	46.14x
3. Freight (101)	11,959,891.14	21,603,014.55	11,960,371.20	480.06	.....	9,642,643.35x	44.64x
4. Passenger (102)	3,847,407.42	5,955,199.64	2,105,892.97	1,741,514.45x	45.26x	3,849,306.67x	64.64x
5. Mail (106)	359,507.27	397,745.73	431,819.21	72,311.94	20.11	34,073.48	8.57
6. Express (107)	962,164.07	1,079,753.62	777,134.49	185,029.58x	19.23x	302,619.13x	28.03x
7. All Other Revenue	722,418.58	1,294,480.50	1,059,272.18	336,853.60	46.63	235,208.32x	18.17x
8. Total Intrastate Operating Revenues	$7,956,985.43	$13,885,116.40	$6,560,653.37	$1,396,332.06x	17.55x	$7,324,463.03x	52.75x
9. Freight (101)	5,027,825.86	10,297,598.26	4,852,183.15	175,642.71x	3.49x	5,445,415.11x	52.88x
10. Passenger (102)	2,209,202.85	2,440,941.40	540,847.67	1,668,355.18x	75.52x	1,900,093.73x	77.84x
11. Mail (106)	107,852.18	119,323.71	129,545.74	21,693.56	20.11	10,222.03	8.57
12. Express (107)	288,649.21	323,926.08	159,711.76	128,937.45x	44.67x	164,214.32x	50.69x
13. All Other Revenues	323,455.33	703,326.95	878,365.05	554,909.72	171.56	175,038.10	24.89
14. Total Interstate Operating Revenues	$9,894,403.05	$16,445,077.64	$9,773,836.68	$120,566.37x	1.22x	$6,671,240.96x	40.57x
15. Freight (101)	6,932,065.28	11,305,416.29	7,108,188.05	176,122.77	2.54	4,197,228.24x	37.13x
16. Passenger (102)	1,638,204.57	3,514,258.24	1,565,045.30	73,159.27x	4.47x	1,949,212.94x	55.47x
17. Mail (106)	251,655.09	278,422.02	302,273.47	50,618.38	20.11	23,851.45	8.57
18. Express	673,514.86	755,827.54	617,422.73	56,092.13x	8.33x	138,404.81x	18.31x
19. All Other Revenue	398,963.25	591,153.55	180,907.13	218,056.12x	54.66x	410,246.42x	69.40x

x Indicates a decrease.

Authority: Annual Reports to Railroad Commission, State of Florida, plus lines operated under lease and contract whose earnings are included in Atlantic Coast Line Railroad returns.

Wilmington, N. C., July 18th, 1931-1

LAMB EXHIBIT No. 133

I. C. C. Docket No. 18364

Statement Showing Consist of Log Trains Operating Between Hines and Palatka on Atlantic Coast Line Railroad, Month of November, 1930.

Contents	Between Hines and Palatka	Number of cars		Car miles		Tonnage		Ton-miles	
		Loaded	Empty	Loaded	Empty	Net	Tare	Net	Tare
	Logs								
Logs	Northbound (13 trips)	490	14	57,820	1,652	15,680	8,282		
Empty	Southbound (12 trips)	...	466	.....	54,988	.....	7,690		
	Total Logs	490	480	57,280	56,640	15,680	15,972	1,850,240	1,884,696
	Other								
Empty	Palatka to Newberry	0	69	.....	5,313	.....	1,394	.....	107,338
"	Palatka to N. Diamond	0	4	....	76	.....	80	.....	1,520
Feed	Palatka to Hines	3	0	354	0	22	60	2,596	7,080
Lumber	Palatka to Hines	1	0	118	0	8	16	944	1,788
Hampers	Gainesville to Palatka	2	0	98	0	24	47	1,176	2,303
Co. Coal	Gainesville to Palatka	1	0	49	0	12	21	588	1,029
Hogs	Burnetts Lake to Palatka	1	0	64	0	15	19	960	1,193
	Total	498	553	58,503	62,029	15,761	17,609	1,856,504	2,006,947
	Grand Total	1,051		120,532		33,370		3,863,451	

"Out of Pocket Expenses"

392—Train Enginemen	$506.19
394—Fuel for Train Locomotives	1,138.49
397—Water for Train Locomotives	39.50
398—Lubricants for Train Locomotives	8.27
399—Other Supplies for Train Locomotives	8.82
400—Enginehouse Expenses—Train	19.05
401—Trainmen	562.86
402—Train Supplies and Expenses	115.37
Total	$2,398.55

[fol. 2364] August G. Gutheim, Attorney at Law, Number 8 Jackson Place, Washington, D. C.

August 3, 1931.

Hon. George B. McGinty,
Secretary, Interstate Commerce Commission,
Washington, D. C.

In re I. C. C. 18364, Georgia Public Service Commission v. Atlantic Coast Line R. R. et al.

Dear Sir: At the hearing in the above-entitled proceeding, held in Washington July 20-21, 1931, permission was granted by presiding Examiner Hoy to intervening Florida log shippers to file as rebuttal testimony on their behalf, the testimony of Witness W. D. McCaig and G. H. Parker in Docket No. 16939, Railroad Commissioners of Florida v. Aberdeen and Rockfish Railroad Company et al., wherein the Atlantic Coast Line Railroad Company was one of the defendants.

I submit herewith on behalf of the intervening Florida log shippers as a supplementary exhibit, the testimony in transcript pages as follows:

Witness W. D. McCaig, pp. 1220-1221, also pp. 1262-1270 inclusive.

Witness G. H. Parker, pp. 1612-1627 inclusive; also p. 1702.

The original copy as submitted herewith has been certified under the seal of the Commission. A copy of this exhibit has been forwarded to all appearances of record this date.

Yours truly, August G. Gutheim.

Copy for Messrs: E. C. Green, Thos. D. Guthrie and R. W. Bennett, T. T. Turnbull, T. M. True, J. V. Norman, Robert C. Alston, E. M. Price, H. P. Adair. (Tr. p. 1520.)

[fol. 2365] Interstate Commerce Commission, Washington

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of pages 1220 and 1221; pages 1262 to 1270, inclusive; pages 1612 to 1627, inclusive; and page 1702 of the transcript of the stenographer's notes of the hearing

held at Jacksonville, Fla., before Examiner Hillyer, April 21 and 26, 1926, in Docket No. 16939, Railroad Commissioners of the State of Florida v. Aberdeen & Rockfish Railroad Company, et al., the originals of which are now on file and of record in the office of this Commission.

In witness whereof I have hereunto set my hand and affixed the Seal of said Commission this 30th day of July, A. D. 1931. (Signed) George B. McGinty, Secretary of the Interstate Commerce Commission.

Copy.

[fol. 2366] 1220

A. I am not familiar with the marketing of the California crop, Mr. Marshall, but I do not see, so far as I know the situation, where that is any great boon over the similar service that the Florida shippers enjoy.

Q. Would you say or not that the blanket adjustment of rates, or the blanket rate, has advantages over specific rates? By that I mean rates from almost every origin point to almost every individual market to which shipments might move?

A. I don't see where it is any big advantage.

Q. You don't think so?

A. No, sir, but at the same time, Mr. Marshall, I want you to understand that I am not a rate expert, and really am not familiar enough with the rates to fully comprehend what is implied in blanket rates and specific rates.

Mr. Marshall: That is all.

Exam. Hillyer: Are there any further questions?

(No response.)

(Witness excused.)

W. D. McCaig was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination.

By Mr. Gwathmey:

Q. Please state your name and address.

A. W. D. McCaig, Wilmington, N. C.

[fol. 2367] 1221

Q. What is your present position?

A. Comptroller of the Atlantic Coast Line Railroad Company.

Q. What has been your experience as a railroad accountant?

A. I have been employed in the Accounting Department of the Atlantic Coast Line Railroad Company and its predecessor companies for a period of thirty-three years. During this time I have successively filled the positions of Stenographer, Clerk, Traveling Auditor, Auditor of Station Accounts, Assistant Auditor of Freight Receipts, Assistant Comptroller, and Comptroller. I have filled the last named position for two years.

Q. What has been your particular connection with this case?

A. Some time after this complaint was filed a committee of railway accounting officers was appointed to give attention to any accounting features that might develop in connection with this case. I was appointed and have subsequently served as chairman of that committee.

Q. In testifying in this case, therefore, you are doing so as a representative of all of the carriers defendants in this case?

A. I do, but more particularly the carriers initial to Florida, who originate the traffic involved in this case.

Q. Are you familiar with the complaint filed in this case and with the testimony given in support thereof by Mr. C. W. Oliver, who is employed by Interveners in this case?

[fol. 2368] 1262

of the expenses to the several commodities named. While it is not specifically claimed by this witness that the results, which he arrives at, reflect in any way the operations of the Atlantic Coast Line Railroad or the Seaboard Air Line Railway in the State of Florida, it might be well, at this time, through an abundance of caution, to point out certain fundamental operating conditions existing on the Florida East Coast Railway on the one hand and the Atlantic Coast Line Railroad and the Seaboard Air Line Railway on the other hand, for instance:

There has been introduced by a number of witnesses in this case maps showing in detail the lines operated by each of these carriers in the State of Florida. From these maps one can readily see that the operations of the Florida East Coast Railway, within the State of Florida, are essentially main line operations, while the operations of the Atlantic Coast Line Railroad and the Seaboard Air Line Railway, within the State of Florida, are to a large extent branch line operations. These branch lines are of a very low traffic density and transportation costs thereon correspondingly higher.

In the operations of a single main track railroad it is possible to reach a point of saturation where added traffic can only be handled by the construction of a second main track. At this point of saturation the per unit cost of

[fol. 2369] 1263

handling traffic should be at its lowest level and the net railway operating income at its highest level. Such a point of saturation was reached on the Florida East Coast Railway during the years 1923 and 1924. As a consequence thereof the Florida East Coast Railway has been engaged for several years in the construction of a second main track between Jacksonville and Miami. This has, and will continue to adversely affect their maintenance charges and capital charges. The point here stressed, however, is that it is manifestly improper to compare the operations of the Florida East Coast Railway, at this point of saturation, or peak, with the operations of the Atlantic Coast Line Railroad and the Seaboard Air Line Railway within the State of Florida, which roads have not yet reached that state of development.

Up to the close of the year 1924 the Florida East Coast Railway occupied a very desirable situation in that their territory was almost wholly free from rail line competition, which condition has a tendency to reduce operating costs.

The Florida East Coast Railway, by reason of its location, is the only line in Florida, which to any extent handles trans-state traffic, that is, traffic having neither origin nor destination within the state.

Again, on this perishable traffic, practically all the diversions take place after the cars leave the lines of the Florida East Coast Railway.

[fol. 2370] 1264

For these, and other reasons, we contend that the operations of the Florida East Coast Railway are not comparable with those of the Atlantic Coast Line Railroad and the Seaboard Air-Line Railway within the State of Florida.

Q. On Sheet 27 of Mr. Oliver's exhibit he compares reproduction values of the Atlantic Coast Line Railroad and the Seaboard Air Line Railway as of date of valuation as taken from the Engineering and Land Reports of the Valuation Section of the Commission for the entire line and the State of Florida. What comment have you to make as to this sheet?

A. As to the accuracy of the figures, I repeat that they are being contested. As to the comparisons between the value of the lines in Florida with the entire lines and the lines outside of Florida—I also repeat that in these calculations the Commission has used quantities as of date of valuation and prices as of 1914, and that a restatement of these costs on basis of present day values would present a different picture. It is also a fact that since date of valuation the expansion, improvement and betterments on these lines in Florida have been greater than on the balance of these lines. It also should be borne in mind in considering this data that, many facilities in other states were constructed to expedite the handling of Florida traffic, a notable instance being the double track of the Atlantic Coast Line

[fol. 2371] 1265

Jacksonville to Richmond. Another factor for consideration in this connection is the large amount of branch line mileage incorporated in the mileage of these two lines within the State of Florida the construction of which is somewhat lighter than main line mileage and which acts as a feeder for main lines in other states. It is, therefore, neither logical nor practical to segregate values of railroads in this manner, and this fact is recognized in Mr. Oliver's testimony (page 870) when he says in connection with this data:

"All of these facts considered as a whole would indicate that part of the operation within the State of Florida, in-

cluding capital costs, can be carried on at substantially the same cost as on the entire lines of the Atlantic Coast Line and the Seaboard Air Line."

As to maintenance and capital costs, no contention has, or will be made by the defendant carriers that these particular costs are higher on the lines in the State of Florida than on the system as a whole.

Q. On Sheet 28, Exhibit No. 19, is shown for the Atlantic Coast Line Railroad and Seaboard Air Line Railway certain operating statistics taken from the reports of these lines to the Interstate Commerce Commission and the Railroad Commission, State of Florida, a comparison being made between the statistics for the entire line and the State of Florida.

[fol. 2372] 1266

What comments have you to make regarding this sheet?

A. As to the maintenance of way and structure expenses per mile of road for the Atlantic Coast Line Railroad for the years 1920 to 1924 inclusive, shown by this sheet, I desire to state that the figures are taken from the reports of that Company for those years to the Railroad Commission, State of Florida. In said reports there is a foot note explaining that operating expenses are assigned to the states by the Atlantic Coast Line Railroad Company on basis of operating ratio of the entire line, these maintenance expenses varying between states according to the revenues earned in each state, which revenues are assigned on an actual basis. A mileage pro-rate of the actual revenue being assigned to each state.

It is therefore not proper to use the Atlantic Coast Line Railroad figures in the manner done in this case. It is probably true, however, that the maintenance of way and structure expenses of both the Atlantic Coast Line Railroad and the Seaboard Air Line Railway are slightly less in the State of Florida than for the entire line per mile of road. As is well known maintenance of roadway and tracks is influenced to a large extent by the use of the track, and the use of a track in Florida as compared with other states and of the entire line of these carriers is reflected in my Exhibit No. 44, which I will introduce

[fol. 2373] 1267

at this time showing for the years 1924 and 1925 tons one mile per mile of road of the Atlantic Coast Line Railroad Company and the Seaboard Air Line Railway Company for the entire line and for the six states through which these lines operate. From this it will be seen that for the Atlantic Coast Line Railroad Company the traffic density for the entire line for the year 1924 was 35% greater than for the State of Florida and for the year 1925 23% greater than for the State of Florida. For the Seaboard Air Line Railway Company the traffic density for the entire line for the year 1924 was 17% greater than for the State of Florida and for the year 1925 7% greater than for the State of Florida. It will also be noted that for the Atlantic Coast Line Railroad Company the traffic density per mile of road in the State of Florida was substantially below that of any state through which it operates. This was also true of the Seaboard Air Line Railway Company except as to the State of Georgia, the traffic density of their lines between Montgomery, Ala., and Savannah, Ga., depressing the average of that State.

The traffic density of Florida has always been below that of any other state in the South and must necessarily be so, from its geographic location, being almost surrounded by water and having access by rail from the major portion of the state only in one direction. As previously stated, its

[fol. 2374] 1268

trans-state traffic is infinitesimal as compared with that of other Southern States.

Practically every shipment transported within the State of Florida involves one or more terminal handlings. A major portion of its mileage is branch lines with relatively lower traffic density and correspondingly higher operating costs. All fuel used by carriers operating in Florida is hauled long distances; its coal coming from Tennessee and Northern Alabama and its fuel oil from Mexico, involving long hauls as compared with other states. For the reasons stated operating costs in the state of Florida must of necessity be greater than the operating costs of other states, even though the maintenance of way and structures expenses of the roads operating in the State

of Florida might be slightly less than for the other states.

Q. Have you made an investigation to show amounts paid by the Atlantic Coast Line Railroad Company to shippers in the matter of claims received in connection with the handling of perishable traffic moving from Florida?

A. I have made such a study and have prepared and submit at this time my exhibit No. 45, showing separately for the commodities involved in this complaint and for all other commodities for the years 1924 and 1925, the total number of cars handled, the Atlantic Coast Line Railroad Company's freight revenue thereon, the total loss and damage claims

[fol. 2375] 1269

paid and charged to the operating expenses of the Atlantic Coast Line Railroad Company, loss and damage paid per car and the ratio of loss and damage claims payments to revenue. It will be noted that the loss and damage claim payments per car on the traffic involved in this case as a whole for the year 1924 was $5.06 as compared with 50c. per car on other commodities. For the year 1925, $4.92 per car compared with 45c. per car for all other commodities, and that the ratio of loss and damage payments to revenue for the year 1924 for the commodities involved in this case was 3.50% as compared with .83 for all other commodities, and for the year 1924 3.37% as compared with .69 on all other commodities.

Q. Mr. McCaig, I want to make the record entirely clear, and I think in the course of your statement your language might have been construed as meaning that this claim statement relates only to citrus fruits and vegetables moving out of Florida. Is it so confined, or does it include other perishables handled by the Atlantic Coast Line?

A. It includes all of the traffic handled by the Atlantic Coast Line. As a matter of fact, however, the Atlantic Coast Line handle no grape fruit and very few cars of oranges originating in any territory other than Florida.

Q. Mr. McCaig, Mr. Pettijohn would like to know whether the claims paid shown on this exhibit represent claims ac-

[fol. 2376] 1270

tually paid and borne by the Atlantic Coast Line, or whether it includes claims accruing to all lines?

A. The revenue shown on this statement is the revenue of the Atlantic Coast Line, and the claims shown thereon are the amounts actually paid and charged to operating expenses of the Atlantic Coast Line.

By Mr. Marshall:

Q. That $5.06 then, Mr. McCaig, is only your proportion of the claim?

A. That is true.

Q. And the actual amount of the claim per car is greater than that, isn't it?

A. Assuming that other carriers involved in the handling of this traffic participated in the settlement of claims, that is true.

Q. The major portion of the citrus traffic reaches markets beyond the terminals of the Atlantic Coast Line, does it not?

A. Yes, sir.

By Mr. Gwathmey:

Q. Mr. McCaig, have you prepared any study tending to show for the carriers serving the State of Florida an increased operating cost during recent years as reflected by the item of employees and compensation of employees?

A. I have prepared and file at this time, my Exhibit No. 46, showing for the Atlantic Coast Line Railroad, Seaboard Air

[fol. 2377] 1612

A. That is correct.

Exam. Hillyer: Are there any further questions?

(No response.)

Exam. Hillyer: You are excused.

(Witness excused.)

Mr. Gwathmey: Our next witness will be Mr. Parker.

GEORGE H. PARKER was thereupon called as a witness, and being first duly sworn, testified as follows:

Direct examination.

By Mr. Gwathmey:

Q. Please state your name, address and present employment.

A. George H. Parker, International Building, 1319 F Street N. W., Washington, D. C.

I have been a railroad man for about 25 years, and for about the past four years of which I have been engaged in private practice, analyzing financial, operating and accounting data, primarily during that period engaged as a transportation analyst, I may say.

Prior to my present private practice I was comptroller of the Philadelphia & Reading for about two years; prior to that comptroller of the United States Railroad Administration, and financial assistant to the Director General during Mr. Hines' administration, and Mr. Hines' assistant when he was Assistant Director General.

Prior to that I was assistant to vice president of the Dela-

[fol. 2378] 1613

ware & Hudson Company for about six years, in charge of the accounting department of its system, embracing all of its properties, except the coal department, including its steam railroads, trolley properties, hotel properties, and steamboat companies.

Prior to that I had several years' experience on large and small roads in construction, accounting, traffic and operating work, principally in the west and southwest.

I am an honorary member of the American Railway Accounting Officers' Association, and member of the District of Columbia Bar.

Q. What is your connection with the defendants in the present proceeding?

A. I was employed by them to make an examination of the facilities employed in connection with the movement of perishable traffic originating in Florida, to examine the operating conditions, and to prepare, so far as practicable, a cost study relating to such traffic.

Q. Have you made such examination?

A. I have. I might say that it was contemplated, in view of the fact that through rates were under attack, that my examination would extend to the operating conditions, et cetera, in the originating territory, and also, so far as necessary in order to produce a satisfactory showing of the situation, a study of the through movement. For the purposes of my analysis I made a detailed examination of the operating conditions on

[fol. 2379] 1614

the ground in order to determine exactly where the perishable traffic originated and how it was handled; the kind of service afforded it; and, generally speaking, all the circumstances surrounding it.

My examination extended to pretty general survey of the whole originating territory. I spent some time in the offices of the division superintendents of the Atlantic Coast Line for the Jacksonville district, at Sanford; for the Lakeland and Tampa districts at Lakeland; and for the Gainesville district, at Gainesville.

I also spent considerable time in the division superintendent's office of the Seaboard Air Line at Tampa; and in the general superintendent's office of the Florida East Coast at St. Augustine.

In addition to the inquiry which I prosecuted in these offices, I went over most of the lines in Florida whereon the perishable traffic moves and made a close inquiry at individual points so as to get all the facts possible bearing on the situation.

At many of the individual points where perishable traffic originates in quantities, I made extended inquiries of yardmasters, agents, and others cognizant of the facts; and acquired a great deal of information through these inquiries and also by personal observation on the ground.

In addition, I studied the yard movements at important yards where involved in this inquiry. Individual points particular-

[fol. 2380] 1615

ly studied, and which seemed to afford sufficient basis to indicate that they are illustrative of the general situation, were points on the Tampa Northern and the Tampa & Gulf

Coast; points on the Barasota branch of the Seaboard; Sanford on the Coast Line and territory immediately surrounding it; Lakeland, Bartow, Lake Wales and Haines City on the Coast Line.

The yards studied embraced Sanford, Lakeland, and Haines City on the Coast Line; and Plant City, Tampa and Wildwood on the Seaboard.

I made some observation of the situation at Miami on the Florida East Coast, and there was also made under my direction some analysis of the yards at Buena Vista, Port Pierce, and New Smyrna on the Florida East Coast.

What I have said relates to the originating territory proper.

I also made observations in the yards of the Coast Line at Jacksonville, through which the traffic coming off the Jacksonville district moves for movement to the north; and High Springs, which is the yard through which the traffic moves coming off the Lakeland and Gainesville districts of the Coast Line.

Also, as regards the Coast Line, I made observations on the ground of the operation of the Waycross yard, which is the important diversion point of the Coast Line.

I also made observations of the movement of the perishable

[fol. 2381] 1616

traffic through the yard at West Jacksonville on the Seaboard Air Line.

Also a survey of a general character of the situation at Savannah, on both the Seaboard and the Atlantic Coast Line. That is, of course, an important yard with reference to the movement of Florida perishables.

And also of the line movements over the Coast Line and Seaboard north of Jacksonville.

Emphasis may properly be laid on the extent of the examination and investigation thus made, because it undoubtedly more abundantly warrants reliance on the conclusions reached through the mathematical calculations because predicated on a thorough understanding of the actual conditions which the mathematics are intended to measure.

So I desire to impress the facts of such investigation and to relate certain general observations which may be predicated directly thereon. To that end I may state, even at

the expense of perhaps here and there a matter of restatement, that I was over the greater part of the railroads of the Atlantic Coast Line, Seaboard Air Line, and Florida East Coast as regards the territory in which the perishable originates, as well as on the main routes traversed by the traffic north of the originating territory.

For the purposes of my study, I was given free access to the data in all the offices of the Atlantic Coast Line, the Seaboard Air Line and the Florida East Coast railways, including the

[fol. 2382] 1617

data in the general and division offices, the yard offices and stations, and was afforded every aid possible by those on the ground and familiar with the handling of the traffic. On account of the existing situation in Florida, it is only fair to the operating and other officers of these lines to say that this aid was possible only through extraordinary exertion on their part, because their current duties constitute a tremendous burden on them.

The study embraced analysis of train sheets showing the train movement, wheel reports, yard reports, supplemented by explanations of operating officers familiar with the practical conditions, as well as such data regarding operating costs as are obtainable in the general offices of the company, and the results of the study are embraced in the various tables and explanatory matter which appear in the exhibits which I shall explain.

Q. From what you have said, Mr. Parker, I understand that you have devoted a very considerable amount of time to a personal study of the situation from a practical standpoint surrounding the originating and handling of this perishable traffic out of Florida—is that right?

A. That is correct, Mr. Gwathmey, and in that connection I would like to say that the only instructions given me by the committee of transportation officers having this particular phase in charge, namely, Mr. Stockard, general superintendent of

[fol. 2383] 1618

transportation of the Atlantic Coast Line, Mr. Hix, superintendent of transportation of the Seaboard Air Line, and

Mr. Owen, general superintendent of transportation of the Florida East Coast, were to find the facts.

Q. And your personal investigation has been made pretty generally throughout the state of Florida, and in the territories particularly in which this perishable traffic originates, has it not?

A. Yes sir. I think it would be fair to say that it has been a fairly intensive inquiry into that whole situation.

Q. Approximately how long have you been working on this matter?

A. I started in, as I recall it, about the 10th or 12th of September, and I have been engaged practically constantly on it ever since. Of that period I spent approximately the first four months on the lines in Florida and the lines north. By far the greater part of that time was spent in Florida.

Q. As a result of your observations, please state in outline what important conclusions you reached with reference to the handling of this perishable traffic?

A. I would summarize my conclusions about as follows:

1. The territory of origination of the Florida perishable traffic is of considerable extent, extends over a comparatively large territory, both absolutely and measured in terms of railroad mileage.

2. That the originating territory embraces a large number

[fol. 2384] 1619

of branch lines of railroad.

3. That the large volume of perishable traffic when considered with reference to the season over which it is spread, results in a comparatively small volume per day.

4. That the foregoing is especially significant when the extent of railroad lines over which such origination is scattered, throughout such season, is considered.

5. That there is a large pick-up service necessitated in the gathering of such traffic over the season, and from the numerous branch lines involved, so that the service in originating territory is substantially wholly a pick-up service and there is, properly speaking, an insignificant amount, if any, of through trains of perishable traffic from point of origin.

6. That the movement of the perishable traffic is expedited in every practicable way, necessarily entailing a much greater cost of handling than that for dead freight.

7. That the placing of empties for perishable loading and the movement of such cars when loaded is done with the exercise, and necessarily so, of a degree of care that need not be observed as to dead freight, thus again entailing a higher relative cost.

8. That the exigencies of the perishable movement necessitates the performance of certain functions not obtaining with dead freight.

9. That diversion privileges are enjoyed by shippers as re-

[fol. 2385] 1620

gards perishable traffic to a degree greatly beyond those actually availed of as to other traffic.

10. That the expense of handling the perishable traffic is greatly in excess of the expenses of handling dead freight; the more important differences between the two classes of traffic resulting in such difference in cost of handling are:

(a) The employment of a special type of car resulting in a much greater per cent of empty mileage.

(b) The heavier type of car (refrigerator cars generally) and the lighter loading of the perishable traffic results in a much lower percentage of paying load to dead weight, in the case of the perishable traffic than that for dead freight.

(c) Extra switching on account of initial icing and reicing of cars for movement under refrigeration.

I want to add this word of explanation in connection with that item, that I understand that the refrigeration charge contains an amount intended to compensate the carriers for the cost of switching cars to and from the ice plant. I understand that that amount, that is the amount included in the refrigeration charge, covers the bear cost of the movement of the car from some point in the yard to the ice plant. If in fact the amount included in the charge actually covers that, my own personal opinion is that it really does not pay for that part of the service, but what I am speaking of here is the extra cost which

[fol. 2386] 1621

arises from the fact that the whole operation of the yard is slowed up by reason of giving the first preference to the icing and re-icing of cars, so that the additional expense that I am speaking of here is that more particularly, rather than the cost, as I say, of the switch for the individual ice car for which the charge is allowed in the transportation charge.

By Mr. Marshall:

Q. Mr. Parker, do you have in mind particular yards, or yards where the icing is performed, or are your comments directed to the situation wherever icing may be performed?

A. I should say that it is true wherever icing is performed. The same situation exists generally at every point that I know anything about, and that covers a great many of them.

Q. I don't know what you mean by slowing up operations of the yards, where doubtless there is no other traffic of consequence than perishable traffic.

A. I do not call to my mind offhand any other—any yard where there is no other traffic of considerable consequence. I think that would apply quite generally.

By Mr. Gwathmey:

Q. Are you sufficiently familiar with the situation to be able to say whether or not that switching and that switching charge that we are—that were considered by the Commission in fixing the refrigeration charges applied particularly to the switching at regular icing stations?

[fol. 2387] 1622

A. I don't know that I am. My general impression of it is that it is simply the cost at regular icing stations.

Q. Isn't it a fact that there is considerable icing done sometimes which is not done at regular icing stations?

A. Yes, sir.

Q. In other words, emergency icing?

A. Yes sir, of course in any event the 35 cents is a ridiculously low figure for the thing it was intended to cover.

Exam. Hillyer: I am afraid we are going into detail before you have finished your general conclusions.

The Witness: (d) Greater care and consequent greater consumption time in placing empties for loading perishable traffic.

When a train is going down the road setting cars for loading, it is necessary for the crews in all cases to first go to the packing plant and find out where the cars must be placed. The placing of such cars at the packing plant must be done so that the car is exactly at the door of the packing plant. This necessitates the exact placing of the car.

As regards most all other traffic there is not the same degree of precision required with reference to the placing of the cars. Cars are shoved in on team tracks, or industry tracks, and are not ordinarily needed to be spotted at the door of a plant.

It frequently happens that the packing plants have more than

[fol. 2388] 1623

one door for loading and the car that is to be spotted for loading must be placed beyond a car that may be already placed at another door. This necessitates, for the purpose of spotting the car at the precise point where needed, the pulling out of the car already on the track, the placing in of the new empty, and then the replacing of the other car.

It frequently happens that in cases of this kind a car that has already been placed is partially loaded, and great care must be exercised in handling this car so partially loaded in order to avoid damage to the contents which would give rise to large claims.

(e) Twice a day placement of empty cars for loading perishable at many points, whereas no such practice is followed as to dead freight.

At many points perishable traffic is switched twice daily instead of once daily as is the case with other traffic.

At many points the packing plants are located on tracks on which are also other industries. The twice daily switching at the packing plants necessitates the pulling out of the cars for such other industries as may be on such tracks, for a packing plant located beyond such industries. The

conditions referred to occasion double switching of all such cars.

(f) Sundry differences occasioned by the nature of the traffic and to insure expedited service, such as increase in supervision required, additional employes, as yardmasters, clerks, et cetera, and special records maintained at superin-

[fol. 2389] 1624

tendents' and yard offices, and in agencies.

The keeping of special reports in order to insure preferential handling of empty cars for perishable loading and also to insure preferential handling of perishable traffic when loaded, at the division offices, and at stations, and the amount of following-up that is performed in order to insure the prompt and preferential handling of such traffic constitutes an expense quite apart from the expenses of the service accorded other traffic.

For example, the following description of handling orders for refrigerator cars on the Jacksonville district, Atlantic Coast Line, may be regarded as representative of the situation elsewhere:

Orders for refrigerator cars: The necessities of the situation as regards supplying the needs of shippers with refrigerators entails an elaborate system of ordering cars, and this means a careful following out of the actual assignment and placement of cars, and in order to insure this there is also entailed the keeping of a record of such orders and of the cars supplied, and of placement thereof. The manner of this and the extra service it entails are embraced in the following:

Shipper files orders for cars with agent—if for iced car such orders are in writing. Orders must be filed in the Sanford district, before 5:30 P. M., for placement the next 7:00 A. M., and before 9:00 A. M. for 2:00 P. M. placement;

Other than Sanford there is but one placement per day provided

[fol. 2390] 1625

for, and this requires that orders must be placed before 5:30 P. M. for next 7:00 A. M. placement.

Orders—for ice cars—are made in triplicate and filed with the agent, copies of which are sent to:

(1) District superintendent,

(2) Yardmaster,

(3) Fruit Growers Express,

covering the number of cars to be supplied all over the territory. Yard office follows out to see that the cars are placed as per orders. As soon as copy of order is furnished Fruit Growers Express, that company assigns cars on such orders and notifies district superintendent's office of such assignment. District superintendent's office makes record of such assignment of cars and follows out car by car, noting time of placement on each and every car on each and every order.

The taking of these orders and handling of them requires two additional clerks in freight office, and occasions extra work on superintendent's office. Extra work on yard office is taken care of by additional forces as referred to below.

At 5:30 each day agent has issued bills of lading for all cars loaded and ready for movement, triplicate list of such cars furnished to

(1) Superintendent,

(2) General yardmaster,

(3) Fruit Growers Express,

[fol. 2391] 1626

in order to make preparation for re-icing and the handling of cars ready for movement in ling haul. Yard forces assemble such cars from list furnished it, places such cars for re-icing, and classifies in making up train to go north. Superintendent's office follows movement of each car through these processes, completing his record thereof.

(g) Perishable traffic is given much more expeditious service than is dead freight.

When a train arrives in the yard, consisting of empty cars for perishable loading and other cars, the practice is followed of switching the cars for the perishable loading out first, leaving the switching of the other cars to be performed later. This is because of the urgent need for the perishable cars. They are always in urgent demand and must be obtained quickly. It would be less expensive from the standpoint of the movement of the traffic as a whole if

the switching of the cars for perishable traffic were performed along with the switching of other cars, or, to put it another way, if the switching of the cars for the other traffic were to go along concurrently with the switching movement which is performed when the trains first enter the yard, and this added expense is clearly attributable to the expeditious handling of the perishable traffic.

What has been said with reference to the switching of the empty cars is true to an even greater extent with reference to the switching of the cars containing perishable. Such cars are al-

[fol. 2392] 1627

ways given preferential handling in the yard, the switching of other cars being always allowed to await the complete disposition of the cars containing perishable. The result is to slow up the whole operation of the yard, thereby greatly reducing during the perishable season the number of cars handled per hour and greatly increasing the number of switch engines employed.

I do not want to leave the impression by the terms I have used, slowing up the whole operation of the yard to mean that anybody lays down on the job—it is quite the other way. I do not mean that anybody works slower, but the results accomplished, that is the number of cars per hour, is very greatly reduced, I mean the yard operation is slowed up in that sense through the manner in which the perishable traffic is switched and the attention given to it.

As to road haul the train load is cut in order to permit making the time.

Large delays to other traffic in consequence of expediting the perishable traffic, occur.

Q. Explain now your statements with reference to the large gathering area of originating territory, and the insignificant amount of through train service from points of origin.

A. An accurate answer to such question necessitates understanding as to just what is meant by "through trains."

Through freight trains are so designated with reference to

[fol. 2393] 1702

Mr. Gwathmey: I suggest, if there is no objection, that between now and tomorrow morning, Mr. Parker will ex-

amine his notes to refresh his memory upon the subject, and if he is able to testify positively he can do so. If he feels that he cannot, I will withdraw the question.

By Mr. Gwathmey:

Q. Now Mr. Parker, you have given a very detailed description of the service actually performed by the carriers in these various loading districts in connection with the placing of cars, assembling of cars, and things of that sort. What conclusions do you draw upon that subject?

A. The general conclusion I draw is that the service involved in the handling of perishable traffic is very complicated, that there is a large amount of pick-up service of branch line trains, a large amount of switching, that the trains are relatively light in view of the necessary daily service in order to move promptly whatever traffic offers, and that there is a substantial absence of solid through trains in the assembling territory, and that on the whole the service in the gathering territory is a very expensive one.

Q. At the Orlando hearing quite a number of witnesses, as I recall, that is witnesses for the complainants, seemed to think that in view of the fact that packing house plants have been established in greater numbers in recent years, and that the shippers do the loading at those plants, that about all that this service involves is that the shippers turn over to

[fol. 2394] Copy

Office of Special Counsel, Interstate Commerce Cases, 1210 Shoreham Bldg., Washington, D. C.

File No. 1590

August 3, 1931. fwg.

I. C. C. Docket No. 18364

Georgia Public Service Commission v. Atlantic Coast Line Railroad Co.

Mr. Ulysses Butler, Chief Examiner, Interstate Commerce Commission, Washington, D. C.

Dear Sir: At the further hearing of the above matter at Washington, before Examiner Hoy, Mr. George W. Lamb,

a witness for the Atlantic Coast Line was requested to submit some additional information in connection with his Exhibit No. 133. I am enclosing herewith an original letter from Mr. Lamb to Secretary McGinty, dated August 1st, which contains this information, and copies are being duly forwarded to various parties to the case.

Very truly yours, (S.) F. W. Gwathmey, Special Counsel.

Copy with copy of enclosure to: Mr. H. P. Adair, Atlantic National Bank Bldg., Jacksonville, Fla. Mr. C. E. Cotterill, Grant Bldg., Atlanta, Ga. Mr. J. V. Norman, 1506 Inter-Southern Bldg., Louisville, Ky. Mr. August Gutheim, 712 Jackson Place, Washington, D. C. Mr. E. M. Price, Georgia Public Service Commission, Atlanta, Ga. Mr. Theo. T. Turnbull, Railroad Commission of Florida, Tallahassee, Fla.

[fol. 2395] Atlantic Coast Line Railroad Company

Wilmington, N. C.,
August 1st, 1931.

342-A

I. C. C. Docket 18364

Florida Log Rate Case

Hon. George B. McGinty, Secretary, Interstate Commerce Commission, Washington, D. C.

Dear Sir: At the hearing in I. C. C. Docket 18364, held in Washington on July 21st, I filed as Exhibit No. 133, a "Statement showing the consist of log trains operating between Hines and Palatka, Fla., on the Atlantic Coast Line Railroad, month of November, 1930," which also showed the "out of pocket" expenses.

Some question was raised as to the entry opposite Account 394, Fuel for Train Locomotives, $1,138.49, and it was agreed that I would investigate this item and, if the figures were not correct, file a corrected exhibit or explain what the complainants felt was an excessive amount of fuel as compared with the amount paid train enginemen.

This statement was prepared to show the cost to the Atlantic Coast Line Railroad Company, as represented by

the out of pocket expenses, to handle log trains in solid train load lots.

I find that our General Superintendent of Motive Power, who furnished me the entries for all accounts except 392 and 401, developed from tickets issued at each coaling the following amounts issued for these log trains:

Issued at	Tons	Cost per ton	Amount
Palatka	136	$3.364	$457.50
Wilcox	155	2.573	398.82
Total	291		856.32

Coal issued at Palatka is received from the western Virginia and West Virginia mines. The results shown above include foreign freight only to Yemassee, S. C., where it is turned over to the Atlantic Coast Line. The distance from Yemassee to the Florida State Line is 162.5 miles.

Coal issued at Wilcox is obtained from the Alabama fields and is delivered to the Atlantic Coast Line at Montgomery. The distance from Montgomery to the Florida State Line is 221.5 miles.

Our General Superintendent of Motive Power developed that for the tons of coal issued at Palatka there were 22,100 ton miles and for the coal issued at Wilcox 34,333 ton miles over the Coast Line outside of the State of Florida, a total of 56,433 ton miles. Applying to these ton miles five mills per ton mile produces a cost of $282.17. This figure added to the $856.32 listed in the foregoing tabulation produces the total of $1,138.49 shown on Exhibit No. 133 against Account 394.

[fol. 2396] As a matter of fact, this cost is developed on the Third Division of the Atlantic Coast Line and it appears that the General Superintendent of Motive Power might well have charged the five mills per ton mile not only to the Florida State Line, but to the point of connection with the Third Division. On coal moving from West Virginia fields the distance from the State Line to Jacksonville, point of connection with the Third Division, is 36.90 miles; and from the Georgia State Line to High Springs, junction of the Second and Third Division, the distance is 67.95 miles.

As supporting the cost of fuel issued for the operation of these log trains I find that the Atlantic Coast Line Railroad Company, in an effort to reduce the consumption of

fuel on the First, Second and Third Divisions, has had in operation for some years a contest between Divisions. The Third Division operates entirely within the State of Florida, and I find that for the year ended December 31, 1930, the pounds of coal per thousand gross ton miles (excluding locomotives and tenders) were 163. From Exhibit No. 133, in the last column, it will be noted that the gross ton miles were 3,863,451. Multiplying this figure by 163 pounds per thousand gross ton miles produces 629,742 pounds, which divided by 2,000 represents 314.87 tons. The average cost of the 291 tons of coal issued to the log trains, excluding five mills per ton mile over the Atlantic Coast Line to the Florida State Line, is $2.94 per ton. Multiplying 314.87 tons by $2.94 produces $925.72. Based on the average consumption per thousand gross ton miles of the Third Division for the year ended December, 1930, it is considerably in excess of the $856.32 shown as the cost of coal issued to the log trains at Palatka and Wilcox.

If the actual cost of operating a train in a special service is desired the results may be different from the charges to operating expenses, because the charges to operating expenses are the system figures and the service performed by one division of the system for the benefit of another is reflected in the total operations, whereas in determining the actual cost of performing a given service all expenses attributable thereto should be included.

For this reason our General Superintendent of Motive Power believes the figures reported by him, which are embodied in Exhibit No. 133, are correct. Therefore, for the reasons above stated, I am convinced that the entry opposite Account 394 is to a slight extent an under-statement of the figures which might be used.

Yours very truly, (S.) George W. Lamb, General Auditor.

Copy.

[fol. 2397] BEFORE INTERSTATE COMMERCE COMMISSION

No. 18364

GEORGIA PUBLIC SERVICE COMMISSION

v.

ATLANTIC COAST LINE RAILROAD COMPANY

Submitted —. Decided —

On further hearing:

1. Finding in 146 I. C. C. 717 that rates on logs, except walnut, cherry, and cedar, in carloads, from points in north Florida to destinations in Georgia were unreasonable, affirmed. Present rates found not unreasonable.
2. Rates on logs (over six feet in length), except cedar, in carloads, applying on shipments between points on the Atlantic Coast Line Railroad Company in Florida not shown to be unduly prejudicial to shippers and localities in Georgia but found unjustly discriminatory against interstate commerce. Nondiscriminatory basis of rates prescribed.

E. M. Price for complainant.

Frank W. Gwathmey, Carl H. Davis, Robert C. Alston and E. W. Moise for defendant.

Cary D. Landis, Attorney General for the State of Florida, and T. T. Turnbull for Florida Railroad Commission.

H. P. Adair, C. G. Ashby, C. E. Cotterill and August G. Gutheim for Brooks-Scanlon Corporation, Wilson Cypress Company and Cummer Cypress Company; J. V. Norman for Wilson Lumber Company; T. M. True for Southern Cypress Manufacturers' Association; Thomas D. Guthrie and Russell W. Bennett for various crate manufacturers and E. C. Green for Jacksonville Traffic Bureau, interveners.

REPORT ON FURTHER HEARING PROPOSED BY E. J. HOY AND P. S. PEYSER, EXAMINERS

By complaint filed May 3, 1926, complainant alleged that the rates on logs, in carloads, from points in Florida

on defendants' lines to destinations in Georgia on defendants' lines were unjust and unreasonable and that the rates applicable on shipments between points on defendants' lines within the State of Florida were unduly preferential of intrastate shippers in Florida, unduly prejudicial to interstate shippers from Florida to Georgia and unjustly discriminatory against interstate commerce. Lawful rates for the future were sought.

[fol. 2398] After full hearing, at which the Florida Railroad Commission and various interveners were heard, division 4 in the original report herein 146 I. C. C. 717, found that the interstate rates assailed, except those on walnut, cherry and cedar logs, would be unreasonable for the future to the extent that they might exceed a scale of distance rates set forth therein. The division further found that the Florida intrastate rates assailed resulted in undue preference of Florida intrastate shippers, undue prejudice to interstate shippers from Florida to Georgia and in unjust discrimination against interstate commerce, and that said unlawfulness should be removed by the establishment within the State of Florida of the same scale of rates prescribed for interstate application from north Florida [1] to Georgia. The order entered, as subsequently amended, required the establishment of this scale of rates over defendants' lines throughout the entire State of Florida, except on logs less than six feet in length or on walnut, cherry, or cedar logs. Proceedings were instituted to set aside the order in respect to Florida intrastate rates but it was sustained in the District Court, State of Florida v. United States, 31 Fed. (2nd) 580, as an unjust discrimination against interstate commerce. Upon appeal, the Supreme Court of the United States reversed the lower court because the ultimate findings of unjust discrimination and undue prejudice and preference were not supported by appropriate intermediate findings. Florida v. United States, 282 U. S. 194. The order was accordingly set aside in so far as it applied to Florida intrastate rates, and upon petitions of complainant and defendant, the case was reopened for further hearing.

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[1] Described as "that portion of Florida lying north of and including Jacksonville, Gainesville, Burnett's Lake, and High Springs."

[fol. 2399] After the case was reopened, the Wilson Lumber Company, operating a sawmill at Perry, Fla., was permitted to intervene. At the further hearing the intervening Florida log shippers contended that the complaint did not raise the issue of unjust discrimination against interstate commerce, and that complainant had no legal interest in such issue and had submitted no evidence in support of it. Intervener's motion to dismiss was overruled. The issue of unjust discrimination was considered by the Supreme Court and is clearly still in the case; it can be determined only by consideration of all the evidence. See Section 13, paragraph (2) of the Interstate Commerce Act.

Rates Assailed and Comparisons

Rates will be stated in the equivalent of cents per 100 pounds. The present rates on logs, except walnut, cherry, and cedar from north Florida to Georgia are those prescribed in the original report herein, and are shown in Column 5 of Appendix A hereto. The present intrastate rates on logs over six feet in length and other than cedar, applicable over defendant's lines in Florida are shown in Column 1 of the same appendix. In the tariffs, the latter rates are stated in amounts per car of 50,000 pounds, excess in proportion. The history of the rates up to 170 miles, generally referred to as the Cummer scale, was related in considerable detail in the original report. Briefly summarized, the Cummer scale originated in a contract made in 1903 between the Jacksonville & Southwestern Railroad Company and the Cummer Lumber Company, which was then controlled by the same interests; defendant acquired the properties of the former company in 1904, and assumed its obligations under the contract; during the pendency of said contract defendant entered into a similar agreement with the predecessor of intervener Brooks-[fol. 2400] Scanlon Corporation in connection with the transportation of approximately one billion feet of pine from Lafayette and Perry Counties, Fla., to its plant at Eastport, near Jacksonville, Fla., in trainloads; the Florida Railroad Commission refused to permit the establishment of the agreed rates in trainloads, and required that such rates as were established should apply on carloads and be available to all shippers on the Atlantic Coast Line Railroad Company (see Appendix B); said rates became

effective on carloads over all of defendant's Florida lines October 30, 1914, and as modified by subsequent general changes (and extended from 150 to 170 miles), the rates are now in effect. From February 9, 1929, to about April 10, 1931, the scale of rates shown in Column 5 of Appendix A was applied by defendant intrastate in Florida, as the result of the order of division 4 in this proceeding. After that order was set aside, defendant reinstated the Cummer scale.

The Cummer scale applies only to 170 miles; beyond that distance the rates are substantially higher. The rate for 171 miles is 8.33 cents, which is more than twice as high as the rate of 3.7 cents for 170 miles. The former rate would necessarily be higher than any combination of intermediate rates. The rates under the Cummer scale for distances of 5, 110, and 170 miles are 5.03, 3.54, and 3.85 per cent, respectively, of the southern first-class rates for the same distances.

Columns 3 and 4 of Appendix A show the rates applying on logs except cedar, intrastate in Florida on the Seaboard Air Line Railway Company and Georgia Southern and Florida Railway Company. It is to be noted that these scales are approximately twice as high as the Cummer scale.

On the Atlantic Coast Line and Seaboard Air Line commodity rate based on class P, minimum 40,000 pounds, ap- [fol. 2401] ply in Florida on logs not over six feet in length. These are shown in Column 2 of Appendix A. This basis was established to permit the movement of short-length logs which would otherwise go to waste, but which could be used by manufacturers of crates. They usually come from farms and small timber tracts. This scale is lower than the scale applying on full-length logs over the Seaboard Air Line, and is also lower than the scale applying over defendant's lines for distances over 170 miles. It is substantially higher than the Cummer scale for distances of 170 miles and under.

Appendix A also contains typical scales applying on interstate traffic on logs between points in the Southeast and in the Mississippi Valley. The Mississippi Valley lines usually have two kinds of rates applying on logs, namely, rates for local application and net transit rates, the latter applying when a certain proportion of the finished prod-

net is manufactured and reshipped over the lines of the carrier delivering the logs. The net transit or reshipping rates are usually considerably below the local rates.

The interstate scale shown in Column 5 had its origin in the scale prescribed in Pierpont Mfg. Co. v. S. Ry. Co., 50 I. C. C. 81, and now applies interstate generally between points on the Atlantic Coast Line, Seaboard Air Line, and Southern Railway Company, and as net transit rates on the Louisville and Nashville Railroad Company. It will thus be seen that this scale applies on the most important interstate carriers in the Southeast. It will be hereinafter referred to as defendant's interstate scale.

In Docket No. 22548, Farris Hardwood Lumber Co. v. Louisville and Nashville R. R. Co., decided October 8, 1931, not yet reported, division 4 prescribed gross or local rates on logs from numerous origins in the South to destinations in Tennessee, which are considerably higher than defend- [fol. 2402] ant's interstate scale. The single-line scale prescribed in that case is shown in Column 6 of Appendix A.

The net transit scale of the Illinois Central Railroad Company and Mobile and Ohio Railroad Company is typical of such scales applying in the Mississippi Valley, although that applying on the St. Louis-San Francisco Railway Company is somewhat lower. This scale is shown in Column 7 and is considerably lower than the local scales on these lines, which are shown in Columns 8 and 9. It is to be noted that this net transit scale is comparable in level to defendant's interstate scale.

Appendix C contains a comparison of intrastate rates on logs applying over defendant's system. Its interstate scale applies intrastate in Virginia up to 72 miles and in Alabama under the authority of the state railroad commissions. The local rates in Georgia are somewhat higher and the transit rates are somewhat lower than defendant's interstate scale. The intrastate rates in North Carolina and South Carolina are somewhat lower than the interstate scale, but are higher than the Cummer scale. Defendant states that applications are pending before the respective state authorities to permit the establishment of the interstate scale uniformly throughout all of these states, and that approval of these applications has been withheld because of the low intrastate rates in Florida.

Appendix D contains a comparison of the interstate log scale and the Cummer scale with interstate rates on important low-grade commodities applying between Georgia and Florida. The appendix also shows the revenue per car derived from the transportation of these commodities. On these compared commodities practically the same level of rates applies intrastate in north Florida. A traffic test of all commodities moving over defendant's lines for the [fol. 2403] month of May, 1926, reflects the relative revenue importance of these commodities:

Commodity	Per cent of all tonnage	Per cent of all freight revenue	Value per ton
Logs	7.26	2.05	$2.80
Brick—artificial stone	3.30	2.32	
Sand, gravel	26.49	9.16	$.35 to $1.35
Lime—plaster	0.46	0.39	
Cement	2.29	2.05	7.48

Of all low-grade commodities transported, logs were third in importance as to tonnage and ranked with cement as fifth in revenue produced.

The rates on lumber from mill points on defendant's lines on south Georgia are compared with similar rates from Florida mills. These comparisons show that the outbound lumber rates from south Georgia points and Jacksonville to important destinations in trunk-line and New England territories are the same, but that other points in Florida take arbitraries ranging from 1 to 3 cents over Jacksonville. In making these comparisons, it is suggested that the sum of the inbound log rates and outbound lumber rates is disadvantageous to Georgia shippers and therefore preferential of Florida intrastate shippers.

Defendant suggests that the outbound lumber movement is more important to it from a revenue standpoint than the inbound movement of logs, and that when the large pine mills were located at Jacksonville, a substantial part of the lumber movement was by water or over the lines of other carriers, but that with their present location, defendant necessarily receives a greater outbound tonnage.

Florida Lumber Industry

The principal growth of timber in Florida is pine. Cypress is second in importance. There are also certain

[fol. 2404] kinds of hardwoods, such as ash, gum, hickory, and oak. The hardwoods are usually found scattered in the pine or cypress and do not usually amount to more than 5 or 10 per cent of the timber in any particular tract.

United States Department of Agriculture Circular No. 124 dated October 1930, estimates that in 1927 only 12,650,000 acres of virgin pine land remained in the South out of an original total area of 115,000,000 acres. Of this acreage of virgin growth, 5,450,000 acres, or 43 per cent, were in Florida. The amount of fully or partially restocked cut-over lands represented about two-thirds of the total cut-over lands, but the average in Florida was somewhat smaller.

A study prepared by the Southern Pine Association indicates the production of southern yellow pine in 1925 was practically the same as in 1904, while the production of Douglass fir increased almost 200 per cent. The production of Douglass fir is now second only to southern yellow pine. This fir is shipped by water from the Pacific Coast through the Panama Canal to eastern seaboard markets and has become a very strong competitor of southern pine.

Although the total production of southern pine has not decreased, there has been a marked change in the method of production. In 1919, 67 per cent was produced in large mills, while in 1929 only 47 per cent was produced in such mills. The following table shows the amount of production in large and small mills in Florida during the years 1919, 1924, and 1929 (in millions of board feet):

Year	Large or permanent mills	Small or portable mills
1919	1050	388
1924	960	444
1929	685	386

[fol. 2405] The large mill requires a very large supply of available timber, which it usually owns, in order to secure a steady supply of raw material. Its operations are usually continuous until its supply is exhausted. On the other hand, small mills live off of the timber in the immediate vicinity which they seldom own. The extent of their operations depends entirely upon the market prices and they can suspend operations without having to stand substantial overhead losses. Their use is more flexible in that they may be readily moved to a new timber source.

There is evidence to the effect that all of the large tracts of timber in north Florida are now owned by the large Florida mills and that there are none available for Georgia mills. However, there are numerous small tracts which could be used by small mills and the evidence suggests the conclusion that there is a tendency in Florida toward development of small mills, which development would be similar to that which has taken place in other southern states.

The following table contains a study of the lumber traffic in the United States, the southern district, and on defendant's lines for selected years:

Year	United States tons	Southern district tons	Atlantic Coast Line	
			Tons	Revenue
1920	48,617,871	17,708,828	2,665,512	$5,503,389.44
1925	49,015,498	20,311,619	3,751,516	8,092,819.86
1928	42,508,620	17,872,965	3,093,168	6,641,449.38
1929	40,565,975	17,403,907	3,109,401	6,750,434.28
1930	27,584,148	11,395,877	2,211,258	4,711,383.72

This table indicates the substantial decline of the lumber movement in 1930. It also shows that the percentage decline on defendants' lines in that year was less than for the southern district as a whole. The lumber business in Florida during 1929 was reasonably good but 1930 was a very bad year. During 1929 several mills were not operating by reason of the change of location of the mills, fire, and other causes.

[fol. 2406] Movement

During the years 1926 and 1927 the total movement of logs, posts, poles, and cordwood on the Atlantic Coast Line System amounted to 2,196,971 and 2,056,593 tons, respectively. During these same years the Florida movement amounted to 1,214,361 tons and 1,052,927 tons which represented 55.3 per cent and 51.2 per cent, respectively, of the total system movement for each year. The following table contains a brief analysis of the system and Florida log traffic for the years 1928, 1929, and 1930:

	1928	1929	1930
		SYSTEM	
Total Traffic (tons)	20,402,922	18,951,802	16,784,331
Log Traffic (tons)	1,422,874	949,840	667,612
Per cent of total	7.0	5.0	4.0
Total Revenue	$52,019,283	$53,188,639	$46,428,030
Log Revenue	997,139	794,334	615,393
Per cent of total	1.9	1.5	1.3

		FLORIDA	
Total Florida Traffic (tons)	8,622,556	8,547,924	7,660,058
Florida Log Traffic (tons)	814,777	366,420	272,150
Per cent of total	9.4	4.3	3.6
Per cent Florida Log Traffic bears to System Log Traffic	57.3	38.6	40.8

The above analysis reflects the great decline in log traffic over the system and shows that the decline in Florida traffic has been even greater. The table also shows that although the log traffic for the system in 1930 was less than half of that in 1928, the revenue produced by it in 1930 was over 60 per cent of the revenue produced in 1928. This analysis also indicates the comparatively small revenue burden borne by this traffic; for instance, in 1928 the total log traffic amounted to 7 per cent of the tons carried over the system but produced only 1.9 per cent of the revenue.

At the time this complaint was filed, the most important pine mills were located in the vicinity of Jacksonville. They [fol. 2407] were established there many years before in order that outbound lumber might be transported to the principal markets on the eastern seaboard by water. The Brooks-Scanlon Corporation had succeeded to the business of the Carpenter-O'Brien Company at Eastport, and the Putnam Lumber Company was operating the plant of the Cummer Lumber Company at Milldale, Fla. The latter company also owned a cypress mill at Ortega, Fla. All of these points are within a short radius of Jacksonville. They drew their logs from points on defendants' Perry branch about 166 miles west of Jacksonville. The logs moved in trainloads daily from the vicinity of Perry and Carbur, Fla., to Eastport and from Clara and Cross City, Fla., to Milldale.

At the time of the original hearing, there was evidence to to the effect that it was uneconomical for mills to be located so far from the timber and that even the Cummer scale was higher than they could afford to pay. The Putnam Lumber Company indicated its intention to abandon its plants at Milldale and Ortega and to develop a plant at Cross City, in the timber. It actually built a pine and cypress mill at Shamrock, Dixie County, Fla., near Cross City during 1927 and 1928, and acquired a mill at Bond's Mill, Volusia County, Fla., in the midst of its timber. In 1926 it paid to the Atlantic Coast Line $200,014.50 and in 1927, $107,324.38 on account of logs received at its Milldale and Ortega plants.

Shortly after the establishment of the higher intrastate rates in February, 1929, the Brooks-Scanlon Corporation discontinued its shipments to Eastport and began the construction of its plant at Foley, Fla., about 5.5 miles southwest of Perry. The Eastport plant was continued only long enough to complete the sawing of those logs which had already been cut. The Brooks-Scanlon Corporation paid the Atlantic Coast Line the following amounts for trans-[fol. 2408] portation of pine logs to its plant at Eastport: $334,048.47 in 1926; $330,608.29 in 1927; $353,136.00 in 1928; and $50,954.66 in 1929.

While the movement to Jacksonville represented the most important movement of pine logs over defendants' lines, the Cummer Cypress Company had a plant at Lacoochee, Fla., situated between three tracts of cypress and pine owned by that company. Lacoochee is in Pasco County somewhat north of Dade City, Fla. This company also has a hardwood mill at Otter Creek, Levy County, Fla. From January 20, 1926, to May 5, 1928, when the timber became exhausted, there was a regular train-load movement from the holdings of this company in the vicinity of Otter Creek to Lacoochee. This movement yielded defendant gross revenues of $46,506.15 in 1926, $58,011.75 in 1927, and $15,743.50 in 1928. About the time the movement from Otter Creek to Lacoochee commenced, the Wilson Cypress Company began to move cypress logs from its timber in the vicinity of Hines, Dixie County, Fla., to Palatka, Fla. This movement still continues. The Wilson Cypress Company paid the Atlantic Coast Line total freight charges as follows: $71,742.75 in 1926; $93,219.37 in 1927; $109,138.07 in 1928; $83,098.99 in 1929; $205,096.20 in 1930, and $50,386.17 the first five months in 1931. During a considerable part of 1929, this company was not operating because a fire had destroyed part of its plant. Although this company and the other interveners testified that it would be impossible to continue the movement of logs if the Cummer scale were increased, it has actually done so because its principal timber holdings are tributary to the St. Johns River and it considered it uneconomical to move its plant. Its timber holdings in western Florida are sufficient to continue the movement for one and one-half to two years more, and, if the Cummer scale is increased, it suggests several means that may be devised to [fol. 2409] defeat the increased rates, such as obtaining

trackage rights over the Live Oak, Perry & Gulf Railroad Company and Seaboard Air Line, or by arranging with some of the mills in the vicinity of the timber to saw its logs, or by building a small mill in the timber.

In April, 1929, after the establishment of the higher intrastate rates, the Cummer Cypress Company commenced the movement, consisting principally of cypress, from its holdings in Homosassa, Fla., to Lacoochee. This movement lasted until February, 1930. The Cummer Cypress Company paid the Atlantic Coast Line $75,409.30 in 1929 and $2,200.59 in 1930 on these shipments. In January, 1929, it also commenced a movement of hardwood from Homosassa to Otter Creek, which movement likewise ended in February, 1930. The reason for shipping the logs to Otter Creek rather than Lacoochee was because of the lower freight rate. On these shipments to Otter Creek, the Cummer Cypress Company paid the Atlantic Coast Line $11,151.29 in 1929 and $2,355.80 in 1930. In February, 1930, the Cummer Cypress Company completed its logging railroad of approximately 15 miles to the Seaboard Air Lines, over which railroad it has obtained trackage rights. Since that date it has received no shipments over the Atlantic Coast Line except from a few points within a radius of 18 miles of its plant.

The witnesses of the Putnam Lumber Company, Cummer Cypress Company, and Brooks-Scanlon Corporation testified that they appeared at the further hearing in order to submit to this commission such facts as they had in their possession and not because of any interest on their part in the outcome. They testified that they had made adequate arrangements to take care of the movement of their logs without the use of the Atlantic Coast Line, and that the movement over that road would not be restored even if the Cummer scale remains in effect.

[fol. 2410] What has been said as to the movement refers only to trainload movements. There is also a considerable movement of logs in less than trainloads. Hardwood, which is cut as an incident to the logging of cypress or pine timber, usually moves in less than trainloads. The Wilson Lumber Company, which has a hardwood plant at Perry uses a considerable quantity of hardwood cut as an incident to pine and cypress operations in that vicinity.

Defendant submitted a traffic test of all carload shipments of logs more than six feet in length which moved over its lines in Florida from February 9, 1929, to January 31, 1931, during which period the rates prescribed in the original report herein were in effect. This test shows a movement of 18,602 cars producing a total revenue of $571,508.94. If the Cummer scale had applied, it would have produced only $281,225.75. In other words, the applicable rates produced more than twice as much gross revenue as would have been produced by the Cummer scale. The following summary shows all movements consisting of more than 500 cars during this approximately two-year period:

Origins		Destinations	Carloads
Carbur	to	Cross City	593
Hines	to	Cross City	549
Hines	to	Palatka	7,352
Hines	to	Perry	721
Homosassa	to	Lacoochee	2,995
Homosassa	to	Otter Creek	519
Lamont	to	Perry	648
Smaller movements			5,222
Total			18,602

At a later hearing defendant supplemented this evidence by a statement showing the movement of logs for the five months from February 1, 1931, to June 30, 1931. This statement showed a movement of 1,831 cars from Hines to Palatka and no movement of as much as 100 cars between any other two points. In addition to Palatka, the principal destinations were Perry, Loughman, Jacksonville, Cross City, and Lacoochee, Fla.

[fol. 2411] Interveners made a recheck of the movements included in this traffic study in order to determine the difference in the movement during the first and second years of the high rates and the kinds of logs that moved. Excluding the trainload movement from Hines to Palatka, which consisted of 2,140 cars in 1929 and 5,142 cars in 1930, this check indicates that 7,965 cars moved between February 9, 1929, and January 31, 1930, and that 3,204 cars moved between February 1, 1930, and January 31, 1931. During the first year 3,004 cars moved to Lacoochee, while only 225 cars moved during the second year. This great decrease was because the trainload movement from Homosassa to Lacoochee which represented about 93 per cent of the two years movement ended in February 1930, as heretofore stated. During the two years there were 16 points

that received shipments of logs. During the second year but not during the first year, there were shipments to three of these points, Groveland, Loughman, and Slater, and during the first year but not during the second year, there were shipments to five of them, Eastport, Gainesville, Live Oak, York, and Baldwin. The movement to York was discontinued because the pine mill at that point ceased operations.

This analysis of the traffic test disclosed that the shipments, excluding the movement of cypress from Hines to Palatka, were as follows:

Year	Pine	Cypress	Hardwood
First year	1,282	2,890	3,793
Second year	296	1,566	1,342

Cross City received 225 cars of pine and 709 cars of cypress during the second year of the high rate and 2,107 cars of hardwood moved to Perry during the first year and 1,078 cars during the second year. The movement of [fol. 2412] hardwood to Jacksonville decreased from 958 cars during the first year to 211 cars during the second year.

There is evidence that while the higher rates were in effect certain inferior logs were left in the woods because it was not profitable to handle them.

There are cypress mills at Albany and Savannah, Georgia, but they make few shipments to eastern markets. The record indicates that there has been no movement of logs of any kind from Florida to Georgia over defendant's lines since the filing of this complaint.

[fol. 2413] Transportation Service on Florida Log Traffic

As heretofore stated the movement from Hines to Palatka is now the only movement in trainloads. This movement is in train loads of 40 to 45 cars every other day. The actual time consumed in the trip is about 8 hours. However, it requires a day and night to move in the loaded cars and to unload them. The empties move back at night. Practically the only service performed in this movement is the road haul, except that the train passes through Palatka, at which terminal the cars are sometimes weighed.

In connection with this train load movement, special cars are assigned to the Wilson Cypress Company upon which

they place special logging equipment. That company pays for repairs on equipment when the damage is incurred while the cars are on its logging railroads. It also pays 50 per cent of inspection costs.

There are no terminal services involved in the trainload movement from Hines to Palatka but such services are necessary in connection with other shipments of logs. The movement from Hines to Palatka is less expensive than the ordinary carload movement or the movement of a few carloads. Usually logs are handled in local trains. In 1929, defendant handled on the average 31.69 freight cars per train-mile. Approximately 98 per cent of log cars are returned empty.

General Operating and Revenue Statistics

General operating conditions are reflected in large measure by traffic density, which indicates the quantity of traffic that must bear the transportation burden. The following table shows the traffic density on defendant's system as a whole, on its lines in Florida, and on its system excluding Florida:

[fil. 2414] Revenue Ton-Miles per Mile of Road

Year	System	Florida	System excluding Florida
1921	514,955	341,152	618,635
1922	624,700	409,026	754,341
1923	764,228	512,505	915,990
1924	774,029	570,583	897,150
1925	907,958	740,633	1,009,225
1926	963,569	869,411	1,021,610
1927	747,717	570,932	861,713
1928	647,542	442,245	781,682
1929	637,039	400,002	794,395
1930	556,771	369,979	648,395

This table is based upon the number of miles of railroad; if miles of main-line and second main-line track were used as a base, the figures shown would in each case be less. The Florida mileage increased from 37.4 per cent of the system mileage in 1921 to 40.0 per cent in 1930. It appears that the increase in traffic density on the system during 1926 and 1927 followed closely the increase in traffic density

in Florida during those years. A similar study of the traffic density on the Seaboard Air Line, which in 1930 had 40.59 per cent of its mileage in Florida, shows a similar increase in the traffic density in Florida during 1925 and 1926, but the decline in traffic density for the system excluding Florida in the years subsequent to 1926, was not as great on the Seaboard Air Line as on defendant's lines.

In 1927 there were 894.54 miles of railroad in northern Florida[1] that were operated for freight traffic, and 4183.01 in southern Florida. The traffic density of the lines operating in northern Florida was 615,318 revenue ton-miles per mile of railroad as compared with 557,286 revenue ton-miles in southern Florida. The poorer operating conditions in southern Florida have given rise to the general practice of permitting arbitraries for the movement within that territory. See Southern Class Rate Investigation, 100 I. C. C. 513, 128 I. C. C. 567, 603.

[fol. 2415] A witness for the State of Florida submitted an analysis of the Florida traffic by general commodity groups which tends to show that defendant's traffic in 1930 was 140.41 per cent of that in 1921. This increase was largely in the products of mines. There was also a substantial reduction in the tonnage of products of forests. This witness also presented an analysis of the defendant's tonnage for the years 1926 to 1930, inclusive, separated as to interstate and intrastate traffic. This latter analysis indicates that the decline in the interstate traffic of the system as a whole followed closely the decline in defendant's Florida interstate traffic. This evidence was offered in support of his contention that Florida traffic is a very important factor in defendant's interstate business.

Studies of the operating accounts of defendant for the past 10 years indicate that 1921 was a poor year, 1926 was the best year, and that 1930 was a poor year. The following table indicates the extent of the decline since 1926:

	1926	1929	1930
Investment in road and equipment	$270,564,508	$282,918,571	$285,343,512
Total freight operating revenues	68,001,687	53,188,639	46,428,030
Operating ratio (per cent)	72.82	73.83	78.84
Rate of return on investment in road and equipment (per cent)	6.50	4.55	2.54

[1] On and north of the line of the Seaboard Air Line extending from Jacksonville, etc.

The combined income of the Atlantic Coast Line, Seaboard Air Line[1] and Florida East Coast Railway Company,[1] three of the most important lines operating in Florida, would produce a rate of return of 2.2 per cent in 1930 on the combined property investment, exclusive of subsidiary companies.

[fol. 2416] Defendant submitted a study showing that the net railway operating income from the Florida operations of the Atlantic Coast Line produced a return on the investment in road and equipment of 5.83 per cent in 1926, 2.68 per cent in 1929, and 1.27 per cent in 1930. This study has been criticized because revenue was assigned to Florida operations on the basis of mileage. Inasmuch as many rates are determined by the addition of an arbitrary for the haul in southern Florida, it is considered that the method employed does not assign sufficient revenues to Florida operations. There probably is some merit to this criticism. However, it is not believed that this is sufficient to destroy the effect of the study. The conclusion that the return from Florida operations is very low is further supported by an analysis showing that the gross revenue from Florida intrastate traffic in 1930 had decreased 52.88 per cent from that in 1926, as compared with a decrease of 26.38 per cent on intrastate traffic over the system excluding Florida. The criticism referred to above would not be applicable to the method used in computing the revenue from Florida intrastate traffic. The decrease of Florida interstate traffic during the same years was 37.13 per cent as compared with 25.57 per cent for the entire system excluding Florida. The percentage decline of Florida tonnage was even greater than the revenue decline.

Defendant's Cost Study

Defendant, while conceding that it is impossible to determine with absolute accuracy the cost of handling any one commodity, submitted certain studies intended to show that the revenue produced by the Cummer scale is insufficient to pay the cost of transportation. Its third division includes all of its mileage south of Jacksonville; it also has 126.34 miles of track north and west of Jacksonville which

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[1] These railroads are now operating under receiverships.

are included in other divisions. Defendant made a study [fol. 2417] of the out-of-pocket cost of operation of the third division for the year ended June 30, 1929. The accounts included in this study covered purely road-train service. A check and analysis was made of every payroll and voucher affecting the third division and an assignment of expenses to that division was made accordingly. This study showed that the out-of-pocket expenses of the third division amounted to 88.288 cents per 1,000 gross ton-miles as compared with 53.263 cents for the first and second divisions.

The total freight operating expense on the entire system in 1929 amounted to $36,308,813 and the total out-of-pocket cost, $6,920,684. The various accounts comprising freight operating expense were analyzed and certain of them eliminated because they were not considered as materially affecting the cost of handling logs; the total of these accounts was $9,629,744. By subtracting the latter amount from the total freight operating expense, the balance was $26,679,069, which was denominated total haulage expense. The relationship of the system out-of-pocket expense to the total freight expense and total freight haulage expense was determined as 23.549 per cent and 35.027 per cent, respectively, and these figures were used as the basis of expansion to determine the total freight expense and the total freight haulage expense for the third division.

The results of these calculations were used in determining the cost for particular hauls of logs. The actual carload weights and tare weights were used and it was assumed that there was 100 per cent empty haul. The gross ton-miles[1] thus determined for the particular haul were multiplied by the cost per gross ton-mile for the third division and the product was considered as the operating expense for the [fol. 2418] movement. Taxes, other than income, were assigned on the basis of the operating expense thus determined as compared with all operating expenses in the State of Florida. Return on investment at 5.75 per cent was assigned on the basis of total operating expense for the system.

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[1] Some studies were based on loaded-and-empty car-miles. The results of those studies were not substantially different from those based on gross ton-miles.

The result of these calculations as applied to specific movements may be summarized as follows:

Movement	Miles	Revenue on Cummer scale	Purely haulage expense	Haulage expense plus taxes and return	All freight expense	All freight expense plus taxes and return
Average from Feb. 9, 1929 to Jan. 31, 1931	81.36	$15.12	$12.59	$18.75	$18.72	$27.77
Hines to Palatka	119	19.96	19.24	28.54	28.62	41.47
Homosassa to Lacoochee	68	12.44	10.05	14.96	14.96	22.19

Defendant's general auditor testified he considered the true operating cost to be somewhat more than the column called purely haulage expense and something less than that called all freight expense. Based upon these calculations, he testified that he did not consider that the Cummer scale pays for the cost of transportation of the logs.

This cost study is criticised in several respects. Perhaps the most important and outstanding criticism is that the entire study was based upon the average out-of-pocket expense of the third division and not upon the expense for the particular traffic. System averages are deemed unreliable as a measure of the cost of transportation of specific commodities. Very nearly 25 per cent of the traffic moving in this division consists of fruits and vegetables which require special and costly service. The cost of such service enters [fol. 2419] into the average cost of the third division and would apparently tend to make it higher than the actual cost of this log traffic. Reference is made to Nor. Pac. Ry. v. North Dakota, 236 U. S. 585, and Nor. Pacific v. Dept. Public Works, 268 U. S. 39, as supporting the contention that such averages are of no value in determining the cost of transportation of a particular commodity. This contention appears to be well taken. However, at the request of interveners, defendants submitted a detailed statement showing the actual out-of-pocket expense for the movement of all logs from Hines to Palatka during the month of November, 1930. Interveners agreed to accept these figures as typical for this movement. This study shows an out-of-pocket expense of $2,398.55 in connection with the movement of 490 loaded cars of logs. The log movement amounted to 3,734,936 gross ton-miles and the movement other than logs amounted to 128,515 gross ton-miles; the

latter movement represents only 3.3 per cent of the traffic and for practical purposes can be ignored. The out-of-pocket expense for this movement was 62.0834 cents per 1000 gross ton-miles. It is to be noted that this cost is substantially below that for the average of the third division and apparently this particular criticism of the cost study would be satisfied if the above figure is substituted for the division average.

The second criticism of the cost study is that an error was made in first deducting the total out-of-pocket expense from the total freight expense or total freight haulage expense for the purpose of determining the relationship of the total out-of-pocket expense to those items. Upon cross-examination defendant's general auditor admitted this was erroneous. The correct percentages are 19.069 and 25.9405, respectively.

A third criticism of this cost study is that the use of out-of-pocket expenses as a base for assigning maintenance and [fol. 2420] other expenses to this traffic results in an excessive amount for such latter expenses. Probably there was some merit in this criticism because of the use of the third division out-of-pocket expense. If this figure was too high, then it would naturally follow that the assignment of maintenance expense would be excessive. However, the out-of-pocket expense for the log traffic from Hines to Palatka is considerably less than the out-of-pocket expense attributable to the third division, and an assignment of maintenance based on the Hines-to-Palatka movement would be much less than if based on the average figure for the third division, which must be deemed to be very conservative and hardly allowing to defendant the full measure of such cost.

Another criticism of this cost study is that it is based on gross ton-miles and there are numerous expenses that are not properly assignable upon that basis. Such a criticism might be advanced against any general basis that might be used. From the facts of record it would appear that the use of gross ton-miles is as fair a basis as could be used for this traffic.

Further criticisms are made of the method of assigning taxes and the addition of return on investment in the form of interest. In 1929 Florida taxes amounted to $2,115,260.76 (15.4 per cent of all Florida expenses) and corporation income tax for the system amounted to $570,075.77. It

is unnecessary to make a specific assignment of these taxes to this particular traffic, and it will be sufficient if it is borne in mind that this traffic, as well as other traffic, should pay its fair share toward taxes and yield some return upon the investment.

The average loading of the log cars moving from Hines to Palatka during November, 1930, was 32 tons. Based upon this loading, the gross ton-mile cost of .0620834 cents, and the proper expansion percentages, the movement from [Fol. 2421] Hines to Palatka results in a haulage cost of $18.51 and an all-freight expense of $25.18. The revenue per car on this loading is $20.48. In comparing the revenue with the above computations of cost, it must be remembered that they make no allowance for taxes or return on investment and that they are based upon a trainload movement which is admitted to be less costly than a single carload movement. With due allowance for all the criticisms that have been made of this cost study, it appears reasonably clear that the Cummer scale does not yield sufficient revenue to pay the fair proportionate share of the cost of transportation of logs, even in trainloads.

Conclusions

Before proceeding to discuss the merits of the issues in this case, it is necessary to dispose of the contention of the Florida Railroad Commission that the Interstate Commerce Commission can not or ought not to take jurisdiction of this case until after the former has had an opportunity to pass upon the reasonableness of the Florida intrastate rates assailed. The Supreme Court in its opinion definitely disposed of this contention (282 U. S. 209, 210) and stated that such a construction of the law "would be to impose a limitation not required by the terms of the statute and repugnant to the grant of authority."

In disapproving the order issued by division 4, the Supreme Court stated clearly that its action was based upon the absence of appropriate findings and that it was not passing upon the sufficiency of the evidence before the commission. The concluding paragraphs of its opinion are as follows:

The Commission made no findings as to the revenue which had been derived by the carrier from the traffic in question, or which could reasonably be expected under the

increased rates, or that the alteration of the intrastate rates would produce, or was likely to produce, additional income necessary to prevent an undue burden upon the carrier's interstate revenues and to maintain an adequate transportation service.

[fol. 2422] The question is not merely one of the absence of elaboration or of a suitably complete statement of the grounds of the Commission's determination, to the importance of which this Court has recently adverted (The Beaumont, Sour Lake & Western Railway Company v. United States, decided November 24, 1930, 282 U. S. 74), but of the lack of the basic or essential findings required to support the Commission's order. In the absence of such findings, we are not called upon to examine the evidence in order to resolve opposing contentions as to what it shows or to spell out and state such conclusions of fact as it may permit. The Commission is the fact-finding body and the Court examines the evidence not to make findings for the Commission but to ascertain whether its findings are properly supported. If the facts as to intrastate transportation of logs in Florida are such as to justify an order as to intrastate rates in order to end an unjust discrimination as against interstate commerce either as between persons and localities, or because of an undue burden upon the revenues of the carrier, the Interstate Commerce Commission is still at liberty, acting in accordance with the authority conferred by the statute, to make such determinations as the situation may require.

The Supreme Court in this statement did not lay down a new rule of law but only held that the commission had failed to pass upon the issues which were presented and that it was necessary that the ultimate finding of unjust discrimination against interstate commerce be supported by appropriate intermediate findings. However, interveners contend that unless the commission upon this record can make each of the findings suggested in the first paragraph quoted above, it can not make an ultimate finding of unjust discrimination. A study of the entire opinion, and particularly of the two paragraphs quoted above, shows that the Supreme Court's statement as to the absence of certain findings in the report was made as a suggestion of what might have been appropriate findings to support the conclusion. These suggested findings were merely illustra-

tive; there is nothing in the opinion that would warrant the conclusion that such findings, and no other, were essential preliminary findings of fact. Moreover, such an interpretation of this opinion would be contrary to the subsequent decisions of the Supreme Court in Georgia Comm. v. United States, 283 U. S. 765 and Alabama v. United States, [fol. 2423] 283 U. S. 776, in which orders of the commission increasing intrastate rates were upheld although not supported by intermediate findings of the character suggested. See also La. Pub. Service Comm. v. Texas & New Orleans R. R. Co. et al., decided November 23, 1931.

The evidence does not warrant the conclusion that the Florida intrastate rates have caused undue prejudice or disadvantage to Georgia shippers or localities engaged in interstate commerce. The record fails to show any movement of logs from Florida to Georgia during the approximately two year period the interstate and Florida intrastate rates were on the same level, or the likelihood of such a movement, except possibly under a scale as low as the Cummer scale.

There remains for consideration the further question whether the Florida intrastate rates result in unjust discrimination against interstate commerce. The Supreme Court reaffirmed its prior statements that in considering the issue of unjust discrimination against interstate commerce, "the question is that of the relation of rates to income". Undoubtedly the present record shows that defendant's gross revenues from this Florida log traffic after the increase in rates made pursuant to the order of division 4 were not as great as prior to such increase. The revenue that it received from the Cummer Lumber Company alone during the two years prior to the increase in rates was greater than it received from all Florida log traffic during the two years of the increase. The large pine mills at Jacksonville moved to the timber and the testimony is clear that they will not return whether or not the rates are again increased. This traffic is lost forever. However, the testimony of the President of the Putnam Lumber Company also shows that in his opinion it was economically unsound to continue the mills at Jacksonville even under the Cummer [fol. 2424] scale and that company had made plans to move its mills before this proceeding was brought. The loss of this traffic can be ascribed more readily to fundamental

economic changes than to the increase in freight rates, although the increase was probably the last straw that resulted in the moving of the plant of the Cummer Lumber Company from Eastport to Foley. Another reason why it is impracticable to compare the revenue prior to the increase in rates with the revenue thereafter is because of the decline of traffic due to present economic conditions. The tremendous falling off in revenue on the Atlantic Coast Line in 1930 has been already referred to.

While gross revenues are an important consideration, the matter of real importance is the effect of such change in gross revenues upon net operating income. In the language of the Supreme Court in Wisconsin R. R. Comm. v. C., B. & Q. R. R. Co., 257 U. S. 563, 586, did this traffic pay "a fair proportionate share" of maintaining the Atlantic Coast Line, or did it cast an undue burden upon the interstate traffic of this carrier? The record shows the low earnings of this interstate carrier, the low earnings on log traffic as compared with other commodities, and the fact that the earnings from Florida intrastate log traffic are much below those from interstate log traffic. The cost study made in connection with the trainload movement from Hines to Palatka shows that under the most favorable conditions the traffic did not pay its fair proportionate share of operation and maintenance, even without including taxes and return on investment. The conclusion is inescapable that if, in order to hold this traffic, it is necessary for defendant to keep in effect the Cummer scale, then defendant is better off without the traffic. But the record does not indicate that the Cummer scale is necessary to hold the trainload move-[fol. 2425] ment from Hines to Palatka as is indicated by the volume of that movement during the period of higher rates. The record is also clear that there is a considerable amount of other log traffic in Florida which will move under a higher basis of rates and the revenue derived therefrom will necessarily contribute more to the operating income of this interstate carrier than the much greater gross revenue derived from the application of the low Cummer scale upon a larger tonnage.

Consideration of all the facts of record leads to the conclusion that the rate on traffic from Hines to Palatka, in order that this traffic may pay its fair proportionate share of the transportation burden, should not be less than $27.50

per car. The present minimum on this traffic is 50,000 pounds and no sufficient reason appears for changing it. The record also warrants the conclusion that the cost of transporting other Florida intrastate log traffic over defendant's lines is greater than on such traffic from Hines to Palatka. The rates on such other traffic should be somewhat higher than the level of rates from Hines to Palatka.

The commission should find:

(1) That the rates assailed on logs, in carloads, from points in north Florida to destinations in Georgia were unreasonable to the extent they exceeded those prescribed in the report in 146 I. C. C. 717, and that the rates now in effect are not unreasonable.

(2) That the rates assailed on logs, in carloads, between points on the Atlantic Coast Line in Florida have not been shown to be unduly prejudicial to Georgia shippers and localities engaged in interstate commerce in the State of Georgia.

(3) That the rates on logs (over 6 feet in length), except cedar, in carloads, applying on shipments between points [fol. 2426] on the Atlantic Coast Line in Florida are, and for the future will be, unjustly discriminatory against interstate commerce, and that such unjust discrimination can be and should be removed by the establishment of a rate from Hines to Palatka of not less than 5.5 cents per 100 pounds, minimum 50,000 pounds, and by the establishment of rates between all points on the Atlantic Coast Line in Florida not less than the rates shown for such distances in Appendix B hereto, which rates would be reasonable.

An appropriate order should be entered.

(Here follows Appendix A, side folio 2427)

[fol. 2427]

APPENDIX A

Docket No. 18364

Florida Intrastate Log Scales Compared with Various Interstate Scales in the South (reduced to cents per 100 pounds)

	Florida Intrastate Scales				Interstate Scales in the Southeast		Interstate Scales in the Mississippi Valley		
Distance	Column 1 Atlantic Coast Line (other than cedar)	Column 2 A. C. L. & S. A. L. (not over six feet in length)	Column 3 Seaboard Air Line (other than cedar and over six feet long)	Column 4 Georgia Southern & Florida (other than cedar)	Column 5 On A. C. L., S. A. L., Southern and as net transit rates on L. & N.	Column 6 Single-line scale prescribed in Docket No. 22548 to destinations in Tenn.	Column 7 Net transit scale on I. C. and M. & O. (except cedar, cherry and certain foreign woods)	Column 8 Local scale on Illinois Central (except cedar, walnut and cherry)	Column 9 Local scale on Mobile & Ohio (except cedar, walnut, cherry and mahogany)
5 miles and under	1.71	2.14	2.81	1.95	2.5	3.5	2	3.5	4.5
10 miles and over 5	1.71	2.14	2.81	2.40	2.5	3.5	2	3.5	4.5
15 miles and over 10	1.71	2.37	2.81	3.16	3	4	2	4.5	6
20 miles and over 15	1.71	2.37	2.81	3.16	3	4	2.5	5	6
25 miles and over 20	1.71	2.75	3.37	3.66	3.5	4.5	2.5	6	7
30 miles and over 25	1.71	2.75	3.37	3.66	3.5	4.5	2.5	6	7
35 miles and over 30	1.71	2.88	3.94	3.83	4	5	3.5	6.5	7
40 miles and over 35	1.71	2.88	3.94	3.83	4	5	3.5	7	8.5
45 miles and over 40	2.10	3.25	3.94	4.33	4.5	5.5	4	8	8.5
50 miles and over 45	2.10	3.25	3.94	4.33	4.5	5.5	4.5	8.5	8.5
55 miles and over 50	2.10	3.50	4.50	4.60	4.5	6	4.5	8.5	8.5
60 miles and over 55	2.10	3.50	4.50	4.60	5	6	5	8.5	8.5
65 miles and over 60	2.30	3.75	4.50	5.00	5	6.5	5	9	8.5
70 miles and over 65	2.30	3.75	4.50	5.00	5	6.5	5	9	8.5
75 miles and over 70	2.30	4.00	5.06	5.33	5.5	7	6	10.5	8.5
80 miles and over 75	2.30	4.00	5.06	5.33	5.5	7	6	10.5	8.5
85 miles and over 80	2.30	4.25	5.63	5.66	5.5	7	6	10.5	8.5
90 miles and over 85	2.30	4.25	5.63	5.66	6	7.5	6.5	10.5	10.5
95 miles and over 90	2.60	4.50	6.19	6.00	6	7.5	6.5	11	10.5
100 miles and over 95	2.60	4.50	6.19	6.00	6	7.5	6.5	11	10.5
105 miles and over 100	2.80	4.62	6.19	6.16	6.5	8	6.5	11	10.5
110 miles and over 105	2.80	4.62	6.19	6.16	6.5	8	6.5	11	10.5
115 miles and over 110	3.20	5.00	6.19	6.66	6.5	8	6.5	11	10.5
120 miles and over 115	3.20	5.00	6.19	6.66	6.5	8	6.5	11	10.5
125 miles and over 120	3.20	5.13	6.75	....	7	8.5	7	11.5	10.5
130 miles and over 125	3.20	5.13	6.75	....	7	8.5	7	11.5	10.5
135 miles and over 130	3.40	5.13	6.75	....	7	8.5	7	11.5	10.5
140 miles and over 135	3.40	5.13	6.75	....	7	8.5	7	11.5	10.5
145 miles and over 140	3.40	5.50	7.31	....	7.5	9	7	11.5	11.5
150 miles and over 145	3.40	5.50	7.31	....	7.5	9	7	11.5	11.5
155 miles and over 150	3.40	5.75	....	....	7.5	9	7	11.5	11.5
160 miles and over 155	3.40	5.75	....	....	7.5	9	7	11.5	11.5
165 miles and over 160	3.70	6.25	....	....	8	9.5	8	12.5	11.5
170 miles and over 165	3.70	6.25	....	....	8	9.5	8	12.5	11.5
180 miles and over 170	8.33	6.25	....	....	....	9.5	....	....	....
200 miles and over 180	8.33	6.25	....	....	....	10	....	....	....
220 miles and over 200	8.67	6.50	....	....	....	10.5	....	....	....
240 miles and over 220	9.00	6.75	....	....	....	11	....	....	....
260 miles and over 240	9.17	6.87	....	....	....	11.5	....	....	....
280 miles and over 260	9.50	7.12	....	....	....	12	....	....	....
290 miles and over 280	9.67	7.25	....	....	....	12.5	....	....	....
300 miles and over 290	9.83	7.37	....	....	....	12.5	....	....	....

NOTE: Over 170 miles based on Class P rates, minimum 30,000 pounds.

NOTE: On A. C. L. scale does not apply on cedar, cherry, mahogany, or walnut logs.

NOTE: On I. C. does not apply on pine or walnut.

[fol. 2428] APPENDIX B

Docket No. 18364

Letters from the Florida Railroad Commission Having Reference to the Establishment of the Cummer Scale

File #3685

Tallahassee, Oct. 9, 1914.

Railroad Commission State of Florida

Subject: Logs. Rates to Milldale, Fla.

Mr. Jas. Menzies, F. T. M., Atlantic Coast Line R. R., Wilmington, N. C.

DEAR SIR: This office is in receipt of your Freight Tariff No. 3339, effective October 3, 1914, carrying rates on logs, C. L. between stations on the Atlantic Coast Line R. R. up to a distance of 150 miles, which tariff cancels your No. 3282; which carried rates on logs in trainloads of 28 cars.

I am directed by the Commissioners to call your attention to the paragraph in this tariff which reads:

"When two or more cars are shipped from one station in one day by one shipper for delivery to one consignee at one destination these rates will be charged for an average carload weight of 50,000 pounds per car; excess of the average weight of 50,000 pounds per car will be charged for pro rata."

The Commissioners wish to say that they will not approve this tariff with the above paragraph incorporated therein, and will expect that you immediately re-publish the tariff with this paragraph eliminated.

When this is done, Freight Tariff No. 3339 will comply with the ideas of the Commissioners, in that the rates are stated per carload, and that they apply between all stations up to the given distance of 150 miles. The Commissioners wish it distinctly understood that this approval extends only to the method of stating the rates in this tariff and not to the rates themselves, and that in their opinion they are too low.

The rates carried in this tariff are such as might be deemed confiscatory, and there is little doubt in the minds of the Commissioners if they were to order such a scale of rates that your company would contend that they amounted to confiscation and the taking of your property without due process of law.

[fol. 2429] To make such a scale of rates for the movement of logs in this State reduces the power of the Atlantic Coast Line R. R. Company to make other just and reasonable rates to be charged on all classes of freights that the public may be interested in. It also reduces the power of this Commission upon complaint and hearing hereafter to prescribe what might be just and reasonable rates to be charged for other freights when the entire revenues of the Atlantic Coast Line Railroad Company are to be taken into consideration. They amount practically to a discrimination against other classes of freight and all other people engaged in different lines of business.

You will recall that at the conference in Tallahassee on the 14th of July when the matter of withdrawing your log rates to Milldale, Fla., was under discussion the Commissioners advised you that they thought you should supplant the Milldale rates with your present rates on logs as they are being applied to other points in this State, which advice was based on the conviction that your log rates to Milldale were entirely too low.

The Commissioners regret that you have seen fit to publish these extremely low rates. There is no question but that the time will come when these barely remunerative rates will be used as the basis for opposition to the reduction of other rates, where perhaps a reduction might not only be justifiable but necessary, and therefore the Commissioners wish to impress upon you the fact that the low rates carried in your Freight Tariff #3339 were not only not ordered into effect or suggested by them, but were published by you in direct opposition to their advice and suggestions.

Yours very truly, (S.) J. H. Tench, Rate Expert.

[fol. 2430] Railroad Commission, State of Florida

Tallahassee, Fla., August 18, 1915.

Mr. E. C. McLeod, Kendrick, Fla.

DEAR SIR: Replying to your letter of August 17th, with reference to the present rate on logs, carload, applicable

between stations on the Atlantic Coast Line R. R., for a distance of 150 miles and under.

Beg to advise that the Commissioners thoroughly agree with you that this rate is too low. It was not made by the Commission, nor was it put into effect with our approval. On the contrary, it was made effective contrary to the advice and wishes of the Commission. However, in order that you may become familiar with the situation, it will be necessary for me to go into the history of this rate at some length.

In April 1914, it came to the attention of the Commission that the Atlantic Coast Line was operating a special rate on logs in trainload lots from stations on the Newberry district to Milldale, Fla., that were not only much lower than the Commission Class P rates, which were applicable on logs, but they were much lower than any other rates that the Atlantic Coast Line had in effect on logs between points in this state.

To be perfectly frank, in the opinion of the Commissioners, this was a preferential rate, made in the interest of the Cummer Lumber Company, because the timber holdings of the Cummer Lumber Co., largely lay on the Newberry District of the Atlantic Coast Line, and because of the further fact that there was no mill at Milldale except that of the Cummer Lumber Company.

The Commissioners advised the Atlantic Coast Line R. R. Co., that they would have to cancel this tariff or make it applicable between all stations on its line in Florida, and that in any event they would have to cancel the application of the rate to logs in trainload lots, as the Commissioners would not recognize anything above the carload as a rate making unit.

Much to the surprise of the Commissioners, the Atlantic Coast Line corrected the tariff so as to make it applicable between all stations, and open to every one who had as much as one car of logs to ship. As soon as this was done, we advised the Atlantic Coast Line that we did not approve of these rates, and we also asked Counsel for an opinion as to whether we had authority under the law to order the cancellation of a rate on the ground that in our opinion it was too low. We could get no encouragement from

Counsel that the Commissioners possessed such authority under the law.

[fol. 2431] As further information I enclose herewith a copy of a communication that was addressed to Mr. Jas. Menzies, Freight Traffic Manager of the Atlantic Coast Line R. R., just after their decision to publish these rates as open rates on a mileage basis.

Should the railroad at any time made application to the Commissioners to be allowed to cancel this scale of rates, we would unquestionably allow them to be cancelled, but as the matter now stands the move to cancel must be made by the carrier, as the Commission is without authority to order cancellation of a rate because it is too low.

So long as the present conditions prevail it would be to your advantage to locate your mill in Ocala, for the reasons set forth in your letter. The Commissioners regret that this condition exists, and I feel sure that after you read the letter to Mr. Menzies, which is attached hereto, you will be convinced that these rates are in effect, not because of any action of the Commissioners, but in spite of their expressed objection.

The present Class P rates in this state, which apply on lumber logs and wood, were put into effect by the Commissioners after an extended investigation, not only of the lumber industry in this state and adjoining territory, but also of the financial condition of the carriers, and we are convinced that these rates are just and reasonable as applicable to this traffic. If you will compare the rates on lumber in this state with the rates on lumber in Georgia, Alabama, South Carolina, North Carolina, Virginia and Tennessee, you will find that our rates are lower than in any of these states, in which states the conditions are practically the same, except in that in each state mentioned the density of population is greater than it is in Florida.

Yours very truly, (Signed) R. Hudson Burr, Chairman.

[fol. 2432] APPENDIX C

Docket No. 18364

Comparison of Cummer Scale with Intrastate Rates on Logs Between Points on the Atlantic Coast Line Railroad in Virginia, North Carolina, South Carolina, Georgia and Alabama. (Reduced to Cents Per 100 Pounds)

Miles	Cummer scale (except cedar)	Virginia (except cedar, cherry, mahogany and walnut)	North Carolina	South Carolina	Georgia		Alabama
					Transit	Local	
5	1.71	2.5	1.8	2	1.83	3.05	2.5
7	1.71	2.5	1.8	2	1.83	3.05	2.5
10	1.71	2.5	1.8	2	2.11	3.51	2.5
12	1.71	3	1.8	2.5	2.11	3.51	3
15	1.71	3	2.13	2.5	2.11	4.17	3
17	1.71	3	2.13	2.5	2.5	4.17	3
20	1.71	3	2.13	2.5	2.63	4.38	3
22	1.71	3.5	2.13	3	2.63	4.38	3.5
25	1.71	3.5	2.62	3	2.88	4.79	3.5
27	1.71	3.5	2.62	3	2.88	4.79	3.5
30	1.71	3.5	2.62	3	3	5	3.5
32	1.71	4	2.62	3	3	5	4
35	1.71	4	2.88	3	3.25	5.41	4
37	1.71	4	2.88	3	3.25	5.41	4
40	1.71	4	2.88	3	3.38	5.61	4
42	2.1	4.5	2.88	3.5	3.38	5.61	4.5
45	2.1	4.5	2.88	3.5	3.5	5.91	4.5
47	2.1	4.5	3.25	3.5	3.5	5.91	4.5
50	2.1	4.5	3.25	3.5	3.5	5.91	4.5
52	2.1	4.5	3.25	3.5	3.5	5.91	4.5
55	2.1	4.5	3.5	3.5	3.63	6.04	4.5
57	2.1	5	3.5	4	3.63	6.04	5
60	2.1	5	3.5	4	4	6.66	5
62	2.3	5	3.5	4	4	6.66	5
65	2.3	5	4	4	4.13	6.87	5
67	2.3	5	4	4	4.13	6.87	5
70	2.3	5	4	4	4.25	7.08	5
72	2.3	5.5	4	5	4.25	7.08	5.5
75	2.3	...	4.25	5	4.38	7.29	5.5
77	2.3	...	4.25	5	4.38	7.29	5.5
80	2.3	...	4.25	5	4.63	7.71	5.5
82	2.3	...	4.25	5	4.63	7.71	5.5
85	2.3	...	4.62	5	4.75	7.91	5.5
87	2.3	...	4.62	5	4.75	7.91	6
90	2.3	...	4.62	5	4.88	8.12	6
92	2.6	...	4.62	5	4.88	8.12	6
95	2.6	...	5	5	5.13	8.54	6
97	2.6	...	5	5	5.13	8.54	6
100	2.6	...	5	5	5.38	8.96	6
110	2.8	...	5.38	6.5	5.5	9.17	6.5
120	3.2	...	5.63	6.5	5.63	9.34	6.5
130	3.2	...	6.13	7	5.75	9.58	7
140	3.4	...	6.25	7	6	10	7
150	3.4	...	6.75	8	6.25	10.41	7.5
160	3.4	...	7.13	8	6.38	10.62	7.5
170	3.7	...	7.38	8	6.5	10.83	8

[fol. 2433]

APPENDIX D

Comparison of Rates and Car-Revenue Under Rates Assailed On Logs With Important Commodities Moving Between North Florida and Georgia Points On the Atlantic Coast Line

	Rates (in cents per 100 pounds)						Revenue Per Car					
	Logs		Georgia-Florida Interstate				Logs		Georgia-Florida Interstate			
Miles	Interstate	Florida Intrastate	Common Brick	Gravel and Sand	Lime	Cement	Interstate 55,000 lbs.	Florida Intrastate 55,000 lbs.	Brick 66,580 lbs.	Gravel and Sand 92,540 lbs.	Lime 50,000 lbs.	Cement 70,740 lbs.
5	2.5	1.71	3	2.5	2.8	4	$13.75	$9.41	$19.97	$23.14	$14.00	$28.30
10	2.5	1.71	3	2.5	3.6	5	13.75	9.41	19.97	23.14	18.00	35.37
15	3	1.71	3.5	2.75	4	6	16.50	9.41	23.30	25.45	20.00	42.44
20	3	1.71	3.5	2.75	4.4	7	16.50	9.41	23.30	25.45	22.00	49.52
25	3.5	1.71	4	3	4.8	8	19.25	9.41	26.63	27.76	24.00	56.59
30	3.5	1.71	4	3	5.2	8	19.25	9.41	26.63	27.76	26.00	56.59
35	4	1.71	4.5	3.5	5.6	8.5	22.00	9.41	29.96	32.39	28.00	60.13
40	4	1.71	4.5	3.5	6	8.5	22.00	9.41	29.96	32.39	30.00	60.13
45	4.5	2.10	5	4	6.4	9	24.75	11.55	33.29	37.02	32.00	63.67
50	4.5	2.10	5	4	6.8	9	24.75	11.55	33.29	37.02	34.00	63.67
55	4.5	2.10	5	4	7.2	9.5	24.75	11.55	33.29	37.02	36.00	67.20
60	5	2.10	5	4	7.6	9.5	27.50	11.55	33.29	37.02	38.00	67.20
65	5	2.30	5.5	4.5	8	10	27.50	12.65	36.62	41.64	40.00	70.74
70	5	2.30	5.5	4.5	8.4	10	27.50	12.65	36.62	41.64	42.00	70.74
75	5.5	2.30	6	4.5	8.8	10.5	30.25	12.65	39.95	41.64	44.00	74.28
80	5.5	2.30	6	4.5	8.8	10.5	30.25	12.65	39.95	41.64	44.00	74.28
85	5.5	2.30	6.5	5	9.2	11	30.25	12.65	43.28	46.27	46.00	77.81
90	6	2.30	6.5	5	9.2	11	33.00	12.65	43.28	46.27	46.00	77.81
95	6	2.60	6.5	5	9.6	11.5	33.00	14.30	43.28	46.27	48.00	81.35
100	6	2.60	6.5	5	9.6	11.5	33.00	14.30	43.28	46.27	48.00	81.35
110	6.5	2.80	7	5.5	10	12	35.75	15.40	46.61	50.90	50.00	84.89
120	6.5	3.20	7	5.5	10	12	35.75	17.60	46.61	50.90	50.00	84.89
130	7	3.20	7	6	10.4	12.5	38.50	17.60	46.61	55.52	52.00	88.43
140	7	3.40	7	6	10.4	12.5	38.50	18.70	46.61	55.52	52.00	88.43
150	7.5	3.40	7.5	6	10.8	13	41.25	18.70	49.94	55.52	54.00	91.96
160	7.5	3.40	7.5	6.5	10.8	13	41.25	18.70	49.94	60.15	54.00	91.96
170	8	3.70	8	6.5	11.2	13.5	44.00	20.35	53.26	60.15	56.00	95.50

NOTE: Loadings shown are the average for the system in 1925. Average haul for system in May, 1926: logs, 109 miles; brick, 213 miles; sand and gravel, 120 miles; lime, 217 miles; cement, 243 miles.

[fol. 2433a] APPENDIX E

Docket No. 18364

Minimum Rates Prescribed Herein on Florida Intrastate Log Traffic

Distance	Rate[1] cents per 100 pounds
10 miles and under	2.5
20 " " over 10	3
30 " " " 20	3.5
40 " " " 30	4
55 " " " 40	4.5
70 " " " 55	5
85 " " " 70	5.5
100 " " " 85	6
120 " " " 100	6.5
140 " " " 120	7
160 " " " 140	7.5
170 " " " 160	8

[1] Minimum 50,000 pounds.

[fol. 2434] BEFORE INTERSTATE COMMERCE COMMISSION

Fifteen Per Cent Case, 1931. Ex Parte No. 103

In the Matter of Increases in Freight Rates and Charges

ORDER—Dec. 24, 1931

It appearing, That by its reports entered in the above-entitled proceeding, 178 I. C. C. 539, 179 I. C. C. 215, which are hereby referred to and made a part hereof, the Commission authorized certain increases in the rates and charges of railroads within the continental United States;

It is ordered, That all outstanding unexpired orders of the Commission, whether or not effective upon the date of this order, authorizing or prescribing rates and charges which have or have not been published at the date of this order, and all outstanding suspension orders, be, and they are hereby, modified to the extent necessary to permit the

increases herein authorized to be applied to the rates and charges authorized or prescribed in or maintained or held by virtue of said outstanding orders; but that in all other respects said orders shall remain in full force and effect.

It is further ordered, That all tariffs or supplements changing rates now maintained or held by virtue of outstanding orders of this Commission shall bear on their title-page the following:

Rates shown in this supplement (or tariffs supplemented hereby) published under authority of outstanding orders of the Interstate Commerce Commission are increased herein under authority of order of the Interstate Commerce Commission in Docket No. 103 (Ex Parte), dated December 24, 1931.

And it is further ordered, That a copy of this order be served on each carrier party to said orders and that a copy thereof be inserted in the docket in each such proceeding.

By the Commission:

George B. McGinty, Secretary. (Seal.)

[fols. 2435–2495] Report and order of the Commission on further hearing omitted, printed side page 39, ante.

[fol. 2496] Order of Interstate Commerce Commission, on the 28th of July, 1932, omitted, printed side page 100, ante.

[fol. 2497] Before Interstate Commerce Commission

[Title omitted]

No. 18364

Order—Aug. 13, 1932

Upon further consideration of the record in the above-entitled proceeding and of motion filed by Brooks-Scanlon Corporation, Wilson Cypress Company, Cummer Cypress Company, and Wilson Lumber Company of Florida for

postponement to November 15, 1932, of the effective date of the order heretofore entered in said proceeding:

It is ordered, That said motion be, and it is hereby, denied.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 2498] BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 18364

[Title omitted]

MOTION ON BEHALF OF BROOKS-SCANLON CORPORATION, WILSON CYPRESS COMPANY, CUMMER CYPRESS COMPANY, AND WILSON LUMBER COMPANY OF FLORIDA FOR POSTPONEMENT OF EFFECTIVE DATE OF FINAL ORDER OUTSTANDING IN THIS PROCEEDING—Aug. 10, 1932.

Come now, Brooks-Scanlon Corporation, Wilson Cypress Company, Cummer Cypress Company, and Wilson Lumber Company of Florida, Florida log shippers interveners herein, who are referred to in the Commission's report as "the Florida interveners," and respectfully, and for reasons set forth below, move that the effective date of the outstanding order of the Commission, entered herein on July 5, 1932, be postponed to November 15, 1932.

I

The report in this proceeding dated July 5, 1932, is extraordinarily long and involved, and was rendered by the full Commission.

II

The issues in this proceeding are of the greatest importance, involving as they do, the question of conflict between federal and state power.

III

These movants now have in course of preparation and will very shortly file with the Commission a petition for further hearing in and reconsideration of this proceeding.

IV

Because of the season it appears likely that considered action by the full Commission on said petition for further hearing in and reconsideration of the matter may be delayed.

V

In the event that said petition is denied by the Commission these movants propose to assert their legal rights in the Courts; and because of the season difficulty and delay [fols. 2499 & 2500] are anticipated in the convening of the statutory court to which any appeal for relief from the order of the Commission must be presented.

VI

Orderly procedure makes it desirable that the petition for further hearing and reconsideration be passed upon before these movants assert their legal rights in the Courts and unless the effective date is postponed it is improbable that such orderly procedure can be followed.

VII

Under the circumstances the outstanding order of the Commission herein should be postponed until November 15, 1932, and your movants respectfully pray accordingly.

Respectfully submitted, Brooks-Scanlon Corporation, Wilson Cypress Company, Cummer Cypress Company, Wilson Lumber Company of Florida, by H. P. Adair, C. G. Ashby, Atlantic Natl. Bank Bldg., Jacksonville, Florida; C. E. Cotterill, 70 E. 45th St., New York, N. Y.; August G. Gutheim, 712 Jackson Place, Washington, D. C.; J. V. Norman, Inter-Southern Bldg, Louisville, Ky., Attorneys.

[fol. 2501] BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 18,364

[Title omitted]

PETITION ON BEHALF OF BROOKS-SCANLON CORPORATION, WILSON CYPRESS COMPANY, CUMMER-CYPRESS COMPANY, AND WILSON LUMBER COMPANY OF FLORIDA, INTERVENING FLORIDA LOG SHIPPERS, FOR FURTHER HEARING IN, AND RECONSIDERATION OF, THE ABOVE-ENTITLED PROCEEDING—Aug. 17, 1932.

Come now Brooks-Scanlon Corporation, Wilson Cypress Company, Cummer Cypress Company and Wilson Lumber Company of Florida, Florida log shippers, interveners herein, and referred to in the Commission's report as "the Florida interveners," and respectfully petition the Commission to grant a further hearing in and reconsideration of the above-entitled proceeding; and in support of said petition respectfully show:

I

The Commission erred in denying the motion made by the Florida interveners to dismiss the complaint insofar as it alleged that the Cummer scale of Florida intrastate log rates unduly burdens interstate commerce; also in permitting the defendants to introduce evidence on that issue [fol. 2502] when no evidence respecting that issue had been introduced by the complainants.

The report of the Commission (sheet 4) states that:

"At the further hearing the Florida interveners moved that the complaint should be dismissed as to the issue whether the Florida intrastate rates cause unjust discrimination against interstate commerce, if the complaint raises such an issue, which they still question, because of the absence of any legal interest in that issue by complainant and its failure to introduce evidence in support thereof.

This language states the Motion to dismiss too broadly. As shown by Tr. 993, the Motion made was as follows:

"Come now intervening shipper defendants herein, and in the light of the Examiner's ruling declaring that the

undue burden issue is involved in this case by the proceedings of the complainant, respectfully move dismissal of that part of the complaint of the Georgia Public Service Commission, which as thus construed, would allege that the Cummier scale of the Florida intrastate log rates unduly burdens interstate commerce."

The complaint alleged among other things a violation of Section 13. Upon the original hearing the complainant disclaimed any attempt whatever to prove that Florida intrastate rates burdened interstate commerce, and offered no evidence whatever to prove any such burden. At the further hearing complainant declined to state whether or not its position had been changed in this respect, and was supported in its refusal so to declare by ruling of the Examiner. Complainant, however, did not, at the further hearing, offer any evidence whatever, designed to prove [fol. 2503] that the Florida intrastate rates resulted in a revenue burden upon interstate commerce.

The Courts have recognized that violations of Section 13 may be particular, involving unjust discrimination as between persons and localities in interstate commerce on the one hand, and general, in that intrastate rates may lay a revenue burden upon interstate commerce on the other hand. Railroad Commission v. Chicago, B. & Q. R. Co., 257 U. S. 563; Florida v. United States, 282 U. S. 194, 214, 579-580, 584,585; State of Florida v. United States, 31 Fed. (2d) 580, 581-582.

Insofar as the complaint alleged violation of Section 13, therefore, the record is that the complainant upon the first hearing disavowed any intention to make a revenue case; upon the second hearing it declined to state further in that respect, and was upheld in its refusal by the Examiner; but further, upon the second hearing, complainant offered no evidence whatsoever designed to prove that there was a violation of Section 13 by virtue of a revenue burden cast upon interstate commerce by the Florida intrastate log rates. Under such circumstances the motion to dismiss made by the Florida interveners should have been granted and the defendants should not have been permitted to offer any evidence bearing upon the issue of a revenue burden upon interstate commerce, violative of Section 13.

II

The Commission erred in reciting and giving consideration to the history of the establishment and the development of the Cummer scale and to rate comparisons offered to prove that the rates in the Cummer scale are abnormally low.

[fol. 2504] The report (sheet 5) states that—

"The principal issue upon rehearing was whether the Cummer scale causes unjust discrimination against interstate commerce and that issue will now be considered."

At the conclusion of the report (sheet 50) the Commission states—

"Inasmuch as we find that the Cummer scale rates cause unjust discrimination against interstate commerce from a revenue standpoint and our order herein removes that discrimination by increasing those rates on defendant's lines throughout the State of Florida to the level of the interstate rates previously prescribed and now in effect, no finding in reference to undue prejudice against persons and localities in interstate commerce is necessary and we make no finding in that regard."

Thus the Commission here recognizes the distinction between violations of Section 13 occasioned by unjust discrimination against persons and localities in interstate commerce and those occasioned by a revenue burden cast upon interstate commerce by intrastate rates. As to the first of these, the Commission makes no finding whatever; it therefore grounds its decision entirely upon the issue of unjust discrimination against, occasioned by a revenue burden upon, interstate commerce. As shown under Item I of this petition, the complaint should have been dismissed in that respect, as complainant first disavowed and then offered no evidence whatever pertaining to a violation of Section 13 occasioned by a revenue burden upon interstate commerce.

[fol. 2505] In this very proceeding the Supreme Court has held that—

"In dealing with unjust discrimination as between persons and localities in relation to interstate commerce, the question is one of *the relation of rates to each other*. In considering the authority of the Commission to enter the

State field and to change a scale of intrastate rates in the interest of the carrier's revenue, the question is that of *the relation of rates to income*. *Florida* v. *United States*, *supra*, p. 214. (Italics ours.)

In other words, the opinion of the Court is that in order to prove a revenue burden upon interstate commerce, it is necessary to consider the relation of rates to the income which such rates produce. This, moreover, means the net income which the rates produce. For the Court further says on the same page—

"The raising of rates does not necessarily increase revenue. It may in particular localities reduce revenue instead of increasing it by discouraging patronage."

In this report the Commission commences (sheet 5) by recognizing that the principal issue is that of unjust discrimination against interstate commerce. It concludes (sheet 50) with a disavowal of any finding or intent to find unjust discrimination against persons and localities in interstate commerce. It erred, therefore, in reciting or giving any consideration whatever to such evidence as rate history and rate comparisons. Evidence of that character does not prove a revenue burden upon interstate commerce, and the Supreme Court, it may be noted, has further said in this very case that—

[fol. 2506] "The Commission has no general authority to regulate intrastate rates and the mere existence of a disparity between particular rates on intrastate and interstate traffic does not warrant the Commission in prescribing intrastate rates." Florida v. United States, supra, p. 212.

This rule of law, it may be noted, the Commission itself observed in another case involving Florida intrastate rates, where, although disparity did exist between such rates (on fertilizer) and interstate rates, it expressly refrained from placing the intrastate rates on a level uniform with the interstate rates. Rates on Fertilizer Materials within State of Florida, 151 I. C. C. 692.

III

The Commission erred in giving consideration to the system revenue return and to the relation of log traffic

and log revenue to total traffic and total revenue, and in relying upon such evidence in fixing rates for the future upon a limited class of traffic moving in a restricted territory. It has been elementary for many years that a carrier cannot claim the right to earn a uniform profit from every mile, from every section, or from every other part into which its property might be divided, or upon each individual unit of service which it performs.

The mere fact that the rate of return of the carrier's system net railway operating income declined from 6.11 per cent in 1926 to 2.37 per cent in 1930 (sheet 14) constitutes no reason why rates on logs for hauls up to 170 miles in the State of Florida should be increased, and this is so regardless of whether or not such decline in the rate of return might justify a general adjustment of the carrier's entire rate structure. Individual rates on restricted lines of traffic are not proved unreasonably low by any [fol. 2507] such evidence; indeed, Section 15a (2) seems to so recognize in the proviso that—

"The Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to prescribe different rates for different sections of the country."

We refer in this same connection to the discussion of Commissioner Woodlock based upon the foregoing statutory proviso as elaborated by the Supreme Court in Dayton-Goose Creek R Co. v. United States, 263 U. S. 456,—See Dutton Lumber Co. v. New York, N. H. & H. R. Co., 151 I. C. C. 391, 406.

Nor does it justify the Commission, in increasing rates on logs in Florida, to show (sheet 15) that in 1928—

"The system log tonnage constituted 7 per cent of the total system tonnage, whereas the revenue from the log tonnage was only 1.9 per cent of the total revenue."

This might very naturally result from the characteristics of the tonnage handled, or from variations in the length of the haul. But to order the rates on logs within Florida increased because of the facts so recited is tantamount to ordering the increase in the rates on logs for hauls up to 170 miles within Florida (a very low grade of traffic) because the revenue per ton mile on such traffic is less than

the average revenue per ton mile on all traffic on the entire system. In this connection, and with particular reference to the subject of traffic density, it may be observed that the total traffic of the Atlantic Coast Line system is shown by the tabulation on sheet 15 to have declined 18 [fol. 2508] per cent in 1930 as compared with 1928; the decline in Florida was but 12 per cent.

These petitioners deny that the defendant's evidence "showing all shipments for the kinds of logs here in question which moved over its lines intrastate in Florida during the period from February 8, 1929 to January 31, 1931," (being Perrin Ex. 61) is of much assistance in the determination of the effect of increased intrastate log rates in Florida on the revenues of the defendant. (See sheets 15, 16.) The value of this evidence was greatly minimized, if; indeed, it did not become entirely valueless, because of the failure of the defendant to present a similar statement of such shipments in the immediately preceding like period when the Cummer scale of rates was in effect. This data, although peculiarly in the possession of the defendant, it failed to produce, and the Commission failed to require its presentation. We refer in this connection to our Brief, pp. 14-15, 25, and 38.

The consequence is that the record herein, voluminous as it is, contains no complete and dependable comparison of the actual movement of logs intrastate within Florida, and the revenues upon that traffic, first, upon the Cummer scale, and second, upon the Commission-made scale. As a result, the Commission is throughout the report forced to rely upon deduction, estimate, and conjecture where mathematical certainty is desirable and possible. (See Report, sheets 15, 22, 23.) The Commission should upon the further hearing, grant the request of the Florida interveners and require the Atlantic Coast Line, alone in possession of such data, to produce it.

IV

The Commission erred in giving consideration to the influence which the maintenance of the Cummer scale of [fol. 2509] rates in Florida might have upon the maintenance of other rates on logs.

This record definitely shows that the intrastate rates on logs on the Atlantic Coast Line varied in the different

states in which it operates. (See our Brief, p. 9.) There was no evidence by any witness called to speak on the subject which proved or tended to prove that the conditions of intrastate log transportation in the various states through which the defendant's line operates, are substantially similar, and this statement is made despite the language of the report (sheets 48 and 49) that "the circumstances and conditions surrounding the transportation of these logs intrastate in Florida are not on the whole as favorable as the circumstances and conditions surrounding the interstate movement of logs over defendant's lines." It does, on the other hand, appear that the movement of logs in Florida vastly exceeds the volume of any other intrastate log movement on the Atlantic Coast Line system, and further, that as conducted on the Cummer scale, it was largely a trainload movement, highly economical in character.

The Supreme Court in this very proceeding has stated it to be the law that—

"The Commission has no general authority to regulate intrastate rates and the mere existence of a disparity between particular rates on intrastate and interstate traffic does not warrant the Commission in prescribing intrastate rates." Florida v. United States, supra, p. 212.

A fortiori, disparities between the Florida intrastate rates on logs and other intrastate rates does not confer upon the Interstate Commerce Commission authority to [fol. 2510] regulate the intrastate rates on logs in Florida. The law does not require uniformity of rates.

V

The Commission has erred in its conclusions that—

"It is clear that the decline in the Florida log movement cannot be ascribed wholly to the rate advance. Part of the decline has no doubt been due to that cause but a large part has been due to the change from mill locations uneconomical because too far from the timber and cessation of movements because of exhaustion of timber." (Sheet 22.)

"While there has been a substantial decline in the Florida log traffic, there have also been declines in other traffic, and the same forces that operated to cause a decline in

other traffic were also no doubt responsible for much of the decline in the Florida log traffic." (Sheet 23.)

The language thus excerpted seems to indicate a view on the part of the Commission that general depression has caused the greater part of the decline of the log traffic which followed the application of its own higher rates, and that those rates were responsible for only a relatively smaller part of the decline. The facts of record are to the contrary. See Brief, pp. 44-46.

The sole reason for the removal of the Putnam Lumber Company, the Cummer Lumber Company, and the Brooks-Scanlon mills from suburban Jacksonville to the timber was the rate increase prescribed by this Commission. In the case of the Putnam Company, the agitation of the rate question resulted in the disruption of the all but completed negotiations for the sale of their Jacksonville suburban properties to the Denkmann interests, who intended [fol. 2511] to continue the operation there, the fact being that no assurance could be had from the defendant Atlantic Coast Line Railroad Company as to log rates for the future. Cummer followed suit. (Brief, pp. 27-28.) The action of the Brooks-Scanlon Corporation in abandoning its Eastport mill location and going to the timber was also the direct result of the institution of the higher intrastate rates on logs prescribed by the Interstate Commerce Commission. Many years of prosperous life were ahead for these suburban Jacksonville plants and hundreds of thousands of dollars were lost directly and more hundreds of thousands of dollars were lost indirectly because of the necessity of the removal of the mills. (See Brief, pp. 29-30.)

While it is true that the movement of the Wilson Cypress Company's logs from Hines to Palatka continued, the circumstances in its case are unique. It chose to continue operation of the mill at Palatka in reliance upon a favorable outcome of this litigation, and it is now before the United States District Court for the Northern District of Georgia endeavoring to obtain restitution of large sums unlawfully exacted from it by the Atlantic Coast Line in pursuance to the unlawful orders of this Commission which the District Court erroneously failed to enjoin. (See Report, sheet 16.)

Furthermore, the higher rates which were so maintained in effect in 1929 and 1930 and part of 1931, resulted in much timber being uncut and left standing in the woods, permanently wasted, because it could not stand so high a freight rate. (See our Brief, pp. 32-35.)

It is true that it is uneconomical for mills to be newly located far from the timber but the Putnam, Cummer, Brooks-Scanlon, and Wilson Cypress mills had long been located far from the timber in reliance upon the mainte-[fol. 2512] nance of rates that permitted such operation. Being so located it would have been entirely economical to continue operations in such location and thereby to continue to contribute to the revenues of the Atlantic Coast Line for a considerable volume of log tonnage.

It is impossible on the state of the record to make an accurate comparison of the log revenues of the Atlantic Coast Line resulting from transportation upon the Cummer scale and upon the scale prescribed by this Commission for the same hauls. This is due to the fact that the carrier, although it made a detailed presentation of both tonnage and revenues during the two years the higher rates were in effect, made no comparative presentation of the tonnage and revenues for the two preceding years under the carrier's voluntarily maintained Cummer scale; and moreover, this Commission declined to require the carrier to make such a comparison available although the facts were peculiarly within its possession and not available to the Florida intervenors. (See Paragraph III, supra.)

However, it does definitely appear that whereas under the Cummer scale, and before any of these mills were forced to move to the timber, the Florida log revenues resulting from trainload movements only on the Cummer scale, amounted to $652,311.87 in the calendar year 1926; under the much higher rates prescribed by this Commission the total Florida log revenues both for trainload and individual carload movements aggregated only $275,370.95 in the year February 1, 1930 to January 31, 1931.

Moreover, in this latter year the individual carload movements of logs numbered but 3,204. The balance of the traffic was the trainload movement of the Wilson Cypress

Company from Hines to Palatka, which alone produced slightly in excess of $200,000 of gross revenue. This was [fol. 2513] a movement, which as already said, continued only in reliance upon a favorable outcome of this litigation, and at any rate, the remaining timber of the Wilson Cypress Company, located in the vicinity of Hines, would all be transported under normal conditions in about 18 months. In other words, that traffic is also lost for the future. (See our Brief, pp. 32, 39.)

It is true, as the report (sheet 21) says, that representatives of the Putnam Lumber Company, Brooks-Scanlon Corporation, and the Cummer Cypress Company "testified at the further hearing that they would not resume the shipment of their logs over defendant's lines even if the Cummer scale remained in effect." Quite obviously, although the report does not so state, they could hardly be expected to continue to ship to mills which had been dismantled because of the high rates prescribed by this Commission. They had been forced to relocate the mills in the timber at a cost to them of several millions of dollars; they could hardly be expected thereafter to ship from the woods to their former locations for the benefit of the defendant Atlantic Coast Line Railroad Company.

The fact is that whereas before this litigation started, the Atlantic Coast Line earned on its trainload log traffic under the Cummer scale in Florida $652,311.87 of gross revenues in the year 1926, its earnings on the total trainload and carload traffic, which is all the log traffic now left to it in Florida, even under the greatly increased rates prescribed by this Commission and effective during the period from February 1, 1930 to January 31, 1931, produced only $275,370.95 of gross revenue, and this is much more than the maximum that the Atlantic Coast Line may look for under the same level of rates in the future, for of that sum more than $200,000 was produced by the train- [fol. 2514] load movement from Hines to Palatka, which in any event must terminate shortly.

The assertion of the defendant that the relocation of mills from the vicinity of Jacksonville to Foley and Cross City has had a favorable effect upon its revenues (sheets 19-20) is entirely without basis of fact. The computations made by the defendant, and relied upon by the Commission in this respect, all overlook the essential fact that 350

pounds of logs, approximately, are necessary to produce 100 pounds of lumber. When the logs were milled at Jacksonville it was necessary to transport 350 pounds of logs to Jacksonville in order to produce 100 pounds of lumber at Jacksonville. To use the illustration recited in the report, therefore, it would be necessary, in order to produce 52,000 pounds of lumber in Jacksonville, to move 182,000 pounds of logs to Jacksonville. This would be the equivalent of just about three of the average carloads of 60,200 pounds of logs referred to by the Commission, and on the basis of an average revenue of $20.47 per car of logs, the average gross revenue earned by the Atlantic Coast Line would be $61.41. Compared with this their earnings on the carload of 52,000 pounds of lumber from Foley to Jacksonville would be but $47.53 and from Cross City to Jacksonville but $43.33.

If, to carry the illustration farther, the lumber instead of moving to Jacksonville, moved in either instance to northern markets, the revenue on the lumber from the mill in the timber would be 1 cent per hundred pounds greater on the lumber than from the mill at Jacksonville. In other words, the additional revenue on lumber from the mill in the woods would be $5.20 per car. To earn this as an incident of the location of the mill in the woods, the Atlantic Coast Line in the illustration given above, has contempo- [fol. 2515] raneously lost $61.41 of gross revenues from log transportation.

VI

The Commission has erred in its conclusion with respect to future log traffic in Florida, that (sheet 29):

"In view of the vast quantity of timber in Florida tributary to defendant's lines, the large number of mills located on defendant's lines at widely scattered points in Florida, and the probability of the establishment of new mills, large and small, we entertain no doubt that the log traffic will increase well above the present volume when economic conditions change for the better."

If this conclusion of the Commission merely contemplates that some time in the future there will be a movement of logs on the Atlantic Coast Line somewhat greater than the movement to just three destinations in Florida—

which was all the Florida log traffic enjoyed by the Coast Line at the time the hearings closed—there may be some justification for the Commission's statement. But we assume that the Commission has something more in mind.

The report states (sheet 25) that—

"The record affords no accurate basis of determining how much of the standing timber in Florida is tributary to the Atlantic Coast Line."

That is exactly the state of the record. The conclusion which the Commission has reached on this subject is one that is based entirely upon incorrect mathematics and an unwarranted assumption on the part of the defendant, all directly contrary to the very definite testimony of the Flor- [fol. 2516] ida interveners with respect to this subject. All of these Florida intervener witnesses who testified on this subject were men actively engaged in the lumber business in Florida, and informed by virtue of long years of experience in the industry and acquaintance with actual conditions, to speak with authority on the matter.

It is first to be observed that the figures published by the U. S. Department of Agriculture and showing standing pine timber in Florida (sheets 23-24) are figures for the entire state; they are not figures of pine timber "now reasonably adjacent to railroad," as to which there may be noted the statement of the defendant's traffic manager, quoted on sheet 25 of the Commission's report herein.

Furthermore these government figures for the entire state include that vast area of western Florida, principally beyond the Appalachicola River, which is not at all tributary to the Atlantic Coast Line. It is not the fact that the main and branch lines of the carrier form a network which virtually covers the state except the extreme southeastern portion. See the map, Pettijohn Ex. No. 100.

Such being the circumstances, the Freight Traffic Manager of the Atlantic Coast Line was entirely unwarranted in assuming (sheet 25) that in the future the Coast Line will transport 40 per cent of the logs to be produced in Florida from timber now standing, i. e., approximately 9 billion feet. This 9 billion feet results merely from the application of 40 per cent to the departmental figures showing standing pine timber for all Florida.

Again, the Freight Traffic Manager of the Coast Line, was entirely unwarranted in assuming that the average haul of logs in the future would be 81 miles. That figure [fol. 2517] he deduced from the haul of the log traffic on his railroad in Florida in the two years, approximately, 1929-1930, shown on his Ex. 61. He neglected to observe that more than half of the business shown on that exhibit is made up of long haul log movements which either have been wholly discontinued, or if continued, have continued in reliance upon a favorable outcome of this litigation, and which will not, in any circumstances, be business enjoyed by the Coast Line in the future. When such movements—that from Hines to Palatka, that from Homosassa to Lacoochee, and the various movements to Eastport are eliminated from the Coast Line's Florida log traffic of 1929 and 1930—the average haul instead of being 81 miles, would be less than 50 miles.

Again, there was an unwarranted assumption on the part of the defendant's Freight Traffic Manager that the same transportation would be performed at the rates prescribed by the Interstate Commerce Commission, for the record definitely shows that that transportation will never be performed at the rates so prescribed by this Commission. The bulk of the transportation on the Cummer scale, as already shown, was in the trainload movements, which have been discontinued and which will never again be necessary because the mills have been forced into the timber by these very high rates prescribed by the Commission. Furthermore, the Commission recognizes that in the construction of mills in these times, it is uneconomic to locate except in the timber. This being so, log hauls for the future will necessarily be at a minimum. The Hines to Palatka movement, it is to be remembered, has been continued only in the hope of a favorable outcome of this litigation, and at any rate, would under normal conditions be finished in about 18 months, as the Commission finds (sheet 26).

[fol. 2518] Along this line it may be observed that the Georgia lumbermen who appeared on behalf of complainant at the original hearings but did not appear at the rehearing, were a unit in stating that the ordinary maximum haul of log traffic would not exceed thirty miles.

The rate prescribed herein by the Commission for hauls of 30 miles is 3.5 cents per hundred pounds—just about

the equivalent of the maximum rate of 3.7 per hundred ponds on the Cummer scale. In North Carolina, where there was formerly a trainload movement of logs on the Coast Line, the average haul was very short, running about 20-25 miles. That particular North Carolina shipper has arranged for the transportation of his logs by water, because of the Coast Line's high rate by rail in North Carolina. (See Brief, p. 12.)

While it is true that as stated (sheet 27) the defendant showed movements to some 17 destinations during the five months' period, February-June, 1931, the witness who offered this evidence on behalf of the Coast Line (Perrin, Ex. 128) admitted that in submitting those figures he did not intend to contradict the previous testimony of his Superintendent of Transportation Langley that at the time of that very hearing the only intrastate movement of logs in Florida was restricted to just three destinations. (See our Brief, pp. 37-38.) It cannot be forgotten that the rates changed during this five months period; the Commission-made high rates were effective until April 10, 1931, but thereafter the Cummer scale applied. Most certainly, therefore, the movement from April 10 to June 30 is no criterion of a future movement at a rate level twice as high. And observe that of the 2,765 cars said to have been moved in that five months period to 17 destinations, more than two-thirds moved in trainloads from Hines to Palatka—[fol. 2519] the same movement hereinbefore several times referred to.

The further fact is that about the only log traffic left in Florida outside of the Hines to Palatka movement, is incidental hardwood traffic, for the pine traffic has been demolished by the high rates fixed by this Commission. It is this incidental hardwood traffic which in future years must be relied upon to produce log revenues for the Coast Line. In view of the few hundred carloads transported in the latest period of which record was made,—February-June, 1931, the Florida interveners confidently assert that never in the future will the Atlantic Coast Line approach in gross revenues from Florida intrastate log traffic even a small part of the $652,311.87 of gross revenues earned from trainload movements on the Cummer scale in the year 1926, before this litigation commenced.

VII

The Commission erred in giving any consideration whatsoever to the defendant's general studies of costs of log transportation in Florida, discussed in the report at sheets 30-36.

As the Commission finally agrees (sheet 39) these general cost studies are no more than what these intervenors showed them to be, and what defendant finally admitted them to be,—mere system averages of total costs based upon an expansion of a system average out-of-pocket cost. (See our Brief, pp. 59 et seq.).

It is a fair criticism of these cost studies to say that they were merely introduced by way of incidental support of a preconceived determination to prove that the cost of transportation of logs in Florida exceeded the revenue from such transportation upon the Cummer scale. [fol. 2520] The studies being based upon the average cost of handling all traffic in the State of Florida, there is necessarily included in that average and assessed against the transportation of logs, the average cost of handling all freight in Florida, including the very expensive traffic in fruits and vegetables which constitutes about 25 per cent of the total tonnage handled on the Atlantic Coast Line in that state. This is originated tonnage and necessarily its transportation involves one terminal handling cost in Florida.

Moreover, the traffic on the Atlantic Coast Line in Florida almost without exception, regardless of the commodity handled, is a traffic which involves at least one terminal service in that state. All such factors tend to inflate the average cost of handling traffic in the State of Florida, and it is nothing short of preposterous to argue that such an average cost is in any way indicative of the actual cost of transporting logs in Florida, or within the range of any average maximum and minimum cost of transporting logs in Florida.

One of the arbitrary assumptions indulged in by the author of these general cost studies is that respecting the empty return movement of cars loaded with logs. He assumes that every such car invariably returns empty from the unloading point back to the loading point, and he charges the cost of such empty haul against the revenue from the load of logs. The record does to be sure, admit

the usual empty return of the specially equipped log cars handled in trainloads. But that business is practically ended—demolished by this Commission's own rates. The record does not show that the return movement of other cars handling logs is 100 per cent empty.

This unwarranted assumption results in an error of great magnitude. As is shown by Lamb's general cost [fol. 2521] studies, Exs. 86-99, the tons assumed to be handled in empty return movement average 16½ per car; this is almost 30 per cent of the gross weight of car and contents assumed to be hauled in transportation both ways, going and returning, and compensated for solely by the revenue on logs, on the Cummer scale.

It is apparent that this error is the more applicable if the future log traffic consists of scattered carloads, rather than trainloads, whereas the Commission has found herein that the costs in connection with the trainload movement are undoubtedly less than the cost in single carload lots. (See Report, Sheet 39.)

Furthermore, as the report notes on sheets 32 and 33, exhibits of record were erroneous in the use of the expansion ratio by which the out-of-pocket average costs were expanded to total costs. The erroneous exhibit of record were the defendant's exhibits. The fact is that the defendant first produced correct exhibits, next withdrew them and produced erroneous exhibits, and finally agreed that the first exhibits were correct, and the second exhibits were wrong. But nevertheless, the conclusion which defendant's witness drew from these exhibits was stated and adhered to with respect to the erroneous exhibits as well as to the correct exhibits. This, these interveners insist, is certain indication that, as already said, the exhibits were merely introduced as incidental support of a preconceived notion and contention. We refer in this respect to our Brief at pp. 51-58.

With reference to the contention of the defendant with respect to what is shown by these general cost studies, the report says (referring to the witness through whom they were introduced—sheet 35) that, "based on *his survey of the application of the Cummer scale* of rates and from his experience as an accountant, he expressed the [fol. 2522] opinion that the Cummer scale does not afford a revenue which is equal to the cost of doing the business covered thereby * * *." (Italics ours.)

This is indeed charitable language. The fact is that this particular witness who thrice changed his testimony with respect to the mathematics of his cost studies, but who adhered nevertheless to the same conclusion as respects all of them, whether right or wrong, knew nothing whatever of the transportation of logs on the Cummer scale and indeed, knew little of transportation conditions on the Atlantic Coast Line in Florida. He had, for instance, never made any particular investigation of the highly perishable fruit and vegetable traffic; he had made no investigation of the conditions under which it was transported; he did not know if its handling cost was higher than the average of all freight; he knew little about its volume. Nevertheless, with respect to the conclusions which he drew from his cost calculations, right or wrong, he testified—

"I base my statement on the facts I have developed and my general knowledge of cost accounting."

Not upon any "survey" in Florida, it will be noted.

The Commission, these interveners respectfully submit, should attach no weight to such cost studies. It should not have recited them in the report, nor have given them any consideration whatsoever.

VIII

The Commission erred in giving any consideration whatever to the defendant's showing of the actual out-of-pocket expenses for the movement of logs from Hines to Palatka [fol. 2523] during the month of November, 1930, set forth in the report at sheets 36-39.

These interveners note again (see our Exceptions to Proposed Report herein of the Examiners, p. 12) that the Commission states with respect to this Hines to Palatka cost study for November, 1930, that it was "agreed to be typical of the year 1930." These interveners reiterate most emphatically that they did not agree to accept the figures contained in Ex. 133, setting forth this cost study, as "typical." Tr. 1539-1540 leaves no room to contend the contrary. At that point in the record the statistician of the Florida Railroad Commission stated—

"We do not admit the accuracy of all the figures in accepting this in lieu of what is demanded."

To which the presiding Examiner then rejoined—

"No one admits the accuracy of figures in some one else's exhibit."

It is to be observed that this Hines to Palatka out-of-pocket cost study was introduced in the closing moments of the final hearing in this proceeding and by a witness who merely submitted information which he stated was furnished to him by other parties. (Tr. 1538-1539.) His attention was immediately directed to the fact that comparison with other statistics which he had submitted indicated that the amount charged for locomotive fuel coal on these log trains was very much higher than on the Third District as a whole. This discrepancy the witness was unable to explain (Tr. 1540-1541). His subsequent explanation by letter was totally inadequate.

The note to the report at sheet 16 states that suits for restitution for the recovery of all amounts paid in excess [fol. 2524] of the Cummer scale rates during the period when the unlawful higher rates prescribed by this Commission were effective, are now pending. These suits are pending in the United States District Court for the Northern District of Georgia, Atlanta Division. As a part of its defense to such suits the Atlantic Coast Line offered before the Master to whom the question has been submitted, this same Hines to Palatka out-of-pocket cost study, Ex. No. 133 in this proceeding, and through the same witness. In the proceeding before the Master there devolved upon the carrier a duty unfortunately not required of it before this Commission—to prove that exhibit with some reasonable regard to the Rules of Evidence. It then appeared that in calculating the cost of locomotive fuel expended in the Hines to Palatka movement an average price per ton was used made up of the f. o. b. mine price, foreign railroad freight charges from mine to junction with the Coast Line, and 5 mills per ton per mile for transportation of such coal on the rails of the Atlantic Coast Line to the Florida destination.

For the inclusion of this last item,—an arbitrary charge for transportation of fuel coal on the rails of the consuming carrier,—there is no warrant whatever in the classification of operating expenses prescribed by this Commission. There is, indeed, express prohibition against the inclusion of such charges. It further appeared in the

evidence before the Master that no such charge is ordinarily made to operating expenses on the Atlantic Coast Line Railroad, and also that the charge was included in this particular cost study upon the instructions of witness Lamb, who was unable to explain the discrepancy when present in person, as a witness, and who, it may be observed, being Auditor of the Atlantic Coast Line, should [fol. 2525] certainly be acquainted with the requirements of this Commission's classification of operating expenses.

The result of this manner of computing locomotive fuel cost to be included in this particular cost study has been to inflate the total out-of-pocket cost shown in that study just about 33⅓ per cent. This erroneous charge is of course accentuated, and made worse, when the total out-of-pocket expense is subsequently expanded to produce a figure of total operating expenses.

Not only is this criticism in the matter of price for locomotive fuel fairly to be directed against witness Lamb and his Ex. 133, but the proceedings before the Master also indicate that it is gravely to be doubted whether the number of tons of fuel coal charged against the transportation of logs from Hines to Palatka is correct. The evidence before the Master shows that all coal delivered to engines which handled those log trains, were charged against the Hines to Palatka transportation. It does not as yet definitely appear whether those locomotives performed other transportation with the same coal, nor, indeed, does it yet appear who authorized the charging of this particular coal delivered to these particular engines to the Hines to Palatka cost study, on the ground that these engines actually performed the Hines to Palatka log transportation.

The Commission in the further hearing should require of the carrier that it support its contentions as set forth in Lamb Ex. 133 by the production of original evidence under the Best Evidence rule. The Commission, in determining these issues should have the benefit of the evidence before the Master.

[fol. 2526] IX

The Commission has erred in the conclusion (sheet 42) that—

"* * * it is apparent that the operating expenses allocated by defendant to Florida are not actual but construc-

tive expenses, and that they are understated to an unknown extent. In view of this fact, system figures including Florida, which are not in question, may be utilized as the basis for approximating the cost of transporting logs in that State;"

and, further, has erred in assuming to measure the cost of transporting logs in Florida on the basis of system average operating results on the theory that such system average operating results indicate the cost of transporting the average car of logs in Florida as shown in Appendix E, and discussed in the report at sheets 42-46.

Appendix E, which was presumably made by the Commission and which was not submitted to these interveners upon hearing, for their examination, is nothing but a system average cost study of the class recognized by the Commission in this report to be condemned by the Supreme Court of the United States in Northern P. R. Co. v. Department of Public Works, 268 U. S. 39. "But," says the Commission, (sheet 42)—

"ordinarily it would be unsound to use a system unit cost to determine the cost in a particular state, but since it is indisputable that unit costs are higher in Florida than elsewhere on the system, it seems clear that system unit cost may be used to find a cost that may be said to be less than the cost in Florida."

[fol. 2527] Without admitting, and on the contrary specifically denying, any proof in this record that—

"It is indisputable that unit costs are higher in Florida than elsewhere on the System."

these interveners respectfully assert that even if the fact were as stated by the Commission, it would not follow that the system costs so determined would necessarily be less than the cost of transporting logs in Florida.

This is the error, and the very grave error into which the Commission has fallen in the use of this, its own cost study, substituted by it apparently for the defective cost studies submitted herein by the defendant. When all is said and done the final result achieved by the Commission is a system average cost of all traffic; this figure, these interveners emphatically deny is in any way repre-

sentative of the cost of transporting the average car of logs in Florida the average distance of 81.30 miles.

Traffic on the Atlantic Coast Line in Florida consists to the extent of about 25 per cent of the total of fresh fruit and vegetable shipments, the transportation of which is very costly. The details of the circumstances and conditions surrounding such transportation and which make it so costly, were set forth by witnesses for this defendant in other proceedings, which testimony has now been made a part of the record herein, and is discussed at length in our original brief at pp. 62 et seq. But it should be further observed that practically every shipment accorded transportation within the State of Florida, fruits, vegetables, or anything else, involves one or more terminal handlings. (See supplemental testimony of witness McCaig, p. 1268.)

Under these circumstances these interveners respectfully submit that even if transportation costs in Florida are [fol. 2528] higher than transportation costs on the system as a whole (which we specifically do not admit) it does not follow that the unit cost of transporting logs in Florida is equal to the unit cost of transporting all traffic on the entire system. Therefore the substitute cost study which the Commission presents in its Appendix E to this report "cannot be accepted as indicating the averege out-of-pocket cost to defendant of transporting logs in Florida," (see sheet 39), and the Commission has erred in assuming that the Appendix E costs may be so accepted.

X

The Commission's utilization and reliance upon its own cost study, Appendix E, without submitting the same in evidence and affording to these interveners an opportunity to cross-examine the author thereof, and to offer evidence in rebuttal thereof, has deprived these interveners of the full and fair hearing to which they are entitled by the Act.

XI

The Commission has erred in its final conclusion that—

"The traffic moving under the Cummer scale does not pay its fair, proportionate share of operation and maintenance alone." (Sheet 46.)

By way of supporting this conclusion the Commission first points out that the test is (sheet 46) —

"* * * whether the traffic moving on that scale pays a fair proportionate share of the cost of maintaining defendant, or whether it causes an undue revenue burden upon the interstate traffic of defendant."

[fol. 2529] Then, to demonstrate that the record answers the latter query in the affirmative the Commission recites and relies upon —

1. The low system earnings of the defendant.
2. The low earnings on its log traffic as compared with its earnings on other low-grade commodities.
3. The much lower earnings on its Florida log traffic than on its interstate log traffic.
4. The much lower level of the Cummer scale than of other scales applicable interstate and intrastate throughout the south.
5. The evidence of transportation costs.

As to item 1 these interveners respectfully point out that that is solely a matter of system revenue return, and therefore refer to the discussion in paragraph III hereof. We repeat that—

"The mere fact that the rate of return of the carrier's system net railway operating income declined from 6.11 per cent in 1926 to 2.37 per cent in 1930 (sheet 14) constitutes no reason why rates on logs for hauls up to 170 miles in the State of Florida should be increased, and this is so regardless of whether or not such decline in the rate of return might justify a general adjustment of the carrier's entire rate structure.

The accuracy of the foregoing statement has long been recognized by both the Commission and the Courts, which have said that while the net operating profit accruing to a carrier from its whole rate structure is relevant evidence in determining whether the sum of the rates as a whole is fair to the carrier, the return to the carrier from its whole rate structure affords no light on the reasonableness of a [fol. 2530] particular rate. See Minneapolis & St. L. R. Co. v. Minnesota ex rel. Railroad & W. Com., 186 U. S. 257

at 265, 266; Dayton-Goose Creek R. Co. v. United States, 263 U. S. 456 at 480-481; Midcontinent Oil Rates, 1925, 139 I. C. C. 605, at 616; Dutton Lumber Corp. v. New York, N. H. & H. R. Co., 151 I. C. C. 391, 406.

To put it in the language of Commissioner McManamy in the Midcontinent Oil case, p. 616, where the Commission was "fully mindful of the revenue needs of these various carriers—

"* * * as we have frequently said, lack of adequate revenue from operations as a whole affords no justification for unlawful rates on individual commodities."

Items 2, 3, and 4, are solely a matter of rate comparisons—of "the relation of rates to each other," as the Supreme Court puts it in this very case. We therefore refer to the discussion of paragraph II hereof, and we reiterate that, as the Commission has expressly disavowed herein (sheet 50) any finding "in reference to undue prejudice against persons and localities in interstate commerce," it has no lawful authority to base such findings and conclusions as it has made, upon rate comparisons. Florida v. United States, supra, at p. 214.

Also, it is to be noted the Supreme Court has, in this very proceeding, condemned this sort of evidence as the basis for such findings, as the Commission has now made, and for such an order prescribing intrastate rates, as it has now entered. "The mere existence of a disparity between particular rates on intrastate and interstate traffic does not warrant the Commission in prescribing intrastate rates." Florida v. United States, supra, p. 212.

[fol. 2531] There remains item 5. This is solely a matter of transportation cost studies, and these interveners therefore refer to paragraphs VII, VIII, and IX hereof.

As shown in Paragraph VII, the defendant's general cost studies are mere system averages, recognized by the Commission as of the class said by the Supreme Court to be of no probative value in the determination of the issue herein. As shown in paragraph VIII, the defendant's specific Hines to Palatka cost study has, since its introduction before this Commission through a witness who disclaimed responsibility for or knowledge of its details (Tr. 1540-1541), been demonstrated to be inflated and otherwise defective by other witnesses for this defendant in another

(the restitution) proceeding in the United States District Court. As shown in paragraph IX, the Commission's own general cost study, Exhibit E, is another mere system average of the character condemned by the Commission itself in this report (sheet 39). Moreover, it is highly involved; it was apparently prepared, in part at least, from non-record sources of evidence, subsequent to the submission of the proceeding to the Commission; it was never submitted to these interveners for examination; and these interveners were never afforded any opportunity to cross-examine its author. These interveners have thus been denied a full and fair hearing.

Accordingly the report lacks the findings and the record lacks the basis for the findings, necessary to support this conclusion of the Commission that—

"the traffic moving under the Cummer scale does not pay its 'fair proportionate share' of operation and maintenance alone" (sheet 46).

[fol. 2532] XII

The Commission has erred in the conclusion that (sheet 48)—

"Accordingly, on the basis of an average of 7,431 cars a year under normal economic conditions, which basis we believe conservative, the gross revenues under the rates prescribed by the previous order herein would be more than $100,000.00 a year greater than under the Cummer scale, now in effect. The application of the Cummer scale, therefore, places a substantial burden upon defendant's interstate revenues."

Right at the outset it is to be observed that this is a finding of results upon gross revenue; there is no finding of results upon net revenue; "the question is that of the relation of rates to income," says the Supreme Court in this case, Florida v. United States, supra, at p. 214. Nowhere does the report purport to find the extent of any burden upon interstate commerce.

We have already pointed out what seems to us to be conclusive reasons why the Commission should reverse its findings of fact as to both the future movement of logs and the effect on the net revenues of the Atlantic Coast Line.

However, even though the Commission's findings as to these facts be accepted as correct (and their correctness we most emphatically do not admit) yet such findings do not constitute a justification for its invasion of the domain of state power in the prescribing of Florida intrastate log rates.

It will be observed that even under the Commission's calculations the gross revenues of the defendant will be reduced only $100,000.00 per year. This is based on the assumption that there will be at least the same volume of [fol. 2533] movement under the Commission's scale as has heretofore been had under the Cummer scale, although at other places in the report it is admitted that the higher scale will cause some reduction in the movement. In arriving at this figure of $100,000.00 the Commission assumes that the movement will be 7,431 cars per year although the records show that, (1) in the year February 1, 1930 to January 31, 1931, the movement, exclusive of the trainloads (which it is admitted will be discontinued) was only 3,204 cars; and, (2) in the five months from February 1 to June 30, 1931 (with the Cummer scale again in effect beginning April 10, 1931) the movement, exclusive of the trainloads, was only 934 cars (Ex. 128).

The Commission assumes therefore that the movement in future normal periods will be two and one-third times the movement in the last year that its own high rates (the same rates herein prescribed) were in effect; it also assumes that the movement in future normal years will be three and one-third times the rate of movement during February-June, 1931, during the latter half of which period the Cummer scale of rates was in effect. There is no competent evidence by qualified witnesses in this proceeding which in any way warrants such assumptions. But, accepting these extreme and unwarranted assumptions, we yet say that the difference in gross revenue of $100,000.00, which the Commission by using such assumptions finds will result, does not constitute sufficient grounds for the Commission's action herein.

In its opinion in this very case the Supreme Court said (Florida v. United States, supra, pp. 211-212)—

"The propriety of the exertion of the authority must be tested by its relation to the purpose of the grant and with suitable regard to the principle that whenever the Federal [fol. 2534] power is exerted within what would otherwise be the domain of state power, the justification of the exercise of the Federal power *must clearly appear.*" *Illinois C. R. R. v. State Pub. Utilities Commission*, 245 U. S. 493. (Italics ours.)

What is the "purpose of the grant" of this extraordinary federal power to which the Court refers in the above quotation? The Court itself states it to be, "to maintain an adequate national railway system." Florida v. United States, supra, p. 211. The Court has also said that to justify the exercise of such power by the Commission there must be—

"a real discrimination against, and obstruction to interstate commerce." Railroad Commission of Wisconsin v. C. B. & Q. Railroad, 257 U. S. 563, at 590-591.

Can it be said that a difference of $100,000.00 in gross revenue from log traffic on one railroad in Florida will constitute such an interference with the maintenance of an adequate national railway system as to make it "clearly appear" that the exercise of the Federal power within the field that would otherwise be the domain of the state, is justified?

The Commission has here fixed no general level of log rates. There is no interstate commerce in logs and the Commission makes no finding of discrimination against persons and localities. It bases its right to enter the domain of state power and impose its judgment as to the rates to be charged for the intrastate transportation of a single commodity over a single railroad solely on the ground that such action is necessary to prevent a revenue burden on interstate commerce. Yet, based on the assump- [fol. 2535] tion that intrastate traffic will be the same, and although it has ordered that the intrastate rates be doubled, the Commission finds, erroneously as we have shown, a loss in gross revenue of only $100,000.00.

We respectfully submit that the Commission's action in invading the state domain and prescribing rates for intrastate application, cannot find justification under those con-

ditions of fact, when the propriety of the exercise of the Commission's power must as a matter of law, be "tested by its relation to the purpose of the grant and with suitable regard to the principle that whenever the federal power is exerted within what would otherwise be the domain of state power, the justification of the exercise of the Federal power must clearly appear." Florida v. United States, supra, pp. 211-212.

It should be especially observed that the Commission is not here considering only a private claim of a private citizen against another private citizen. "Substantial" evidence may be sufficient basis for Commission action in such a controversy. Here, however, is a question of sovereign rights, and as between state and federal governments. In such a case, mere substantial evidence will not suffice; justification must clearly appear to an even greater and more definite extent than the Supreme Court requires in determining questions of constitutional right between the government and persons subject to its authority. Crowell v. Benson, p. 369, at — U. S. —, 76 L. Ed. (Adv. Sheets, 378-381), decided February 23, 1932; Eastern Texas R. Co. v. Railroad Commission of Texas, 242 Fed. 300, at 307-308.

XIII

The Commission has erred in its final conclusion that (sheet 48)—

[fol. 2536] "We believe that the movement of logs intrastate in Florida over defendant's lines will not be materially curtailed under the rates which we here prescribe, which are the same or substantially the same as the rates generally in effect and under which logs freely move throughout the south."

The detailed discussion of the Florida intrastate log movement, past, present, and future, is found in paragraphs V and VI hereof.

At this point we direct attention first to the language of this conclusion of the Commission. It is not the language of a finding of fact; it is a mere expression of a belief; it may fairly be said, we think, to be largely an expression of a wish which is father to a thought.

The carrier submitted two statements showing the detail of the Florida intrastate log movement; the first (Perrin

Ex. 61) covering the period of substantially two years from February 9, 1929 to January 31, 1931, during all of which time the Commission-made scale of rates was in effect; the second, (Perrin Ex. 128) covers the period from February 1, 1931 to June 30, 1931, during which period the Commission's scale remained in effect until April 10, 1931, and the Cummer scale was again in effect thereafter. In this latter exhibit (Perrin No. 128) there is no division of the movement for the periods prior and subsequent to April 10, 1931. There is, therefore, no justification for the statement in the report (sheet 47) that—

"There was no substantial increase in the movement after the Cummer scale was restored on April 10, 1931."

Next, on this same subject, the Commission indulges in opinion to the general effect (sheet 47) that—

[fol. 2537] "The depressed condition of the lumber industry * * * in our opinion has been and will be of far greater importance than the level of the Florida log rates in determining the extent of the movement in the immediate future at least."

For this expression of opinion which again, is far short of a finding of fact, the record affords no basis whatsoever.

The Commission next makes the statement that (sheet 47)—

"Under normal economic conditions it seems probable that the annual volume of the Florida log movement under rates the same as those previously prescribed will not be less than the average of this two-year period minus the number of cars included in the discontinued trainload movements."

This, again is language far short of a finding of fact. We are not dealing with normal economic conditions in these days, nor do even the best authorities venture to predict when normal economic conditions will return. Furthermore, with respect to the detailed showing of log movement by the Atlantic Coast Line, first in the two-year period ending January 31, 1931, and second, in the five-months period following, there was never offered any similar statement of such movement in the prior like period or periods when the Cummer scale of rates was in effect. There is, therefore,

no basis whatever in the record for this expression of probabilities by the Commission.

The Commission is not justified in relying, as it does, upon the Coast Line's statement of log tonnage in the five-month period, February 1, 1931 to June 30, 1931, for the very fact that the period was split into two almost equal parts by the change in the rates. Necessarily, therefore, [fol. 2538] the Commission was not only dealing with an abnormal period as it says, but it was dealing with a period when two materially different rate levels were effective. Inasmuch as Perrin Ex. 128 does not split the five-months movement according to the rate split, or at all, the exhibit is worthless as even an indication of future probabilities, especially as the greater part of the movement in the five-months period, 1,831 cars out of a total of 2,765 carloads was the Wilson Cypress Company movement from Hines to Palatka, which the Commission admits will be discontinued.

The statement, therefore, that "it seems probable" that the intrastate log movement in Florida "will not be materially curtailed" under the Commission's higher rates is contrary to the evidence and contrary to the facts.

XIV

The Commission has erred in its final conclusion (sheet 49) that—

"The intrastate rates on logs over six feet in length, except walnut, cherry, and cedar, applicable between points on the Atlantic Coast Line in Florida for distances of 170 miles and less are, and for the future will be, unjustly discriminatory against interstate commerce."

XV

The Commission has erred in its final conclusion (sheet 49) that—

"Such unjust discrimination can be and should be removed by the establishment between all points on the At- [fol. 2539] lantic Coast Line in Florida for distances of 170 miles or less, of rates not less than the rates shown for such distances in Appendix F thereto, which are the rates found reasonable for interstate application from northern Florida to Georgia."

XVI

The Commission has erred in prescribing by its order as amended the establishment of minimum rates on Florida intrastate log traffic as set forth in Appendix F; in requiring that such Florida intrastate rates be published "by filing and posting tariffs in the manner prescribed in Section 6 of the interstate commerce act"; and in assuming to order the establishment and maintenance of such rates wtihin the State of Florida without fixing a future date certain upon which such order shall become effective, as required by Section 15 (2) of the Act.

XVII

The Commission has erred in assuming that intrastate rates which produce gross revenues in excess of the actual total out of pocket cost of handling the traffic over existing and maintained lines of railroad can create a burden upon interstate commerce.

XVIII

The Commission has erred in prescribing for future application, intrastate in Florida, rates which will produce gross revenues considerably in excess of the total cost of transportation, the total proportionate share of taxes attributed to the traffic, and the full profit of 5¾ per cent allowed by law, as such cost of transportation, taxes, and return on investment are computed by the Commission [fols. 2540 & 2541] itself in its report, the rates so prescribed being extortionate.

Wherefore, petitioners pray that further hearing and reconsideration be granted in the above-entitled proceeding, and that the Commission enter such further order or orders in the premises as to it may seem reasonable and just.

Petitioners also point out that the report of the Commission herein is by the full Commission; that consideration of this petition by the full Commission may because of the season be delayed; that pending the disposition of this petition the Commission should postpone the effective date of the order herein to such future date as will permit petitioners an opportunity to assert their rights in the premises in the Courts in the event that the Commission should deny

this petition; and that, therefore, petitioners pray that the effective date of the outstanding order herein, be extended to November 15, 1932.

Respectfully submitted, Brooks-Scanlon Corporation, Wilson Cypress Company, Cummer Cypress Company, Wilson Lumber Company of Florida, by H. P. Adair, C. [illegible] Ashby, C. E. Cotterill, August G. Gutheim, J. V. Norman, Attorneys. 712 Jackson Place, Washington, D. C.

August 17, 1932.

[fol. 2542] BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 18364

[Title omitted].

PETITION ON BEHALF OF THE STATE OF FLORIDA AND THE FLORIDA RAILROAD COMMISSION FOR FURTHER HEARING IN, AND RECONSIDERATION OF, THE ABOVE-ENTITLED PROCEEDINGS—Aug. 23, 1932

Come now the State of Florida and the Florida Railroad Commission and respectfully petition the Interstate Commerce Commission to grant a further hearing in and reconsideration of the above-entitled proceeding; and in support of said petition respectfully show:

1

That the findings declared by the Supreme Court of the United States to be essential herein to the entry of the order of the Commission herein entered affecting Florida [fol. 2543] intrastate rates were not made and cannot be made by the Commission upon the evidence before it, and the Commission erred in making such order in the absence of such findings.

2

The Commission erred in invading the domain of the State of Florida upon the record which the Commission had before it.

3

The basic essential and jurisdictional facts to justify the invasion of the domain of the State of Florida have

not been made to clearly appear in the report or findings of the Commission.

4

The basic essential and jurisdictional facts to justify the invasion of the domain of the State of Florida have not been made to clearly appear in the evidence.

5

The alleged findings of fact upon which the Commission relies to justify its order prescribing intrastate rates are not warranted and/or made to clearly appear by the evidence.

6

That the Commission has erred in entering its statewide order affecting Florida intrastate rates on logs herein in that it does not appear that there are findings supported by evidence of the essential facts as to the Florida intrastate traffic in logs and the revenue therefrom, and the effect of the intrastate rates, both as existing and prescribed, upon the income of the defendant carrier, which would justify the conclusion that the order is needed to avoid an undue burden on the revenues of the carrier and [fol. 2544] a consequent interference with the maintenance of an adequate transportation system.

7

That the Commission made no finding of the amount of revenue which had been derived in the past by the defendant carrier from the particular traffic in question under the existing intrastate rates, and erred in entering the order which it did enter in the absence of such finding.

8

It does not clearly appear that the evidence would warrant a finding of the amount of revenue which had been derived in the past by the defendant carrier from the particular tariff in question under the existing intrastate rate, and the Commission erred in making the order which it did make under the circumstances.

9

That the Commission made no finding of the amount of revenue which can reasonably be expected to be derived

from the traffic in question under the increased intrastate rate which the Commission proposes to establish, and the Commission erred in entering the order which it did enter in the absence of such finding.

10

It does not clearly appear that the evidence would warrant a finding of the amount of revenue which can reasonably be expected to be derived from the traffic in question under the increased intrastate rate which the Commission proposes to establish, and the Commission erred in making [fol. 2545] the order which it did make under the circumstances.

11

That the Commission made no finding that the application of the existing intrastate rate results in an impairment of the income of the carrier, which causes an undue burden upon the carrier's interstate revenues and obstructs the maintenance of an adequate national transportation service, and the Commission erred in entering the order which it did enter in the absence of such finding.

12

It does not clearly appear that the evidence would warrant a finding that the application of the existing intrastate rate results in an impairment of the income of the carrier, which causes an undue burden upon the carrier's interstate revenues and obstructs the maintenance of an adequate national transportation service, and the Commission erred in making the order which it did make under the circumstances.

13

That the Commission made no finding that an undue burden upon the carrier's interstate revenues and obstruction to the maintenance of an adequate national transportation service exists which is of such character and consequence that it is the affirmative duty of the Commission as an important step in maintaining an adequate national railway system to remove such burden and obstruction, and the Commission erred in entering the order which it did enter in the absence of such finding.

14

It does not clearly appear that the evidence would war-
[fol. 2546] rant a finding that any undue burden upon the carrier's interstate revenues and obstruction to the maintenance of an adequate national transportation service exists, which is of such character and consequence that it is the affirmative duty of the Commission as an important step in maintaining an adequate national railway system, to remove such burden and obstruction, and the Commission erred in making the order which it did make under the circumstances.

15

The Commission made no finding that the alteration of the intrastate rates will produce, or is likely to produce, an additional and greater amount of income, and made no finding that such additional and greater amount of income is necessary to prevent an existing undue burden upon the defendant carrier's interstate revenues and necessary to maintain an adequate transportation service, and the Commission erred in entering the order which it did enter in the absence of such finding.

16

It does not clearly appear that the evidence would warrant a finding that the alteration of the intrastate rates will produce, or is likely to produce, an additional and greater amount of icome, and it does not clearly appear that the evidence would warrant a finding that such additional and greater amount of income is necessary to prevent an existing undue burden upon the defendant carrier's intrastate revenues and necessary to maintain an adequate transportation service, nd the Commission erred in making the order which it did make under the circumstances.

[fol. 2547] 17

The Commission made no finding of the quantity or extent of any burden upon the intrastate revenues of the defendant carrier caused by the application of the existing Florida intrastate rate.

18

It does not clearly appear that the evidence would warrant a finding of the quantity or extent of any burden upon

the interstate revenues of the defendant carrier caused by the application of the existing Florida intrastate rate.

19

The Commission erred in denying the motion to dismiss the complaint for the reason that no complaint was made and no evidence offered by the complainant of a revenue burden upon interstate commerce.

20

The Commission erred in refusing to require the defendant carrier to furnish the information showing the revenue of the defendant carrier for the years 1927 and 1928 derived from the application of the Florida intrastate rate in effect during said two years.

21

The Commission erred in considering or giving any effect whatsoever to any rate comparisons.

22

The Commission erred in considering or giving any effect whatsoever to any statements of system revenue [fol. 2548] returns, or of the relation of log traffic and log revenue to total traffic and total revenue.

23

The Commission erred in considering or giving any effect whatsoever to any cost studies produced in this proceeding by any of the parties or by the Commission itself.

24

The Commission, by giving effect to its own cost study, Appendix E, which has been formulated from matter dehors the record, without submitting the same in evidence and without affording an opportunity to cross-examine the author thereof and to offer evidence in rebuttal thereof, has deprived the State of Florida and its Railroad Commission of the full and fair hearing to which they are entitled by the Act, and the Commission has erred in so doing.

25

The Commission erred in entering its order herein affecting Florida intrastate rates in that the Commission did not, prior to the entering of such order, require the Atlantic Coast Line Railroad to first apply to the Florida Railroad Commission for alteration of the Florida intrastate rates.

26

The Commission erred in entering its order herein affecting Florida intrastate rates without the justification of the exercise of the Commission's power clearly appearing.

27

The Commisison erred in entering its order herein affecting Florida intrastate rates, in that the same constitutes an [fol. 2549] unwarranted and unjustifiable invasion of the domain and rights of the State of Florida.

Wherefore, these petitioners pray that further hearing and reconsideration be granted in the above-entitled proceeding, and that the Commission enter such further order or orders in the premises as to it may seem reasonable and just.

Respectfullly submitted, Cary D. Landis, Attorney General of Florida. T. T. Turnbull, Counsel for Florida Railroad Commission.

Tallahassee, Fla., August 23, 1932.

[fol. 2550] BEFORE INTERSTATE COMMERCE COMMISSION

No. 18364

[Title omitted]

ORDER DENYING PETITIONS—Aug. 25, 1932

Upon consideration of petitions of interveners Brooks-Scanlon Corporation, Wilson Cypress Company, Cummer Cypress Company, and Wilson Lumber Company, and of the State of Florida and the Florida Railroad Commission for further hearing and reconsideration of the above-entitled proceeding:

It is ordered, That said petitions be, and they are hereby, denied.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fols. 2551 & 2552] INTERSTATE COMMERCE COMMISSION
WASHINGTON

Feb. 24, 1933.

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of the following:

Petition on Behalf of Wilson Cypress Company and Wilson Lumber Company of Florida, for Further Hearing, and Reconsideration, on the Ground of Newly Discovered Evidence, filed October 6, 1932,

Reply of Defendant, Atlantic Coast Line Railroad Company, to Petition of Wilson Cypress Company and Wilson Lumber Company of Florida for Further Hearing Upon the Ground of Newly Discovered Evidence, filed October 11, 1932,

Motion To Set Aside the Final Order of the Interstate Commerce Commission and For Further Hearing and Reconsideration, filed October 11, 1932,

Petition of Intervention and Petition For Further Hearing, filed October 10, 1932, and

Reply of Defendant, Atlantic Coast Line Railroad Company, to Petition of State of Florida and Florida Railroad Commission for Further Hearing and Petitions of F. S. Buffam Company Inc., for Leave to Intervene and For Further Hearing, filed October 18, 1932,

in case No. 18364, Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, the originals of which are now on file and of record in the office of this Commission.

In witness whereof I have hereunto set my hand and affixed the Seal of said Commission this 21st day of October, A. D. 1932. George B. McGinty, Secretary of the Interstate Commerce Commission. (Seal Interstate Commerce Commission.)

[fol. 2553] BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 18364

[Title omitted]

PETITION ON BEHALF OF WILSON CYPRESS COMPANY AND WILSON LUMBER COMPANY OF FLORIDA FOR FURTHER HEARING IN, AND RECONSIDERATION OF, THE ABOVE-ENTITLED PROCEEDING, ON THE GROUND OF NEWLY DISCOVERED EVIDENCE —Oct. 5, 1932

Come now Wilson Cypress Company and Wilson Lumber Company of Florida, interveners herein, referred to in the report of this Commission as "the Florida interveners", and respectfully petition the Commission to grant a further hearing in, and reconsideration of, the above-entitled proceeding; and in support of said petition respectfully show:

I. That by its report and final order in this proceeding the Commission prescribed minimum rates per one hundred pounds on Florida intrastate log traffic, minimum carload [fol. 2554] weight 40,000 pounds, as follows:

Distances	Rates, cents
10 miles and under	2.5
20 miles and over 10	3.0
30 miles and over 20	3.5
40 miles and over 30	4.0
55 miles and over 40	4.5
70 miles and over 55	5.0
85 miles and over 70	5.5
100 miles and over 85	6.0
120 miles and over 100	6.5
140 miles and over 120	7.0
160 miles and over 140	7.5
170 miles and over 160	8.0

II. That said Florida intrastate log rates were prescribed by the Commission to remove an "unjust discrimination against interstate commerce from a revenue standpoint;" and for no other reason (Georgia Pub. Serv. Comm. v. Atlantic Coast L. R. Co., 186 I. C. C. 157, 190); and that in reaching its conclusions and in prescribing said rates the Commission relied upon and gave consideration to certain comparisons of the presently effective Florida intrastate log rates (the so-called Cummer scale), with other scales of rates effective in southeastern territory (Georgia Pub. Serv. Comm. v. Atlantic Coast L. R. Co., supra, pp. 193-194):

III. That there have lately (and since the closing of the hearings in this proceeding and the filing of these interveners' petitions for rehearing and reconsideration) been filed with this Commission and permitted to become effective, certain reduced rates applicable to the transportation of logs in southeastern territory; that such rates are published as rates per carload, regardless of weight, in tariffs, of various carriers, including those listed below; and that such rates are generally upon the following basis:

[fol. 2555]

Distance	Rate per car regardless of weight
25 miles and less	$12.00 (note 1)
50 miles and over 25 miles	15.00
75 miles and over 50 miles	17.50
100 miles and over 75 miles	20.00 (note 2)

NOTE 1.—Sou. Ry. rate is $12.50 per car.

NOTE 2.—St. L.-S. F. Ry. rate is $22.50 per car.

Authorities for Rates

Railroad tariff No.	I. C. C. tariff No.	Issued by	Application
10956	B-860	M. & O. R. R.	From stations on the M. & O. R.R. to Columbus, Corinth, Miss., Humboldt, Jackson, Tenn., Meridian, Miss., Mobile, Ala., Wickliffe, Ky., and Whistler, Ala.
590-R	7786	I. C. R. R.	From stations on the I. C. R. R. to Corinth, Miss., Dyersburg, Tenn., Fernwood, Grenada, Jackson, Miss., Jackson, Tenn., McComb, Pickens, Miss., Ponchatula, La., Water Valley, Miss.
602-M	7810	Y. & M. V. R. R.	From stations on the Y. & M. V. R. R. to Charleston, Clarksdale, Miss., Denham Springs, La., Gloster, Greenville, Greenwood, Grenada, Hickory, Holcomb, Jackson, Kings, Lambert, Meridian, Natchez, Phillip, Stevenson, Tehula, Trotters Point, Vicksburg and Yazoo City, Miss.
3	3284-A	N. C. & St. L. Ry.	Applies on interstate traffic between points on the N. C. & St. L. Ry.
6	Rate Issue 41296	N. C. & St. L. Ry.	Applies on Tennessee State Traffic between points on the N. C. & St. L. Ry.
6	A-10425	Sou. Ry.	From points in Alabama, Georgia, and Tennessee to Chattanooga, Tenn.
3155-F	9019	St. L.-S. F. Ry.	Between stations on the St. L.-S. F. Ry. in Alabama, Florida and Mississippi.

[fol. 2556] IV. That the said reduced rates are applicable upon the lines of the carriers located in the same territorial rate group as is the Atlantic Coast Line Railroad, i. e., the Southern group, and in the territory where the transportation conditions surrounding the movement of logs have been declared by witnesses herein for the Atlantic Coast Line Railroad Company to be substantially identical with the transportation conditions in Florida; that said rates are in fact applicable in certain portions of Florida over the lines of other carriers than the Atlantic Coast Line Railroad; and that there is now a substantial movement of logs by truck in Florida.

V. That your petitioners are informed and believe, and on such information and belief aver, that similar reduced rates, applicable to the transportation of logs in southwestern territory, have recently been published and filed with this Commission and permitted to become effective.

IV. That the record herein shows that the average car loading of logs intrastate in Florida exceeds 56,000 pounds, and that the average car loading of logs handled in trainloads intrastate in Florida is approximately 64,000 pounds. And that these petitioners aver that it is the custom of shippers of traffic, particularly logs, in shipping upon rates named per car regardless of weight, to load to the full carrying capacity of the car; and that the loading of logs of all kind, including hardwood in the southeastern territory and in Florida, upon cars moved at rates per car regardless of weight, would approximate or exceed 70,000 pounds to 75,000 pounds per car.

[fol. 2557] VII. That the table below compares for the hauls therein specified the rates, per car of the weight mentioned, for the transportation of logs upon the Cummer scale intrastate in Florida, also upon the recently published rates named per car regardless of weight as aforesaid, based upon the loading thereof reasonably to be expected, and also upon the scale of minimum rates prescribed by this Commission as aforesaid, intrastate in Florida:

Computed on Carload of 70,000 Pounds

Hauls in miles	Cummer scale	New scale in southeast	Scale fixed by Commission
25 miles	$11.97	$12.00	$24.50
50 miles	14.70	15.00	31.50
75 miles	16.10	17.50	38.50
100 miles	18.20	20.00	42.00

Computed on Carload of 75,000 Pounds

25 miles	$12.82	$12.00	$26.25
50 miles	15.75	15.00	33.75
75 miles	17.25	17.50	41.25
100 miles	19.50	20.00	45.00

VIII. That the foregoing comparison demonstrates that the Cummer scale of rates on logs intrastate in Florida is upon almost exactly the same level as are the recently published rates named to apply on car loads of logs regardless of weight in southeastern territory; that measured by such recently published carload rates the scale prescribed by the Interstate Commerce Commission for intrastate application in Florida is unjustly and unreasonably high and extortionate; and that such presently effective rates on logs in the southeast do not justify the Commission in its proposed disestablishment of the Cummer scale of rates intrastate in Florida and the substitution therefor of the mini-[fol. 2558] mum rates prescribed in Georgia Pub. Serv. Comm. v. Atlantic Coast L. R. Co., supra, p. 198.

IX. That your petitioners have only within the past ten days learned of the publication and effectiveness without suspension by this Commission, of the carload rates on logs effective in southeastern and southwestern territory, as referred to above; that the same are in the nature of newly discovered evidence; that the same have been substituted in large part for the rates relied upon by the Commission for comparative purposes in this proceeding; and that the Commission should have the benefit of further comparisons of the Cummer scale of rates on logs intrastate in Florida and these and other recently published carload rates on logs before it in the final determination of the issues herein.

X. That as appears from the foregoing table, 75,000 pounds of logs may be hauled in one carload 100 miles interstate under rates which this Commission has permitted to become effective at considerably less cost to the shipper

than the same car of logs may be hauled 25 miles under the minimum rates fixed by this Commission for intrastate application in Florida; that such difference constitutes an unjust and indefensible discrimination by interstate commerce against intrastate commerce; and that since such discrimination is created by interstate rates permitted to become effective by this Commission and intrastate rates ordered to become effective by this Commission, the removal of such discrimination can be brought about only by action of this Commission.

[fol. 2559] XI. That the Florida intrastate rates above set forth have been prescribed by this Commission on the sole ground that such rates are necessary to remove a revenue burden on interstate commerce, and in order that such intrastate rates might pay their fair proportionate share towards the maintenance of an adequate national transportation system; that for this Commission to invade the domain of the State and prescribe intrastate rates to remove a burden upon interstate commerce while permitting the application of such lower rates upon interstate commerce constitutes an unwarranted exercise of Federal power to the preference of interstate commerce and to the unjust and undue prejudice of intrastate commerce; and that so long as the Commission's order in this proceeding remains in force and effect the State authorities to whom primary jurisdiction over intrastate rates is committed are powerless to remove the discrimination above described against intrastate commerce.

XII. That the report and order of this Commission herein in prescribing intrastate rates in Florida relate to and are based upon a past period of time, and relate to and are based upon conditions and circumstances all of which are far different from those existing at present, and form no proper basis for any finding or conclusion as to the amount of revenue which the carrier can now reasonably be expected to derive under the Florida intrastate rates so prescribed, and the findings actually made are themselves expressly inapplicable to present circumstances and conditions and are improper findings of fact upon which to support said order.

[fol. 2560] XIII. That the matters and things set forth in the report of this Commission including the findings therein

contained are matters and things alleged to have been existing and true in the year 1929 and thereabouts and form no proper predicate as regards the present, or the future, for the making of the findings, or any of them, which the Supreme Court has said are necessary to justify this Commission's order herein, and such findings as are made are not the findings which the Supreme Court has said are necessary.

XIV. And these petitioners hereby re-assert and reaffirm each and every of the matters and things heretofore asserted and affirmed in the several petitions for rehearing and reconsideration heretofore filed herein by these petitioners.

Wherefore, your petitioners respectfully pray that these proceedings be reopened for further hearing and consideration; that pending such further hearing and consideration the outstanding order herein prescribing rates to be applied for the transportation of logs intrastate in Florida be set aside, or that the effective date thereof be postponed; that the Commission enter such further order or orders as will remove or permit the State authorities of the State of Florida to remove the unjust discrimination in favor of interstate commerce and the unjust prejudice to intrastate commerce resulting from the aforesaid order of this Commission; and that the Commission enter such further order [fol. 2561] or orders in the premises as may be reasonable and just.

Respectfully submitted, Wilson Cypress Company, Wilson Lumber Company of Florida, by J. V. Norman, August G. Gutheim, Chas. E. Cotterill, H. P. Adair, C. G. Ashby, Attorneys.

Washington, D. C., October 5, 1932.

[fol. 2562] BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 18364

[Title omitted]

REPLY OF DEFENDANT, ATLANTIC COAST LINE RAILROAD COMPANY, TO PETITION OF WILSON CYPRESS COMPANY AND WILSON LUMBER COMPANY OF FLORIDA FOR FURTHER HEARING UPON THE GROUND OF NEWLY DISCOVERED EVIDENCE

Come now the Atlantic Coast Line Railroad Company, defendant, and for reply to the petition of Wilson Cypress Company and Wilson Lumber Company of Florida, dated October 5, 1932, for further hearing on the ground of newly discovered evidence, respectfully states:

1

In said petition it is stated (p. 2) that in reaching its conclusions the Commission relied upon and gave consideration to certain comparisons of the so-called Cummer scale of log rates in Florida "with other scales of rates effective in southeastern territory." It may be conceded that in its consideration of this proceeding the Commission—as one method (although by no means the only one) by which to test the reasonableness or unreasonableness of the Cummer scale—made reference to various comparisons [fol. 2563] between the level of this scale of log rates, on the one hand, and on the other the log rates of this defendant as well as other carriers applicable in various other portions of southern territory. It should be kept in mind, however, that in all of the comparisons of this sort which the defendant submitted at the hearing no log rates were used other than rates which had been either approved or prescribed by this Commission for interstate application, or had been approved or prescribed by the several state commissions for intrastate application. Every scale that was used in those comparisons with the Cummer scale had the approval of regulatory bodies, either interstate or intrastate, as representing just and reasonable maximum rates on logs. Furthermore, the comparisons which were drawn were comparisons between the local log rates under the Cummer scale and the local log rates of various southern lines, which latter are generally still in effect, the only

exceptions being certain experimental truck competitive rates on lines in the Mississippi Valley, hereinafter referred to.

2

The only "newly discovered evidence" which is set forth and relied upon in the petition consists of the reference, on page 3, to certain rates on logs which are said to have been published by various individual carriers since the time when this case was heard and decided by the Commission. It will be noted that none of the tariffs referred to in the petition are tariffs of this defendant, Atlantic Coast Line Railroad Company. On the contrary, they consist entirely of several tariffs which have been issued by certain other carriers. They are likewise tariffs having in most in- [fol. 2564] stances a strictly limited territorial application, covering principally certain movements in Mississippi Valley territory for hauls no greater than 100 miles, and being generally limited expressly as to origins and destinations. And what the petition fails to mention is (as will be disclosed by an examination of these tariffs) that the rates are published for temporary application only, the tariffs themselves carrying very generally an expiration date of one year from the date of issue. Furthermore the tariffs of the Mobile & Ohio Railroad, Illinois Central Railroad, Yazoo & Mississippi Valley Railroad and St. Louis-San Francisco Railway are in each instance transit tariffs, and the rates shown are net transit rates as distinguished from local rates, which means that they fail to represent the entire revenue which the issuing road will obtain from the traffic, since the rates are to apply only in the event that the product of the logs is reshipped from transit point via the line carrying the logs into the transit point.

The rates mentioned in the petition are, in a word, nothing more or less than certain truck competitive rates which have been issued as an experimental measure and for the purpose of meeting motor truck competition. They were in no sense issued as representing reasonable maximum rates. They have been made, on the contrary, in an effort to substitute rail transportation for motor truck transportation at rates no higher than those charged by motor trucks or no higher than the expense of transporting the logs by shippers on their own trucks. These rates were not made because of the existence of standing timber

that would ordinarily be cut and shipped by rail in large volume, as is the case in Florida. This defendant has been urged on various occasions to establish similar rates be-
[fol. 2565] tween points on its lines to cover such single car movements of logs as lumber mills might be able to purchase from farmers, but has consistently declined to do so. To say, therefore, that competitive rates of this sort should be considered and used by the Commission as a standard or test by which to measure the level of reasonable maximum rates is simply to ignore and cast out of view every recognized and accepted principle of rate making. The law is well settled that under the exigencies of the force of competition carriers frequently establish voluntarily rates which the Commission could not require them by its order to establish (Interstate Commerce Commission v. Chicago Great Western R. Co., 209 U. S. 108). It follows, therefore, that even if the case should be reopened, as prayed in this petition, and even if the rates therein referred to should now be placed in evidence and made a part of the record, such rates would be valueless as bearing upon the reasonableness of either this defendant's intrastate log rates in Florida or its interstate log rates as applicable generally over its lines. It is difficult indeed to understand how the existence of certain truck competitive rates of lines in the Mississippi Valley, issued as experimental rates, can be considered as newly discovered evidence that would be of any value in determining what would constitute a reasonable scale of log rates on the Atlantic Coast Line in Florida. The reasonableness of these temporary rates in the Mississippi Valley, unlike the rates which are already before the Commission in this record for the purpose of comparison, has never been considered or tested by the Commission.

[fol. 2566] 3

It is said in the petition (p. 4) that the reduced rates above mentioned are applicable in territory "where the transportation conditions surrounding the movement of logs have been declared by witnesses herein for the Atlantic Coast Line Railroad Company to be substantially identical with the transportation conditions in Florida." This statement in the petition is the exact reverse of the testimony of defendant's witnesses in this record. The testi-

many of those witnesses was that the transportation conditions surrounding the movement of logs in Florida are less favorable than those in other portions of southern territory, and that there is a need for higher rates on this traffic within the state of Florida than in other sections of the south. In the report of July 5, 1932, 186 I. C. C. at page 189, the Commission stated:

"We find that the circumstances and conditions surrounding the transportation of these logs intrastate in Florida are not on the whole as favorable as the circumstances and conditions surrounding the interstate movement of logs over defendant's lines."

The petition further states that "there is now a substantial movement of logs by truck in Florida" (p. 4). The purpose of this statement is not apparent, unless the intention of the petitioners is to convey the idea that the Commission should order the establishment of lower rates on logs in Florida in order to enable the defendant to meet the competition of an alleged movement of logs by truck. In the report of July 5, 1932, the Commission stated, among other things, that:

"In the Florida log transportation some competition from trucks is met but only to a very slight degree. It is not shown that logs can or will be transported by trucks [fol. 2567] except for very short distances, nor that truck competition was or will be increased under advanced rates."

The foregoing finding of the Commission was grounded upon adequate and complete evidence of record, and there is nothing in the petition which indicates that this finding is in any respect erroneous. But regardless of whether there is or is not a substantial movement of logs by truck in Florida, or of whether certain railroads in other parts of the country have elected to reduce rates for the purpose of meeting truck competition, there can be no support for any contention that the Commission, in the exercise of its power to determine reasonable maximum rates, should undertake to compel a carrier to seek to meet such truck competition through the medium of a reduction in rates.

In furtherance of the effort to compare the Cummer scale of log rates in Florida with the competitive rates which certain other roads have established, there are computed in the petition, on pages 4 and 5, various comparisons of what purport to be the car earnings under the Cummer scale; the scale ordered by the Commission; and the so-called "new scale in the southeast". Reference is further made to "the recently published rates named to apply on car loads of logs regardless of weight in southeastern territory." The purpose seems to be to create the impression that some new and reduced level of log rates has now been established and made effective generally throughout southeastern territory. As we have pointed out above, the only new rates that are even mentioned in the petition for rehearing are rates of a few individual carriers which are applicable principally in Mississippi Valley territory and [fol. 2568] between certain limited origins and destinations, and which are likewise merely temporary rates, are restricted to apply for relatively short distances only, and are in most instances not even local rates, but on the contrary transit rates—all of such rates, even of the character mentioned, having been established solely in an effort to meet truck competition. In addition, it may be noted that the comparisons drawn in the petition are grounded upon a thoroughly unwarranted assumption of the petitioners concerning per car loadings. The statement that "the loading of logs of all kinds, including hardwood in the southeastern territory and in Florida, upon cars moved at rates per car regardless of weight, would approximate or exceed 70,000 pounds to 75,000 pounds per car" (petition, p. 4) can only find its basis in the imagination of the petitioners. Certainly it is unsupported by any evidence in this record. Moreover, it can find no substantiation in actual experience in the shipment of logs under rates applicable per car regardless of weight. On the contrary this record does show that cars built especially for the handling of logs in train loads, and capable of loading far in excess of the carrying capacity of flat cars that are ordinarily used in the handling of logs, were loaded on the average no more than 62,325 pounds per car notwithstanding the fact that log loading skidders of the most improved type have been used. It is plainly apparent that the compari-

sons of per car revenues, as set forth in the petition, are of no real value in any event because the per car earnings are computed upon the basis of theoretical and greatly inflated weights.

[fol. 2569] 5

This defendant expressly denies the allegation (par. IX, p. 6 of petition) that the recently published log rates to which reference is made "have been substituted in large part for the rates relied upon by the Commission for comparative purposes in this proceeding"; and the further allegation that "the Commission should have the benefit of further comparisons of the Cummer scale of rates on logs intrastate in Florida and these and other recently published carload rates on logs before it in the final determination of the issues herein." As pointed out above, there have been no changes or reductions in the interstate rates of the Atlantic Coast Line Railroad Company. Neither have there been any changes or reductions in the interstate log rates generally applicable throughout southern territory. It was such rates—most if not all of which had theretofore been definitely prescribed or approved as reasonable by either this Commission or the various state commissions—which the Commission very appropriately referred to and used in this case for purposes of comparison with the rates in issue. It may be mentioned, in passing, that in their former petition for rehearing, dated August 17, 1932, the present petitioners, together with the Brooks-Scanlon Corporation and the Cummer Cypress Company, joined in urging, among other things, as a ground for further hearing and reconsideration, that "the Commission erred in reciting and giving consideration to * * * *rate comparisons offered to prove that the rates in the Cummer scale are abnormally low*" (petition of August 17, [fol. 2570] p. 3). Nevertheless, in this new petition for rehearing the same petitioners now set up as constituting "newly discovered evidence", upon which it is claimed that the Commission should reopen and reconsider the case, certain rates which they would themselves have the Commission use for purposes of comparison and as purporting to show that the prescribed scale for intrastate application in Florida "is unjustly and unreasonably high and extortionate."

6

In paragraphs X and XI (pp. 6 and 7 of petition) the theory appears to be advanced that the Commission should reopen the case and modify its former order because of an alleged "unjust and indefensible discrimination by interstate commerce against intrastate commerce" growing out of the publication by certain carriers of the log rates mentioned at page 3 of the petition. In this connection also the comparison is again drawn in the petition upon the basis of purely theoretical and imaginary car loadings. But aside from that circumstance, it becomes difficult indeed to conceive that merely because certain competitive log rates may have been published for limited application by carriers operating in the Mississippi Valley (none of such rates having been either published or concurred in by this defendant) the conclusion must be reached that there is thereby created a discrimination against intrastate commerce of which the removal constitutes a duty resting upon this Commission.

[fol. 2571] 7

With respect to the suggestion (par. XII of petition) that the conditions which existed at the time when this case was heard and decided by the Commission are "far different" from those existing at present, it seems sufficient to observe that the petition itself does not even purport to set forth any change in conditions other than the publication of certain competitive log rates by the carriers above referred to. By what process of reasoning the petitioners reach the conclusion that present conditions warrant lower log rates in Florida than those which the Commission has heretofore prescribed in this case it is impossible to understand, unless it is the petitioners' intention to urge that the Commission should lay aside all attempts to determine just and reasonable rates and should base its conclusions upon that subject entirely upon the unregulated competition of motor trucks. Certainly it is true that the revenue needs of this defendant and other carriers are now even greater than they have ever been heretofore.

This case was decided by the Commission upon a most complete and adequate record and after hearings at which every opportunity was made available to all interested

parties to insure the presentation of all of the relevant and material facts. Following the issuance of the Commission's report and order, petitions for rehearing were filed by the intervening Florida log shippers, as well as by the Railroad Commission of Florida, which petitions were considered by the Commission and denied by order of August [fols. 2572 & 2573] 25, 1932. Thereupon these petitioners joined in instituting a suit in the United States District Court in Georgia to enjoin and set aside the Commission's order, a hearing has been had, and the matter is now pending, the Court having fixed October 13, 1932, as the date for filing briefs. It is respectfully submitted that this latest petition for rehearing discloses no reasons whatever for a reopening and rehearing of the case by the Commission, and accordingly that said petition should be denied.

Respectfully submitted, Robert C. Alston, Carl H. Davis, Frank W. Gwathmey, Attorneys for Atlantic Coast Line Railroad Company.

October 11, 1932.

[fol. 2574] BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 18364

MOTION TO SET ASIDE THE FINAL ORDER OF THE INTERSTATE COMMERCE COMMISSION AND FOR FURTHER HEARING IN, AND RECONSIDERATION OF THE ABOVE-ENTITLED PROCEEDING—Oct. 8, 1932

Come now the State of Florida and the Florida Railroad Commission, and not admitting the jurisdiction or power of the Interstate Commerce Commission to enter the final order which was entered in the above entitled cause, but expressly denying the existence of such jurisdiction and [fol. 2575] power, and move the said Interstate Commerce Commission to set aside such final order and for a further hearing in and reconsideration of the above entitled cause, and in support of such motion respectfully show:

I. That by its report and final order dated July 5th, 1932, filed July 15th, 1932, as amended July 28th, 1932, by its terms to become effective September 15th, 1932, this Interstate Commerce Commission purported to fix intra-

state rates thereafter to be charged in Florida for the transportation of logs on the lines of the Atlantic Coast Line Railroad, as follows:

Distances	Rates, cents
10 miles and under	2.5
20 miles and over 10	3.0
30 miles and over 20	3.5
40 miles and over 30	4.0
55 miles and over 40	4.5
70 miles and over 55	5.0
85 miles and over 70	5.5
100 miles and over 85	6.0
120 miles and over 100	6.5
140 miles and over 120	7.0
160 miles and over 140	7.5
170 miles and over 160	8.0

II. That this Interstate Commerce Commission sought to justify its invasion of the domain of the State of Florida and to prescribe intrastate log rates upon no ground save upon the asserted ground that the lawful state rates of the State of Florida constituted an unjust discrimination against interstate commerce from a revenue standpoint.

[fol. 2576] III. That to wit, after said July 5th, 1932, and prior to said September 15th, 1932 (the day on which said final order of this Interstate Commerce Commission was to become effective) numerous railroad carriers doing business in the Southern territorial rate group did file with this Interstate Commerce Commission and said Commission did permit to become effective a scale of rates for the transportation of logs which was and is substantially lower than the rates theretofore obtaining for like application upon the lines of such carriers; that such scale of rates was and is a mileage scale expressed in lump sum terms per carload, regardless of weight, and was and is upon the basis hereinafter set forth, and was and is published in the tariffs hereinafter described by the carriers whose names are hereinafter set forth, viz.:

Distance	Rate per car regardless of weight
25 miles and less	$12.00
50 miles and over 25 miles	15.00
75 miles and over 50 miles	17.50
100 miles and over 75 miles	20.00

[fol. 2577] Authorities for Rates

Railroad tariff No.	I. C. C. tariff No.	Issued by	Application
10956	B-860	M. & O. R. R.	From stations on the M. & O. R R to Columbus, Corinth, Miss., Humboldt, Jackson, Tenn., Meridian, Miss., Mobile, Ala., Wickliffe, Ky., and Whistler, Ala.
590-R	7786	I. C. R. R.	From stations on the I. C. R. R. to Corinth, Miss., Dyersburg, Tenn., Fernwood, Grenada, Jackson, Miss, Jackson, Tenn., McComb, Pickens, Miss., Pochatula, La., Water Valley, Miss.
602-M	7810	Y. & M. V. R. R.	From stations on the Y. & M. V. R. R. to Charleston, Clarksdale, Miss., Denham Springs, La., Gloster, Greenville, Greenwood, Grenada, Hickory, Holcomb, Jackson, Kings, Lambert, Meridian, Natchez, Phillips, Stevenson, Tchula, Trotters Point, Vicksburg and Yazoo City, Miss.
3	3284-A	N. C. & St. L. Ry.	Applies on interstate traffic between points on the N. C. & St. L. Ry.
	Rate Issue		
6	41296	N. C. & St. L. Ry.	Applies on Tennessee State Traffic between points on the N. C. & St. L. Ry.
6	A-10425	Sou. Ry.	From points in Alabama, Georgia and Tennessee, to Chattanooga, Tenn. (Note 1).
3155-F	9019	St. L. S. F. Ry.	Between stations on the St. L. S. F. Ry. in Alabama, Florida and Mississippi (Note 2).
	2848	Cent. of Ga. Ry.	Between stations on Cent. of Ga. Ry. and Montgomery, Ala. (Note 3).

Note 1—Sou. Ry. 25 miles and less, 50c per car more than above scale; all other distances the same as above scale.
Note 2—St. L. S. F. Ry. 100 miles and over 75, $2.50 per car more than above scale; all other distances the same as above scale.
Note 3—Cent. of Ga. Ry. $2.50 per car more than above scale for all distances.

[fol. 2578] IV. That the rates prescribed in the next preceding paragraph (hereinafter sometimes referred to as the Newly Reduced Rates) are now in force and effect and applicable upon lines of divers carriers in the same territorial rate group as is the Atlantic Coast Line Railroad, i. e., the Southern rate group, and in the territory where the transportation conditions surrounding the movement of logs has been declared by witnesses for the Atlantic Coast Line Railroad Company to be substantially similar with the transportation conditions in Florida; that said rates are in force

and effect in interstate commerce in Western Florida over the lines of carriers other than the Atlantic Coast Line Railroad; that there is now a substantial movement of logs by truck in Florida.

V. That at or about the same time that the Newly Reduced Rates were permitted by this Interstate Commerce Commission to become effective and did become effective, to-wit, upon various days in the month of August, 1932, similar rates applicable to the transportation of logs in the southwestern territory were published by divers railroad carriers doing business in the southwestern territory and filed with this Interstate Commerce Commission and were likewise permitted by this Interstate Commerce Commission to become effective in said southwestern territory; that among the tariffs naming such reduced rates applicable in such southwestern territory as aforesaid are the tariffs hereinafter described, issued by the railroads hereinafter named and applicable as hereinafter set forth, viz.:

[fol. 2579]

Railroad tariff No.	I. C. C. tariff No.	Issued by	Application
5683-AA	A-8212	Mo. Pac. R. R.	Between points on Mo. Pac. R. R. in Arkansas, Louisiana, Missouri, Oklahoma and Texas.
31134-N	C-12130	C. R. I. & P. Ry.	Between points on the C. R. I. & P. Ry. in Arkansas and Louisiana.
2915-B	4676	St. L. S. W. Ry.	Between points on the St. L. S. W. Ry. in Arkansas, Louisiana and Missouri. (Applies on cars of 90,000 lbs. or less, excess loads to be charged proportionately).
1485-A	9346	St. L. S. F. Ry.	Between points on the St. L. S. F. Ry. in Arkansas and between points in Arkansas and points in Missouri.

That the reduced rates so established in Southwestern territory as aforesaid are per carload rates regardless of weight and are identical in level with the Newly Reduced Rates established in the southern rate group as aforesaid, save that in Southwestern territory the rate per car for transportation a distance of 100 and over 75 miles is $22.50 and that on the St. L. S. F. Ry. the said rates are applicable on cars of 90,000 lbs. or less, excess loads to be charged proportionately.

VI. That the Cummer Scale is a mileage scale of rates expressed in lump sum terms per car of minimum weight

of 50,000 pounds, excess in proportion; that the Newly Reduced Rates which this Interstate Commerce Commission has permitted to become effective in interstate commerce in Southeastern and Southwestern territories, other than Florida, is expressed in lump sum terms per car regardless of weight; that the capacity of cars in which logs ordinarily are loaded for transportation in Southeastern and Southwestern territories ranges from 80,000 to 100,000 pounds per car, with the privilege of overloading to the extent of 10 per cent of such capacity. And these movants aver that [fol. 2580] shippers generally, particularly shippers of commodities such as logs, in shipping upon rates applicable to carloads regardless of weight, customarily load to the full carrying capacity of the car; and that the loading of logs of all kinds, including hardwood moving in the Southeastern and Southwestern territories and in Florida, upon lump sum per car rates regardless of weight would substantially exceed 70,000 pounds per car, and would range from 75,000 to 85,000 pounds per car or more.

VII. That the table below compares for the hauls therein specified the rates, per car of the weight mentioned, for the transportation of logs upon the Cummer Scale intrastate in Florida (column 2); upon the Newly Reduced Rates (column 3); and upon the scale prescribed by this Interstate Commerce Commission as aforesaid intrastate in Florida (Column 4):

Computed on Carload of 70,000 Lbs.

(1) Hauls in miles	(2) Cummer scale	(3) Newly reduced rates in S. E. territory	(4) Scale fixed by I. C. C.
25 miles	$11.97	$12.00	$24.50
50 miles	14.70	15.00	31.50
75 miles	16.10	17.50	38.50
100 miles	18.20	20.00	42.00
	Computed on Carload of 75,000 Lbs.		
25 miles	12.82	12.00	26.25
50 miles	15.75	15.00	33.75
			41.25
100 miles	19.50	20.00	45.00

Computed on Carload of 80,000 Lbs.

(1) Hauls in miles	(2) Cummer scale	(3) Newly reduced rates in S. E. territory	(4) Scale fixed by I. C. C.
25 miles	13.68	12.00	28.00
50 miles	16.80	15.00	36.00
75 miles	18.40	17.50	44.00
100 miles	20.80	20.00	48.00

Computed on Carload of 85,000 Lbs.

25 miles	14.51	12.00	29.75
50 miles	17.85	15.00	38.25
75 miles	19.55	17.50	46.75
100 miles	22.10	20.00	51.00

[fol. 2581] VIII. That such Newly Reduced Rates are published in some instances as transit rates and in other instances as local rates, and your petitioners aver that the Cummer Scale of rates while in terms a local scale in practical operation and effect is in large part tantamount to a transit scale in that all or substantially all of the outbound product manufactured by the several shippers receiving logs under the Cummer Scale moves over the lines of the Atlantic Coast Line Railroad, under and by virtue of the terms of service contracts exacted from such shippers in case of trainload shipments and by virtue of the location of the mills of many if not most of such other shippers as receive logs under the Cummer Scale. That in practical operation and effect the Newly Reduced Rates are substantially similar to the Cummer Scale. That in seeking to justify its invasion of the domain of the State of Florida, the Interstate Commerce Commission relied upon and gave consideration to comparisons of the said Cummer Scale with divers scales of transit and other rates effective in interstate commerce upon divers other railroads in the Southeastern territory and in the Mississippi Valley; and in several instances the very rates so compared with the said Cummer Scale have been superseded in whole or in part by the Newly Reduced Rates which this Interstate Commerce Commission has suffered and permitted lately to become effective as aforesaid.

IX. That the Newly Reduced Rates are applicable to a very large portion of the interstate log traffic in the South-

ern territorial rate group, as well as in the Southwestern territorial rate group, and are applicable in interstate com- [fol. 2582] merce between ten or more States, and over part or all of the lines of ten or more railroads, as well as in intrastate commerce in divers of such States over part or all of the lines of divers of such railroads; that the action of this Interstate Commerce Commission in permitting the Newly Reduced Rates (which are in operation and effect substantially similar to said Cummer Scale) to become effective and to supersede the substantially higher interstate rates for the transportation of logs, are substantially concurrent with the attempt on the part of said Commission to supersede the said Cummer Scale of rates in intrastate commerce in Florida with a substantially higher scale of rates prescribed by this Interstate Commerce Commission. That this Commission at no time has attempted to fix intrastate rates for the transportation of logs in any State in the Southern territorial rate group other than in Florida, or on any railroad other than the Atlantic Coast Line Railroad.

X. That to-wit, on August 23rd, 1932, these movants did file with this Interstate Commerce Commission their petition for rehearing in and reconsideration of the said report and order heretofore entered herein by this Interstate Commerce Commission as aforesaid; and said petition having been denied these movants did file in the United States District Court for the Northern District of Georgia, Atlanta Division, their bill of complaint, the purpose whereof was to enjoin, annul and set aside so much of the order of the Interstate Commerce Commission as attempted to prescribe intrastate rates for application in Florida; that on September 14th, 1932, said court did duly enter its order staying said order of said Interstate Commerce Commission and said stay order is still in force and effect, and that [fol. 2583] said suit is still pending in said Court. That these movants did not discover or learn that the said Newly Reduced Rates had been filed or permitted by this Interstate Commerce Commission to become effective or were in contemplation until, to-wit, September 26th, 1932, after the said order of this Interstate Commerce Commission had been entered and after the said petition for rehearing had been filed and denied and after the bill

of complaint had been filed in the said United States District Court for the Northern District of Georgia. That these movants by the exercise of no amount of diligence could have sooner discovered the matters and things herein set forth, and since such discovery have acted diligently.

XI. And these movants aver (as at all times in these proceedings they have averred), that this Interstate Commerce Commission is without the power, authority or jurisdiction to prescribe intrastate rates for the transportation of logs in intrastate commerce in Florida in this proceeding; also, that this Interstate Commerce Commission has not made and cannot upon the record in this proceeding make the findings which would justify the invasion of the domain of the State of Florida, and that this Interstate Commerce Commission had not justified and could not upon this record justify the invasion of the domain of the State of Florida to fix intrastate rates in Florida, and that the action of this Interstate Commerce Commission in attempting so to do was and is arbitrary and unlawful; that the matters and things set forth in the proceeding paragraphs of this Motion constitute additional evidence (newly discovered by these movants and overlooked by this Interstate Commerce Commission), further demonstrating that [fol. 2784] the said order of the Interstate Commerce Commission in invading the domain of the State of Florida as aforesaid was not and is not justified and was and is arbitrary and unlawful and ought not to have been entered, and having been entered ought to be set aside by this Interstate Commerce Commission; that forthwith upon the filing of this Motion these movants will seek leave to file and will file in said cause so pending in said United States District Court for the Northern District of Georgia, proper pleadings setting up the matters and things set up in said original bill and in addition setting forth the matters and things set up in this Motion, as further and additional reasons why said order of this Interstate Commerce Commission should be enjoined, annulled and set aside by said Court in the event that this Interstate Commerce Commission shall deny this motion or any part thereof, praying (a) that the present existing order of said Court staying the operation of said order of this Interstate Commerce Commission be continued until this Interstate Commerce Commission shall have acted upon this motion; (b) that in the event that

this Interstate Commerce Commission shall deny this motion or any part thereof, the said order of this Interstate Commerce Commission be enjoined, annulled and set aside as was prayed in said original bill; (c) for such other relief as these petitioners shall be advised is proper in the premises.

Wherefore, your petitioners move that these proceedings be reopened for further hearing and reconsideration; and that the outstanding order herein prescribing rates to be applied for the transportation of logs intrastate in Florida [fols. 2585 & 2586] be annulled and set aside and that these proceedings be dismissed.

Respectfully submitted, The State of Florida, by Cary D. Landis, Its Attorney General. Florida Railroad Commission, by Theo. T. Turnbull, Special Counsel.

Tallahassee, Florida, October 8, 1932.

[fol. 2587] Before the Interstate Commerce Commission

I. C. C. Docket No. 18364

[Title omitted]

Petition of Intervention and Petition for Further Hearing. Filed Oct. 10, 1932.

To the Interstate Commerce Commission:

Comes now your petitioner, F. S. Buffam Company, Inc., and respectfully represents that it has an interest in the matters in controversy in the above-entitled proceeding, and desires to intervene in and become a party to said proceeding, and for grounds of the proposed intervention, says that:

Petitioner is a corporation organized and existing under the laws of the state of Florida, with its principal office at 234 Ives Street, in the city of Jacksonville, where it operates a cypress and hardwood lumber mill.

Petitioner has good cause to intervene in this proceeding although a second report and order of the Commission thereon have been entered, as will more fully appear from

the following statement of the unusual and alarming conditions which have arisen in the business affairs of petitioner as a direct result of the second decision of the Commission, 186 I. C. C. 157.

Petitioner began operation of its Jacksonville plant subsequent to the first report and decision of the Commission in the above entitled proceeding. Since the Cummer scale of rates on logs was restored on April 16, 1931 and during the year 1932, Petitioner has caused to be shipped by the Atlantic Coast Line Railroad to its Jacksonville plant, which is located on and served exclusively by the Atlantic Coast Line Railroad Company, an average of about 72 carloads of logs per month from stations in Florida such as Lake Butler, Wauchula, Sanford, Palatka and other stations. Petitioner's plant uses no pine logs, such as were the principal source of controversy in the original proceedings in this case. Its supply of inbound logs consists of hardwoods, principally cypress, ash and oak, cypress predominating. The hardwood lumber manufactured by Petitioner's plant moves to far distant destinations, about two thirds going to the eastern markets north of the Richmond gateway, and one third to the central, western and southern states. About ninety per cent of Petitioner's lumber products move outbound by rail, and all of the rail movements are transported over the lines of the Atlantic Coast Line Railroad Company, which railroad enjoys the inbound haul of Petitioner's logs.

[fol. 2588]

The capital invested in the plant operated by Petitioner at Jacksonville is substantial, and the number of persons regularly employed there has been about 125. In addition about 200 persons are employed in the woods getting out the logs and timber to be used in Petitioner's mill.

Subsequent to the second report of the Commission (de-

[fol. 2589]

cided July 5, 1932) information was spread by word of mouth that the Cummer scale of rates would be cancelled and the Commission's own scale would be substituted therefor on logs moving by rail within the State of Florida, on or after the middle of September 1932. Even though no change has occurred at the time of filing this petition (October 8, 1932), the log cutters in the woods, fearing the drastic increases in freight rates which might occur under the impending change, discontinued cutting hardwood, cypress and other logs. The movement of logs to Petitioner's mill suddenly closed. As a result of this un-

usual condition, and being without a supply of such logs, Petitioner was forced to stop the operation of its mill, thereby throwing many persons out of employment.

The Affirmative Relief sought for the future by Petitioner is the leaving in effect of the Cummer scale for application on hardwoods, such as cypress, ash and oak logs from points in Florida to Petitioner's mill, in intrastate commerce under the jurisdiction of the Railroad Commission of Florida, such scale to be used in the nature of and in the absence of proportional or inbound transit rates on logs in connection with outbound shipments of lumber over the lines of the Atlantic Coast Line Railroad to interstate destinations.

Petitioner alleges that in various southern states the railroads, in order to retain their revenues from logs and lumber have voluntarily established in very recent months, even [fol. 2590] subsequent to the date of the second decision of the Commission in this case, scales of rates on logs to be applied when the lumber manufactured therefrom at the mill points is forwarded over the line of the railroad which transported the logs into the mill point, which said scales of rates are commensurate with, and even lower in certain instances than the Cummer scale of rates which has been and is being applied in the nature of proportional rates on logs which move to Petitioners' mill over the Atlantic Coast Line, and which move out as lumber over the same lines of the same railroad. The newly and voluntarily established log scales have been permitted to become effective by the Commission. The presence of such scales which are now available to Petitioner's competitors in other states, such as South Carolina, Alabama, Mississippi and Tennessee, and the withdrawal of the Cummer scale from application to log traffic to Petitioner's mill, would work an undue hardship and prejudice against Petitioner and effect an unfair advantage and preference to mills in South Carolina, Alabama, Mississippi and Tennessee which compete with Petitioner in the sale of their manufactured lumber products in northern markets. Petitioner contends that if this Commission has any authority over such Florida log rates to Petitioner's mill, which Petitioner denies, the Commission cannot lawfully apply any different tests in determining the costs of the service in transporting logs for certain distances as intrastate, local rates than it applies in determin-

ing the costs of the service in transporting logs for like [fol. 2591] distances as inbound proportional rates which, by transit rules and regulations are transformed by legal diction into interstate proportional rates. The Commission cannot lawfully sanction and justify inbound proportional transit rates on logs, over which it perhaps may have jurisdiction through the fiction of "transit", and at the same time condemn intrastate rates on like traffic which for like distances are upon a level commensurate with or higher than the inbound proportional transit "interstate" rates. The proposition here asserted does not appear in and has not been before the Commission in these proceedings. The subject arises out of new circumstances and conditions which have arisen subsequent to the closing of the record in this case after further hearing was held.

Wherefore by reason of the second decision of the Commission in the above entitled proceeding, and nothing else, Petitioner has suddenly been subjected to a total loss of business and is in jeopardy of losing its entire investment and the value of its going concern. Heretofore Petitioner has never been directly affected by the above-entitled proceeding. Petitioner therefore prays that in view of these sudden and unusual conditions it be granted leave to intervene and be treated as a party hereto with the right to have notice of and appear at the taking of testimony, if further testimony is taken, to produce and cross-examine witnesses, and be heard in person or by counsel upon brief and at the oral argument, if further argument is granted.

[fol. 2592] Petition for Further Hearing

Petitioner prays that the Commission re-open the above entitled proceeding for further hearing and reconsideration.

Petitioner prays opportunity to offer and present testimony in proof of the fact that Petitioner will suffer irreparable injury if the second decision and order of the Commission in the above entitled proceeding should become effective.

Petitioner also desires opportunity to offer in evidence newly developed facts and changed conditions which have arisen since the second hearing in this proceeding; and if permitted to so do Petitioner will prove vital and material facts which will warrant substantial changes in and re-

versals and modifications of the findings and conclusions in the second report of the Commission, none of which new evidence was available at the time of the second hearing and none of which appears in the existing transcript of record in this case.

Petitioner desires to prove further that under the special circumstances surrounding the operation of Petitioner's hardwood plant, the scale of log rates used by it, and published locally, is in substance and effect a scale of proportional transit rates, commensurate with many other scales of proportional transit rates on logs, which scales are in effect and available for use by mills located in other southern states which sell their products in the same markets in competition with Petitioner. Petitioner avers that such [fol. 2593] evidence has not been heretofore available in this case, and that such evidence was not presented to or known to the Commission when it rendered its second decision in the above-entitled proceeding. Petitioner contends therefore, that it is entiled as a matter of right to an opportunity to present such evidence to the Commission; and that if such opportunity is not accorded, Petitioner shall have been denied a full hearing, as is contemplated by the Interstate Commerce Act. (Sec. 15. (1), Sec. 16 (a)).

Petitioner asks opportunity to offer new and additional proof that the substitution of the Commission's scale for the Cummer scale will not have the intended effect of increasing the revenues of the carriers, but will cut off almost entirely the regular and substantial revenues which defendant has been receiving from the inbound shipment of logs to Petitioner's mill and, in addition, will also cut off, almost entirely the revenues which defendant has been receiving on 90 per cent of Petitioner's manufactured products; and that thereby defendant's revenues will be reduced in substantial amounts. Petitioner asserts that such testimony will prove such facts beyond any reasonable doubt.

Petitioner, without admitting the power or jurisdiction of the Interstate Commerce Commission to enter any order in this proceeding insofar as intrastate local rates in Florida are concerned, but expressly denying the existence of such power and jurisdiction, desires opportunity to prove [fol. 2594] further, that the facts and circumstances surrounding the shipment of logs from points in Florida to

Petitioner's plant at Jacksonville are such that the Commission ought not to assert its jurisdiction over such local intrastate log rates and ought not to seek to impose its power over these Florida intrastate rates.

Petitioner desires to prove further that not only is there an absence of competition between Georgia and Florida cypress ash tank mills in the purchase of Florida hardwood and cypress logs such as would be necessary to warrant the exercise of federal power over Florida intrastate rates, but also that the second decision of the Commission would in itself create and set up a new, unjust and unwarranted discrimination against petitioner and Petitioner's mill locality in favor of competing mills and mill localities in other states which have recently acquired advantage of local transit scales of rates on logs. These new transit scales of rates, established since the date of the second decision of the Commission are commensurate with, and in instances lower and cheaper than the Cummer scale of log rates which are used by Petitioner as proportional rates in the absence of like transit log rate scales which should be accorded to Petitioner in connection with the outbound shipments.

Petitioner desires to prove further that the Cummer scale does not cast a burden upon interstate commerce and that the cancellation of the Cummer scale and the substitution of the Commission's prescribed scale therefor, will not [fol. 2595] have the practical effect which the Commission intended in its second decision upon the net railway operating revenue of the defendant. Petitioner will further show by expert testimony, if given opportunity to do so, that there are serious mistakes, illogical theories, and unwarranted assumptions underlying the so-called accounting evidence which was presented at the second hearing in an effort to prove that the Cummer scale of log rates cast a burden on interstate traffic.

Petitioner asks that it not be required in this petition to explain in detail the errors in the accounting methods and formulas which led the Commission to the conclusion that the Cummer scale cast a burden upon interstate traffic, but if such explanation is deemed by the Commission as essential to support this petition, the Petitioner asks leave to prepare and present to the Commission a full exposition of this subject in a separate brief at some later date

to be hereafter fixed by the Commission. Petitioner asks opportunity to prove further that the failure of defendants to earn a fair return on investment has been due primarily to the fact that its passenger traffic has declined to such an extent that the operating expenses of its passenger traffic actually exceed its passenger revenues, thereby casting an enormous burden upon freight traffic. Freight shippers should not be made to pay increased freight charges on particular commodities to make up for the deficits from passenger operations. This situation has not been pre- [fol. 2596] sented to the Commission in connection with the accounting evidence, theories and formulas which were introduced in evidence at the second hearing. Petitioner asserts that when such evidence is offered in proper form its effect will be so persuasive as to warrant numerous changes in important findings in the Commission's second decision and as to warrant the reversal of the Commission's finding that the Florida log rates cast a burden on interstate commerce.

Petitioner asks opportunity to prove further that, due to the general depression in all lines of prices and the decline in basic commodity prices of agricultural, forest and manufactured products, which, according to common knowledge represent changed conditions which were not before the Commission at the time of the first or second hearings in this case, the charges for the transportation of low-priced commodities, such as logs, must be reduced, instead of increased, unless the rail lines would deliberately design to deliver such traffic to competing forms of transportation, namely the trucks and the water lines. Petitioner will show, contrary to findings of fact and erroneous deductions therefrom which appear in the Commission's second decision, that when the Cummer scale was temporarily and unlawfully lifted, between February 9, 1929 and April 10, 1931, Petitioner received many shipments of logs by water and by motor trucks, and practically none by rail, due to the inability of the rail lines to compete, under the Commission-prescribed log scale, with the other [fol. 2597] modes of transportation; and that as soon as the Cummer scale was restored, April 10, 1931 and up until September 15, 1932, when the Commission's second-prescribed log scale was to replace the Cummer scale, Petitioner's supply of logs was transported almost entirely by

the rail lines, and lines of the defendant Atlantic Coast Line Railroad. All of which, Petitioner will show, is proof of the adage that "increased rates do not necessarily mean increased revenues" because even the threatened increase in Petitioner's log rates in September 1932 resulted in the almost complete and sudden stoppage of all railroad revenues on inbound logs to and outbound lumber from Petitioner's plant.

Petitioner asks opportunity to prove further that the findings and deductions of the Commission on page 170 of the second decision with respect to the comparison of revenue on logs to Jacksonville with the revenue on lumber to Jacksonville is inapt in that Petitioner's tonnage of logs is made into lumber which is not used locally but moves outbound by rail to Northern markets, and the lumber rate from the points of origin of the logs to the final destinations of the lumber are in many instances only 1 cent per 100 pounds in excess of the lumber rates from the milling point. Petitioner will show that the revenues under the Cummer scale from log producing points to Petitioner's mill at Jacksonville plus the revenues under the lumber [fol. 2598] rates outbound to Northern markets, using the ratio of about three cars of logs inbound to one car of lumber outbound, produce far greater revenue than if the lumber were manufactured at the log-shipping point and shipped as lumber to the same eastern markets. Petitioner will show by its experience during the past two months that the effect of the increase in the log rates will be to cut off railroad revenue not only on inbound logs but on outbound lumber as well, without the substitution of any revenue on lumber from the log shipping points direct to northern markets. Petitioner will further show that the effect of the substitution of the Cummer scale by the Commission prescribed scale will drive the tonnage of inbound logs and outbound lumber to other and cheaper modes of transportation, thereby reducing, instead of increasing, both the gross and net revenues of the railroads.

Petitioner desires to show further, by competent evidence that numerous other statements of fact, and deductions based thereon in the Commission's decision, are in some instances erroneous, in others, lacking in a fair conception of the nature of this traffic, of the transportation conditions in Florida, and of the economic effects which

would result from the application of certain doctrines upon which the second decision of the Commission rests. Without undertaking in this petition to elaborate upon and explain the numerous matters of this kind which warrant further study by the Commission, Petitioner avers that the granting of further hearing in this case would enable [fol. 2599] the Commission to acquire a grasp of this situation and a vision of the commercial conditions confronting both the lumber and the railroad industries far different from the views which the Commission has taken of this case as expressed in its second report.

Wherefore petitioner prays that the Commission enter an order in this proceeding, re-opening the same for further hearing, and staying the effective date of its order of July 5, 1932, pending rehearing and reconsideration, as provided in the Interstate Commerce Act, Sec. 16a.

Julian E. Fant and F. C. Hillyer, Attorneys for Petitioner.

[fol. 2600] *Duly sworn to by F. S. Buffam. Jurat omitted in printing.*

[fol. 2601] BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 18364

[Title omitted]

REPLY OF DEFENDANT, ATLANTIC COAST LINE RAILROAD COMPANY, TO PETITION OF STATE OF FLORIDA AND FLORIDA RAILROAD COMMISSION FOR FURTHER HEARING AND PETITIONS OF F. S. BUFFAM COMPANY, INC., FOR LEAVE TO INTERVENE AND FOR FURTHER HEARING

Comes now the Atlantic Coast Line Railroad Company, defendant, and for answer to the petition of the State of Florida and the Florida Railroad Commission for further hearing, and the petitions of F. S. Buffam Company, Inc., for leave to intervene and for further hearing, and jointly answering said petitions, respectfully states:

1

That the allegations of said petitions and the grounds set forth and relied upon therein are largely a repetition

of similar allegations in the petition for rehearing heretofore filed on behalf of Wilson Cypress Company and Wilson Lumber Company of Florida, dated October 5, 1932, and this defendant accordingly asks leave to adopt and rely upon its answer to this last-named petition, filed [fol. 2602] on October 11, 1932, and that said answer may be made a part hereof and may be considered and read in connection herewith. That although the petitions of the State of Florida, et al., and F. S. Buffam Company, Inc., carry references to several additional tariffs which were not specifically named in the petition of the Wilson Companies, these tariffs are all tariffs of a similar nature, that is to say, they are tariffs publishing certain temporary rates on logs which are restricted to apply for relatively short distances only, and are generally limited as to origin and destination territories, and the rates are in most instances transit rates—all of said rates having been established solely for the purpose of meeting truck competition. That all of said rates are competitive and depressed rates and are valueless for purposes of comparison in determining the level of reasonable maximum rates on logs, either on the lines of this defendant or elsewhere; and that none of these tariffs have been published for account of this defendant, the Atlantic Coast Line Railroad Company. Neither does it appear that the conditions surrounding the transportation of logs under said tariffs, or any of them, are in any respect similar to the conditions which surround the transportation of logs over the lines of this defendant in Florida, and defendant avers, on the contrary, that such conditions are in fact altogether dissimilar.

2.

That under the Rules of Practice of this Commission no petition of intervention may be filed after a case has been heard and decided but on the contrary such petitions may [fol. 2603] be filed only in a "pending proceeding," and then only "prior to or at the time it is called for hearing, but not after except for good cause shown" (Rule 11 of Rules of Practice), and that the petition of the F. S. Buffam Company, Inc., for leave to intervene has not been filed in compliance with said rule and accordingly it should not be accepted or considered by the Commission.

3

That although said petition of intervention alleges that petitioner began the operation of its plant "subsequent to the first report and decision of the Commission," the petitioner, F. S. Buffam Company, Inc., did begin to operate its plant at Jacksonville in the early part of 1930, and was operating at the time when the further hearings were held herein, said hearings having commenced on June 10, 1931, with additional hearings at a still later date, and that the case was not finally submitted until February 3, 1932, during all of which period petitioner had every opportunity to apply for leave to intervene but failed to do so. That the said hearing of June 10, 1931, was held in the City of Jacksonville, and that E. C. Green, Manager of the Jacksonville Traffic Bureau, which is in turn a branch of the Chamber of Commerce of Jacksonville, was present and entered his appearance on behalf of the Jacksonville Traffic Bureau and the Jacksonville Chamber of Commerce and the Municipality of Jacksonville, and that he was in attendance throughout that hearing and likewise participated throughout the original case, representing the same interests.

[fol. 2604]

4

That said petition of intervention fails in any event to show good cause for the allowance of this intervention. In so far as the petition purports to set up an alleged discrimination against this petitioner and an undue preference and advantage to petitioner's competitors who may be engaged in other localities in the manufacture and shipment of lumber, it represents an effort to have the case reopened, presumably upon the ground of some alleged error in the Commission's former findings, although in respect to an issue upon which the Commission made no finding and on the contrary expressly declined to make any finding. In the report of July 5, 1932, it was stated that "no finding in reference to undue prejudice against persons and localities in interstate commerce is necessary and we make no finding in that regard" (186 I. C. C. 190). And so far as concerns the allegations of injury and detriment to the petitioner, growing out of the Commission's order, defendant is informed and believes and therefore states that this petitioner owns no lumber mill but that in the early part of 1930 it leased and

began to operate a certain mill which is owned by one Gress. The petitioner likewise owns no standing timber, and it purchases logs from various owners of timber who cut the logs and ship them to the mill; and that the petitioner purchases such logs only as and when they are needed to supply the mill in filling orders for lumber. That said mill is located in the outskirts of the city of Jacksonville and within the switching limits of the city, and is likewise located upon McCoys' Creek, which empties into the St. Johns River. That at the time when the petitioner began to operate, and during the entire period June, 1930, to March, 1931, the [fol. 2605] Cummer scale of log rates was not in effect, having been superseded by the scale ordered by this Commission, and that all times during this period, and prior and subsequent thereto, the oportunity was and still is available to the petitioner to move its logs into the mill by water. That during the period June, 1930, to March, 1931, (when this Commission's scale was in force) the log movement to petitioner's mill, other than over the lines of this defendant, was 114 cars; whereas the movement via defendant's lines totalled 89 cars, or an average of 9 cars of logs per month. During the period subsequent to March, 1931, and from April, 1931, to August, 1932, inclusive, the rail movement via defendant's line averaged 36 cars of logs per month. In the month of September, 1932, the rail shipments via the Atlantic Coast Line totalled 39 cars of logs, of which 12 moved in the latter part of September; and in October, 1932, to the present date there has been a movement in this manner of 17 cars.

That so far as concerns the outbound movement of lumber from petitioner's mill, there are available to the petitioner through the medium of a switching service the transportation facilities of all railroads reaching Jacksonville, including the Seaboard Air Line and the Southern Railway, and that during the nine months of the current year the outbound shipments via defendant's lines have totaled 76 cars, and there has been a movement of 6 cars via other lines.

5

Defendant expressly denies that by reason of the second decision of this Commission petitioner "has suddenly been [fol. 2606] subjected to a total loss of business and is in jeopardy of losing its entire investment and the value of its

going concern", as alleged in said petition of F. S. Buffam Company, Inc. Among other things, the petition refers (on p. 2) to "the capital invested in the plant operated by the petitioner"; and, further, to the number of persons who are "employed in the woods getting out the logs and timber to be used in petitioner's mill." Clearly the Buffam Company can claim no right to intervene in order to preserve the capital investment of the Gress Lumber Company, this latter company being the owner of the plant in which the petitioner has no interest except as the lessee; and with respect to the number of persons employed, the petitioner has no employment of persons cutting logs in the woods, the logs being on the contrary cut by, and at the expense of, the parties who sell them to the petitioner. Moreover, the reference in said petition to "unusual and alarming conditions which have arisen in the business affairs of the petitioner as the direct result of the second decision of the Commission" presents no rate condition whatever that did not exist at the time when the petitioner leased its mill and began operations.

6

That said petition discloses no good cause why the petitioner should now be allowed to intervene in this proceeding, or why the proceeding should be reopened and reheard, for the further reason that if any discrimination or other disadvantage should be found to grow out of the Commission's order as affecting this petition or other individual shippers, the way is at all times open to them to seek relief [fol. 2607] before this Commission in an appropriate proceeding. Moreover, if it shall be made to appear in any individual instance that the intrastate rates ordered by the Commission will in fact operate to reduce the income of the defendant by discouraging patronage, an application may at any time be made to this Commission for appropriate exception (Railroad Commission v. C. B. & Q. R. Co., 257 U. S. 563). Defendant, however, denies that the substitution of the Commission's scale for the Cummer scale has had the effect, or will hereafter have the effect, of reducing income by discouraging patronage. Furthermore, there can be no reduction of income growing out of the loss of any traffic if such traffic is being handled at less than the out-of-pocket expense of transportation, and this fact was fully

recognized by the Commission in entering its report and order herein.

7

That even if its intervention should be permitted the said Buffam Company's petition for further hearing sets forth no new facts which would require or justify a reopening of this case and a rehearing thereof by the Commission. The reference in said petition (p. 8) to alleged competition and "unjust and unwarranted discrimination against petitioner and petitioner's mill locality in favor of competing mills and mill localities in other states" concerns an issue as to which the Commission made no finding in the report, and therefore no alleged error in that respect can now properly be set up and claimed as constituting a ground for rehearing and reconsideration by the Commission. Petitioner's [fol. 2608] offer to show by expert testimony that there are "serious mistakes, illogical theories and unwarranted assumptions underlying the so-called accounting evidence which was presented at the second hearing" (petition, p. 9) is made in the face of the fact that all of this accounting evidence was subjected to the closest scrutiny by representatives of the State of Florida at the hearings, and by this Commission in the course of its consideration of the case, and the substantial accuracy of the compilations submitted by defendant's witnesses at the hearing was confirmed. Moreover, this study and analysis of the accounts of this defendant was not limited to the revenues and expenses from the transportation of freight alone, but there were taken into account the revenues and expenses of conducting the passenger service. The petition in this respect represents nothing more than an offer on the part of the petitioner to seek to prove that the Commission misinterpreted and misapplied the evidence which was before it in the record and which had been developed at most extensive hearings.

8

That petitioner's offer to prove that the scale of log rates used by it "is in substance and effect a scale of proportional transit rates, commensurate with any other scales of proportional transit rates on logs" (petition, p. 6), is made in disregard of the fact that this case involves the local rates on logs between all Florida points, and that the use of the

Cummer scale throughout that state in no way carries with it the shipment of the manufactured product of the logs. Log shippers in Florida who ship a volume of logs many times in excess of this petitioner's shipments are not bound [fol. 2609] to ship the product via defendant's lines and do not do so in actual practice. On the other hand, under the transit tariffs of certain lines in the Mississippi Valley and elsewhere, referred to in the petition, the shipment of the manufactured product via the line that carries the logs to the mill is essential in order to secure the application of the transit rates on the logs.

For the reasons set forth herein, as well as in the answer to the separate petition of Wilson Lumber Company, et al., defendant respectfully submits that the petition of the State of Florida and the Florida Railroad Commission, and the petitions of the F. S. Buffam Company, Inc., should at the earliest practicable date be denied by the Commission. The petitioners have now filed in the United States District Court in Georgia supplemental or original bills setting up the filing of these petitions with the Commission, and urging the matters and things set forth therein as constituting ground for a further stay of the Commission's order by the Court, and further praying that the order shall be stayed pending action by the Commission upon the petitions, and defendant is advised that the matter is now set for further hearing before the Court on October 22, 1932.

Respectfully submitted, Atlantic Coast Line Railroad Company, by Robert C. Alston, Carl H. Davis, Frank W. Gwathmey; Its Attorneys.

October 17, 1932.

[fol. 2610] BEFORE INTERSTATE COMMERCE COMMISSION

No. 18364

[Title omitted]

ORDER REOPENING PROCEEDING—Oct. 21, 1932.

Upon consideration of petitions for further hearing and reconsideration of the above-entitled proceeding filed by interveners Wilson Cypress Company and Wilson Lumber

Company of Florida and by the State of Florida and the Florida Railroad Commission, of petition for leave to intervene and for further hearing filed by F. S. Buffum Company, Inc., and of defendant's answers to said petitions:

It is ordered, that said proceeding be, and it is hereby, reopened for further hearing for the sole purpose of receiving evidence respecting any change in the rates on logs since the close of the last hearing herein, the circumstances connected with and the conditions which occasioned such changes, and whether such circumstanes and conditions, or any of them, are present with respect to the Florida intrastate log rates of defendant.

It is further ordered, that the operation of the order heretofore entered in this proceeding on July 5, 1932, as amended by order of July 28, 1932, be, and it is hereby, suspended until the further order of the commission.

It is further ordered, that F. S. Buffum Company, Inc., be, and it is hereby, permitted to intervene and be treated as a party to this proceeding, with the right to have notice of and appear at the taking of further testimony, produce and cross examine witnesses, and participate in oral argument, if any be had; provided that the permission to intervene herein granted shall not be construed to allow inter- [fol. 2611] vener to introduce evidence not within the scope of such further hearing.

It is further ordered, that in all respects the aforesaid petitions be, and they are hereby, denied.

It is further ordered, that this proceeding be, and it is hereby assigned for such further hearing November 10, 1932, at 10:00 o'clock, A. M., standard time, at Hotel Mayflower, Jacksonville, Fla., before Examiner Hoy.

It is further ordered, that briefs on further hearing shall not be received, that there shall be no proposed report of the examiner, and that there shall be no oral argument before the commission; provided, however, that at the conclusion of such further hearing oral argument, if desired, may be had before the presiding examiner.

By the commission.

George B. McGinty, Secretary.

A true copy.

George B. McGinty, Secretary. (Seal Interstate Commerce Commission.)

[fols. 2612-2614] INTERSTATE COMMERCE COMMISSION
WASHINGTON

Feb. 24, 1933.

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of the following:

Order of the Commission entered October 21, 1932,

Notice of the Commission dated October 28, 1932,

Transcript of the stenographer's notes of the hearing held November 21 and 22, 1932, at Jacksonville, Florida, before Examiner Hoy, and of exhibits filed at said hearing,

Report and order of the Commission filed and entered January 9, 1933, and

Order of the Commission entered January 19, 1933, in Docket No. 18364, Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, the originals of which are now on file and of record in the office of this Commission.

In witness whereof I have hereunto set my hand and affixed the Seal of said Commission this 21st day of February, A. D. 1933. George B. McGinty, Secretary of the Interstate Commerce Commission. (Seal Interstate Commerce Commission.)

[fols. 2615-3632] BEFORE INTERSTATE COMMERCE COMMISSION
WASHINGTON

No. 18364

[Title omitted]

ORDER REASSIGNING CAUSE—October 28, 1932

Further hearing in the above entitled case, now assigned for November 10, 1932, at Jacksonville, Florida, before Examiner Hoy, is cancelled, and this case is reassigned for hearing November 21, 1932, ten o'clock a. m., standard time, at the Mayflower Hotel, Jacksonville, Florida, before Examiner Hoy.

By the Commission.

George B. McGinty, Secretary.

[fol. 3033]

EXHIBIT GREEN #134

I. C. C. Docket 18364

Witness Green

Statement Showing Proportional or Net Rates on Logs as Described in the Following Tariffs

Missouri Pacific Railroad

I. C. C. No.	Supplement No.	Application
A 7348	12	On intrastate traffic in Louisiana up to 75 miles.
A 7349	45	On interstate traffic only between stations in Missouri.
A 8193		On intrastate and interstate traffic between stations in Arkansas.
A 8018	16	Between all stations in Arkansas, Louisiana, Missouri, Oklahoma and Texas; also from specifically named stations on the M. P. in the state of Arkansas to Cape Girardeau, Mo.; for distances 100 to 142 miles.

St. L. & S. F. Railroad

9639	28	From St. L. & S. F. stations in Tennessee and Mississippi to Memphis, Tenn., only.
9640		Between St. L. & S. F. stations in Missouri.
9638		From stations on the St. L. & S. F. in Arkansas and Missouri to Cape Girardeau.
9346	17	Between stations in Arkansas and also between stations in Arkansas on the one hand and stations in Missouri.
9019	17	Between all stations in Alabama; between all stations in Alabama and Florida or Mississippi; between all stations in Mississippi; and between all stations in Florida.
9567	2	Intrastate traffic between stations, Missouri.
9235	10	Same as above.
9195		Intrastate traffic in Mississippi.

G. M. & N. Railroad

1137		Between all stations on G. M. & N. R. R.
1058		Intrastate in Mississippi.

C. R. I. & P. Railroad

C 12130	9 & 10	Intrastate traffic in Louisiana; from C. R. I. & P. stations in Arkansas and Louisiana to Memphis, Tenn.; between stations in Arkansas, and between stations in Arkansas on the one hand and stations in Louisiana; also between stations in Louisiana on interstate traffic.

[fol. 3034]

St. L. & S. W. Railroad

4676	3	Between all stations in Arkansas, Louisiana and Missouri; also from stations in Arkansas to Memphis.
J. E. Johanson, Agent Freight Distance Tariff 5-H		On intrastate traffic in Arkansas between all stations on the lines of the C. R. I. & P., St. L. & S. F. and St. L. & S. W.

Distance	Rate per car regardless of weight
25 miles and under	$12.00
50 miles and over 25	15.00
75 miles and over 50	17.50
100 miles and over 75	22.50

[fol. 3035] EXHIBIT GREEN #135

I. C. C. Docket 18364

Witness Green

Statement Showing Proportional or Net Rates on Logs as Described in the Following Tariffs

Southern Railway

I. C. C. No.	Supplement No.	Application
A-10425	5	From Southern Ry. stations in Ga., Tennessee and Ala. to Chattanooga; from A. G. S. R. R. stations in Ala. and Tenn. to Chattanooga; from C. N. O. & T. P. stations in Tennessee to Chattanooga; applicable on both interstate and intrastate traffic in Tennessee.
A-10472		Under transit arrangements from So. Ry., A. G. S. and C. N. O. & T. P. stations in Ga. and Ala. to Chattanooga.
Agent F. L. Speiden's		
A 659	115	From all T. A. & G. stations to Chattanooga, Tenn., and Gadsden, Ala.

Distance	Rate per car regardless of weight
25 miles and under	$12 50
50 miles and over 25	15 00
75 miles and over 50	17 50
100 miles and over 75	20 00

[fol. 3036] EXHIBIT GREEN #136

I. C. C. Docket No. 18364

Witness Green

Statement Showing Proportional or Net Rate on Logs as Described in the Following Tariffs

Southern Railway

I. C. C. No.	Supplement No.	Application
10472		Under transit arrangements from So. Ry. stations in Mississippi, Ala., and Tenn. to Corinth, Miss.
10448	2	From all stations on the So. Ry. between Memphis, Tenn., and Corinth, Miss., to Memphis, Tenn.
Illinois Central R. R.		
7789		From all stations on the G. & S. I. to Jackson, Miss., and Laurel, Miss.
7810 (Y. & M. V.)	4 and 5	From stations on the Y. & M. V. east of the Miss. River to the following points in Miss.: Clarksdale, Gloster, Greenville, Greenwood, Grenada, Hickory, Holcomb, Jackson, Kings, Lambert, Meridian, Natchez, Phillip, Stevenson, Tehule, Trotters Point, Vicksburg, Yazoo City; and also to Denham Spr., La.
7786	3	From all stations on the I. C. on its southern lines to the following pts.: Corinth, Miss., Dyersburg, Tenn., Fernwood, Miss., Grenada, Miss., Jackson, Miss., Jackson, Tenn., McComb, Miss., Pickings, Miss., Ponchatoula, La., Water Valley, Miss.
7811 (Y. & M. V.)		Between all stations on the Y. & M. V., located west of the Miss. River.

N. C. & St. L. Railroad

3284-A	...	Between all stations on the N. C. & St. L.

Columbus & Greenville R. R.

36	6 and 8	From all stations on the C. & G. to the followin pts. in Mississippi: Columbus, Greenvill Grenada and West Point.

M. & O. Railroad

B-860	1	From all stations on the M. & O. in Ala., Ky Miss. and Tenn. south of the Ohio River to th following points: Columbus, Corinth, Meridian Miss.; Humboldt, Jackson, Tenn.; Mobile Whistler, Ala.

Distance	Rate per car regardless of weight
25 miles and under	$12.00
50 miles and over 25	15.00
75 miles and over 50	17.50
100 miles and over 75	20.00

[fol. 3037]

EXHIBIT GREEN #137

I. C. C. Docket 18364

Witness Green

Statement Showing Proportional or Net Rates on Logs as Described in th Following Tariffs

S. A. L. Ry.

I. C. C. No.	Supplement No.	Application
A-7638	...	From stations on the S. A. L. Ry. in Alabam located between Omaha, Ga., and Montgomery Ala., under transit rules and regulations.

Western Ry. of Ala.

A-129	...	From all stations on the Western Ry. of Ala. t Montgomery, Ala., and Selma, Ala.

Central of Ga. Ry.

2848	...	From all stations on the Central of Ga. in Alabam to Montgomery, Ala., under transit arrange ments.

Southern Ry.

A-10425	6	From all Southern Railway stations in Alabam to both Mobile and Selma, from all Southern Ry. stations in Alabama and from all station on the A. G. S. in Alabama and Mississippi t York, Ala.; not applicable under transit rule and regulations.

Distance	Rate per car regardless of weight
25 miles and under	$14.50
50 miles and over 25	17.50
75 miles and over 50	20.00
100 miles and over 75	22.50

[fol. 3038] EXHIBIT GREEN No. 138

Docket No. 18364

Witness Green

Statement Showing Revenues Per Car, of Various Weights under the "So-Called" "Cummer" Scale, Compared with Various Other Scales of Proportional or Net Rates Applicable to Logs

Under the following scales	Tariff authority	25 miles	50 miles	75 miles	100 miles
Per Car of 70,000 Pounds for					
Cummer Scale	* A	$11.97	$14.70	$16.10	$18.20
Mississippi Valley	# B	12.00	15.00	17.50	22.50
Chattanooga	# C	12.50	15.00	17.50	20.00
Mississippi	# D	12.00	15.00	17.50	20.00
Montgomery	# E	14.50	17.50	20.00	22.50
Docket 18364	F	24.50	31.50	38.50	42.00
Per Car of 75,000 Pounds					
Cummer Scale	* A	$12.83	$15.75	$17.25	$19.50
Mississippi Valley	# B	12.00	15.00	17.50	22.50
Chattanooga	# C	12.50	15.00	17.50	20.00
Mississippi	# D	12.00	15.00	17.50	20.00
Montgomery	# E	14.50	17.50	20.00	22.50
Docket 18364	F	26.25	33.75	41.25	45.00
Per Car of 80,000 Pounds					
Cummer Scale	* A	$13.68	$16.80	$18.40	$20.80
Mississippi Valley	# B	12.00	15.00	17.50	22.50
Chattanooga	# C	12.50	15.00	17.50	20.00
Mississippi	# D	12.00	15.00	17.50	20.00
Montgomery	# E	14.50	17.50	20.00	22.50
Docket 18364	F	28.00	36.00	44.00	48.00
Per Car of 85,000 Pounds					
Cummer Scale	* A	$14.53	$17.85	$19.55	$22.10
Mississippi Valley	# B	12.00	15.00	17.50	22.50
Chattanooga	# C	12.50	15.00	17.50	20.00
Mississippi	# D	12.00	15.00	17.50	20.00
Montgomery	# E	14.50	17.50	20.00	22.50
Docket 18364	F	29.75	38.25	46.75	51.00
Per Car of 90,000 Pounds					
Cummer Scale	* A	$15.39	$18.90	$20.70	$23.40
Mississippi Valley	# B	12.00	15.00	17.50	22.50
Chattanooga	# C	12.50	15.00	17.50	20.00
Mississippi	# D	12.00	15.00	17.50	20.00
Montgomery	# E	14.50	17.50	20.00	22.50
Docket 18364	F	31.50	40.50	49.50	54.00
[fol. 3039] **Per Car of 100,000 Pounds**					
Cummer Scale	* A	$17.10	$21.00	$23.00	$26.00
Mississippi Valley	# B	12.00	15.00	17.50	22.50
Chattanooga	# C	12.50	15.00	17.50	20.00
Mississippi	# D	12.00	15.00	17.50	20.00
Montgomery	# E	14.50	17.50	20.00	22.50
Docket 18364	F	35.00	45.00	55.00	60.00

Tariff Authorities:

* A—Agent J. H. Glenn, I. C. C. A-659, page 413, first item as illustrative.
* B—G. M. & N. R. R. I. C. C. 1137.
St. L. & S. F. R. R. Sup. 17 to I. C. C. 9019.
* C—Sou. Ry. Sup. 5 to I. C. C. A-10425.
Agent F. L. Speiden, Sup. 115 to I. C. C. A-659, page 6 last item as illustrative.
* D—I. C. R. R. Sup. 4 and 5 to I. C. C. 7810.
M. & O. R. R. Sup. 1 to I. C. C. B-860.
* E—W. Ry. of A. R. R. I. C. C. A-129 as illustrative.
* F—Prescribed by I. C. C. in I. C. C. Docket 18364.

* Cummer scale is as follows:

Per car of 50,000 pounds, excess in proportion.	
40 miles and under	$8.55
60 " " over 40	10.50
90 " " " 60	11.50
100 " " " 90	13.00
110 " " " 100	14.00
130 " " " 110	16.00
160 " " " 130	17.00
170 " " " 160	18.50

* Scales are as follows:

	Per Car Regardless of Weight			
	Mississippi Valley	Chattanooga	Mississippi	Montgomery
25 miles and under	$12.00	$12.50	$12.00	$14.50
50 " " over 25	15.00	15.00	15.00	17.50
75 " " " 50	17.50	17.50	17.50	20.00
100 " " " 75	22.50	20.00	20.00	22.50

[fol. 3040]

EXHIBIT No 140A

I. C. C. Docket 18364

List of Certified Tariffs Included in Exhibit No 140

Explanation of references shown in Column 6:
L—Local
P—Proportional
T—Transit
B—Bond

1	2	3	4	5	6
Railroad	Tariff I. C. C. No.	Supplement	Title page and page No.	Effective	
Missouri Pacific	A-7348	12	4	Feb. 15, 1932	L
" "	A-7349	15	4	Aug. 17, 1932	L
" "	A-8163		10	Aug. 15, 1932	L
" "	A-8018	6	4	Aug. 19, 1932	L P
St. Louis San F.	9195	28	2	Aug. 23, 1932	L
" "	9640		11	Sept. 3, 1932	L
" "	9638		10	Aug. 31, 1932	L
" "	9346	17	3	Aug. 25, 1932	L
Gulf, Mobile & Nor.	1137		5	May 9, 1932	P B
Southern Ry.	A-10425	5	2	Sept. 26, 1932	L
"	A-10472		4	Sept. 15, 1932	Net
"	A-10467		1-5	Aug. 12, 1932	T
"	A-10367		1, 5	Aug. 12, 1932	T
"	A-10448	2	2	Sept. 15, 1932	P B

EXHIBIT No 140A

I. C. C. Docket 18364

List of Certified Tariffs Included in Exhibit No. 140

Explanation of references shown in Column 6:
L—Local
P—Proportional
T—Transit
B—Bond

1	2	3	4	5	6
Railroad	Tariff I. C. C. No.	Supplement	Title page and page No.	Effective	
Illinois Central	7789		4	Inter May 18	
				Intra Apr. 16, 1932	P
" "	7313	24	2	Inter Oct. 12	
				Intra Sept. 12 "	P
" "	7786	3	1, 4	May 3, 1932	P T
Yazoo & Miss. Val.	7810		7	Inter July 20	
				Intra June 17 "	L P
" "	7810	5	3	Inter Nov. 13	
				Intra Oct. 15 "	L P
" "	7811		54	July 19, 1932	T
" "	7810		1, 3	Sept. 24, 1932	L
N. C. & St. L.	3284-A		3	Oct. 6, 1932	L
"	3284-A		1, 2	Aug. 27, 1932	L
" (Tenn.	41296)		1	Oct. 6, 1932	L
(Certificate of Tennessee Commission)					
New Orleans & N. E.	3101		4	Inter July 26, "	P B
				Intra June 26, "	
Columbus & Greenville	36	6	Reverse	Inter Sept. 10	P
				Intra June 10	
"	36	8	"	Inter Sept. 10	T
				Intra Aug. 10	
C. R. I. & P.	12130	9	5	Oct. 22, 1932	L
"	12130	10	6	Nov. 10, 1932	L
St. L. S. W.	4676	3	4	Aug. 25, 1932	P
St. L. S. F.	9019	17	2	Aug. 23, 1932	L
[fol. 3041]					
				Inter June 16.	
Missouri & N. Ark.	678	1	3	Intra May 16, 1932	T
" "	678	2	2	July 13, 1932	T
Seaboard Air Line	A-7638		4	Inter Oct. 25	
				Intra Sept. 12 "	T
Atlanta & West Pt.	A-129		5	Inter Oct. 12	
W. Ry. of Ala.				Intra Sept. 12 "	T
Central of Ga.	2848		1-4	Aug. 12, 1932	T
" "	2848		1-5	Sept. 13, 1932	T
Mobile & Ohio	B-860		1, 3	Aug. 25, 1932	P B T
Not certified, but referred to in oral testimony:					
St. L. S. F.	9567	2		Intrastate Mo.	L
Johanson's	5-H			Intrastate Ark.	L

[fol. 3042]

EXHIBIT BUFFUM NO. 141

I. C. C. Docket 18364

Inbound Cars

Logs

1930	A.C.L.	S.A.L.	Sou.	F.E.C.	Rail-road	Truck	Water	Truck and water
June	2	2	1	....	5	6.3	.....	6.3
July	10	15	....	5	30	22.5	.....	22.5
Aug.	15	33	1	5	54	55.3	.....	55.3
Sept.	13	4	....	....	17	55.4	.5	55.9
Oct.	7	0	....	2	9	99.3	4.6	103.9
Nov.	24	10	....	3	37	62.2	.....	62.2
Dec.	10	3	....	....	13	31	3.3	34.3
1931								
Jan.	11	8	....	....	19	63.4	22.7	86.1
Feb.	15	22	....	4	41	82.4	6.8	89.2
Mar.	16	10	....	....	26	72.7	.4	73.1
Apr.	13	....	....	5	18	75.9	23.5	99.4
May	6	....	....	....	6	77.4	23.2	100.6
	142	107	2	24	275	703.8	85.	788.8
June	23	....	....	....	23	73.9	.....	73.9
July	43	....	....	....	43	75.8	.....	75.8
Aug.	34	....	....	....	34	119.5	.....	119.5
Sept.	24	....	....	....	24	38.6	.....	38.6
Oct.	2	....	....	....	2	0	.....	0
Nov.	0	....	....	....	0	26.7	.....	26.7
Dec.	8	....	....	....	8	48.5	2.1	50.6
	134				134	383.0	2.1	385.1
1932								
Jan.	20	....	....	....	20	107	.....	107.
Feb.	53	....	....	....	53	102.8	15.2	118
Mar.	58	2	....	....	60	100.8	10	110.8
Apr.	75	3	....	....	78	87.5	10	97.5
May	107	16	....	....	123	99.3	4.3	103.3
June	59	5	....	....	64	48.	8.6	56.6
July	98	2	....	....	100	72.6	.3	72.9
Aug.	88	....	....	....	88	71.6	6.3	77.9
Sept.	39	....	....	....	39	70.3	.2	70.5
Oct.	58	....	....	....	58	88.6	9.3	97.9
	655	28	....	....	683	848.5	64.2	912.7
Grand Total					1092	1935.3	151.3	2086.6

1092.

3178.6

[fol. 3043]

[Stamp:] Interstate Commerce Commission. Docket No. 18364, Exhibit No. 142. Witness Roland. Complainant's, Defendant's, Commission's, Intervenor's. Date 11-21-32. Reporter Algee.

Shipments of Over 70,000 Pounds to Wilson Lumber Company of Florida Included in Restitution Claim

Date of shipment	Car number	Origin	Destination	Weight
11/18/29	A. C. L. 90432	Miccosukee	Perry	70,328
11/ 9/29	91359	Williston	"	75,200
5/ 3/29	91805	Hildreth	"	71,500
5/ 4/29	76806	Homassassa	"	72,400
5/ 6/29	76663	"	"	82,000
5/ 6/29	76813	"	"	78,180
5/ 8/29	76274	"	"	81,600
5/ 8/29	76618	"	"	73,600
5/11/29	74229	"	"	75,460
5/11/29	76002	"	"	79,960
5/11/29	73870	"	"	77,500
"	74195	"	"	77,700
5/10/29	76363	"	"	73,720
5/15/29	76356	"	"	71,580
5/18/29	73881	"	"	74,360
5/17/29	76657	"	"	77,700
"	73861	"	"	83,240
"	75608	"	"	83,600
"	76162	"	"	75,400
5/13/29	75438	"	"	73,300
5/20/29	76282	"	"	79,560
"	72389	"	"	79,020
5/22/29	74390	"	"	85,940
"	74351	"	"	87,720
"	74199	"	"	71,640
5/24/29	72537	"	"	74,120
5/27/29	74012	"	"	87,020
"	73138	"	"	74,400
"	73754	"	"	73,160
5/29.29	73114	"	"	72,500
5/27/29	76454	"	"	74,780
6/ 3/29	73107	"	"	82,700
6/ 3/29	76483	"	"	70,440
6/ 3/29	75550	"	"	79,440
"	73734	"	"	82,560
"	76450	"	"	70,200
"	76087	"	"	86,000
"	74368	"	"	85,820
6/ 5/29	76262	"	"	81,920
6/ 7/29	76806	"	"	83,700
"	73810	"	"	73,200
5/31/29	75567	"	"	72,200
6/10/29	73870	"	"	89,900
"	73988	"	"	78,400
6/10/29	76999	"	"	78,800
"	76881	"	"	77,100
"	79958	"	"	74,360
6/17/29	76577	/	"	80,400
"	72804	"	"	74,100
"	76618	"	"	78,300
"	76386	"	"	73,200
6/19/29	73886	"	"	88,660
"	75001	"	"	71,400
"	76976	"	"	78,840
"	73999	"	"	73,340
6/21/29	76815	"	"	74,700
"	76391	"	"	76,300

6/26/29	A. C. L.	76982	"	Perry	77,300
6/26/29		72036	"	"	70,220

[fol. 3044]

7/ 1/29		76318	Homassassa	"	70,120
7/ 1/29		75690	"	"	75,000
"		75368	"	"	71,660
7/ 3/29		72375	"	"	74,400
"		72550	"	"	72,700
"		74327	"	"	78,400
7/12/29		72886	"	"	74,400
"		74109	"	"	73,900
7/15/29		73152	"	"	72,360
7/17/29		76060	"	"	73,300
7/22/29		72640	"	"	73,900
7/24/29		75353	"	"	70,900
8/ 2/29		76625	"	"	71,400
8/ 7/29		72656	"	"	73,520
8/21/29		73361	"	"	70,100
11/28/29		91936	Lamont	"	71,687
2/15/29		73994	Carbur	"	72,115
2/21/29		72573	"	"	73,812
3/ 4/29		72219	"	"	70,577
3/ 7/29		75000	"	"	73,692
5/ 7/29		74044	"	"	70,804
"		73275	"	"	70,068
5/11/29		5838	"	"	80,049
5/14/29		73615	"	"	73,335
"		76749	"	"	70,184
"		76969	"	"	72,936
"		75051	"	"	75,729
5/16/29		73427	"	"	70,260
5/17/29		73314	"	"	73,070
5/24/29		75597	"	"	73,901
5/31/29		75161	"	"	70,614
6/14/29		75650	"	"	70,111
6/21/29		72617	"	"	70,774
6/20/29		73025	"	"	71,994
6/20/29		73824	"	"	70,854
6/25/29		73908	"	"	77,781
6/29/29		74179	"	"	71,478
6/28/29		75550	"	"	71,081
"		75468	"	"	71,040
"		72619	"	"	73,708
7/ 5/29		72519	"	"	77,564
"		73479	"	"	76,769
7/12/29		76982	"	"	70,948
"		72008	"	"	71,457
"		74179	"	"	78,698
7/19/29		76584	"	"	77,081
"		72824	"	"	72,796
7/24/29		75511	"	"	76,446
7/29/29		76301	"	"	70,795
"		73191	"	"	81,536
8/ 2/29		75211	"	"	77,103
"		72077	"	"	76,982
8/ 1/29		75268	"	"	74,618
"		76662	"	"	73,692
8/ 5/29		76301	"	"	71,088
9/20/29		72144	"	"	71,729
9/21/29		76950	Cross City	"	83,400
"		75463	"	"	73,600
9/16/29		75463	"	"	88,200
9/21/29		72178	"	"	77,800

[fol. 3045]

Date of shipment	Car number	Origin	Destination	Weight
9/19/29	A. G. L. 73991	Cross City	Perry	80,300
9/30/29	73810	"	"	71,000
9/30/29	74109	"	"	73,400
9/26/29	73718	"	"	73,400
10/24/29	75083	"	"	78,600
11/ 7/29	73479	"	"	73,700
"	76087	"	"	81,500
11/19/29	74204	"	"	75,200
3/19/29	76479	Hines	"	70,330
3/26/29	75000	"	"	71,911
3/29/29	72312	"	"	73,945
4/ 3/29	74382	"	"	72,740
5/14/29	76813	"	"	75,973
5/18/29	74195	"	"	81,378
6/ 5/29	75202	"	"	76,081
6/13/29	76363	"	"	73,762
9/10/29	72979	"	"	73,459
1/24/30	73243	Cross City	"	72,200
1/24/30	70331	"	"	70,600
4/19/30	92144	"	"	79,300
"	92334	"	"	70,300
4/25/30	90505	"	"	70,900
"	93116	"	"	78,700
4/26/29	90719	"	"	71,500
5/ 9/30	91391	"	"	81,900
5/16/30	93161	"	"	80,300
5/19/30	92176	"	"	79,700
"	92448	"	"	73,000
5/22/30	90679	"	"	76,500
"	92876	"	"	74,900
"	90643	"	"	73,800
"	91582	"	"	82,400
5/29/30	92170	"	"	82,300
"	90666	"	"	73,600
6/ 6/30	92235	"	"	78,800
6/10/30	92279	"	"	76,400
7/18/30	92020	"	"	92,100
"	91696	"	"	80,400
8/ 1/30	93046	"	"	82,000
"	92168	"	"	83,200
8/ 2/30	90892	"	"	84,400
8/ 8/30	91520	"	"	87,100
"	90601	"	"	77,400
8/13/30	92546	"	"	81,700
"	92400	"	"	78,000
8/22/30	91335	"	"	83,800
8/28/30	92674	"	"	82,400
8/29/30	90816	"	"	76,600
9/26/30	93137	"	"	84,600
10/ 3/30	93155	"	"	74,100
10/14/30	91895	"	"	71,700
10/18/30	92616	"	"	84,700
10/30/30	90745	"	"	80,900
11/14/30	91702	"	"	84,100
11/21/30	92732	"	"	81,300
11/25/30	92626	"	"	75,700
"	93102	"	"	76,300
11/28/30	91108	"	"	71,800
11/29/30	91847	"	"	70,000
12/ 8/30	74489	"	"	75,200
"	92098	"	"	77,500
"	92320	"	"	81,400
12/18/30	74489	"	"	70,000
12/30/30	91749	"	"	75,700
"	90625	"	"	72,500

[fol. 3046]

Date of shipment	Car number	Origin	Destination	Weight
4/10/30	73391	Hines	Perry	75,402
"	73397	"	"	74,277
"	75481	"	"	79,916
4/16/30	75134	"	"	79,018
5/20/30	73236	"	"	76,041
"	74004	"	"	83,267
"	74206	"	"	71,136
"	75603	"	"	75,600
6/19/30	74122	"	"	70,876
"	5859	"	"	70,085
"	73416	"	"	74,742
"	73025	"	"	70,972
"	72035	"	"	76,658
6/26/30	74122	"	"	70,205
1/ 3/31	74467	Cross City	"	73,300
1/ 5/31	92618	"	"	87,400
"	92983	"	"	74,100
"	91708	"	"	80,900
1/ 6/31	74462	"	"	80,100
"	74467	"	"	74,000
1/ 7/31	90957	"	"	83,200
"	74461	"	"	80,700
"	74489	"	"	78,600
"	74425	"	"	78,700
"	92093	"	"	82,000
1/17/31	74489	"	"	76,800
"	74425	"	"	83,800
1/26/31	74489	"	"	71,400
1/27/31	91460	"	"	71,700
"	74467	"	"	72,000
"	74462	"	"	70,400
2/26/31	74432	"	"	70,900
"	74477	"	"	72,600
3/10/31	74450	"	"	79,800
"	74461	"	"	72,600
3/14/31	74489	"	"	77,900
"	92183	"	"	72,300
3/12/31	90486	Miccosukee	"	71,061

[fol. 3047] J. E. PRESTON No. 145

I. C. C. Docket 18364

Shipments to Wilson Cypress Company of Palatka, Florida, of Over 70,000 Pounds Included in Restitution Claim

Destination Palatka Unless Otherwise Shown

Date	Car No.	Origin	Weight
2/19/29	A. C. L. 73976	Hines, Fla.	77,100
2/21/29	76706	"	78,600
2/21/29	76708	"	72,500
2/28/29	76742	"	71,200
3/ 2/29	76564	"	72,500
3/ 4/29	76710	"	79,900
3/ 4/29	74362	"	78,300
3/ 6/29	76502	"	74,500
3/ 8/29	76596	"	74,500
3/12/29	76592	"	78,000
3/12/29	76178	"	74,200
3/15/29	73864	"	82,900
3/19/29	74139	"	79,800
3/21/29	76364	"	77,600
3/20/29	73840	"	72,200
3/21/29	74130	"	74,200
3/23/29	72473	"	70,400
3/23/29	73321	"	72,900
3/29/29	74367	"	85,500
4/ 1/29	74394	"	77,500
4/ 1/29	73317	"	70,300
4/ 2/29	75632	"	74,200
4/ 4/29	76958	"	74,900
4/ 4/29	75747	"	70,700
4/ 2/29	75327	"	85,500
4/ 6/29	74230	"	76,400
4/ 9/29	76810	"	79,600
4/10/29	6294	"	72,400
4/ 9/29	76738	"	85,700
4/13/29	72943	"	73,400
4/13/29	72177	"	73,700
4/16/29	73193	"	89,900
4/17/29	70069	"	85,300
4/18/29	72197	"	80,000
4/20/29	72671	"	83,700
4/25/29	76743	"	78,000
4/25/29	75000	"	78,800
4/25/29	74387	"	72,100
4/23/29	73342	"	78,600
4/24/29	76759	"	82,800
4/24/29	76026	"	72,500
4/26/29	72044	"	81,200
4/29/29	75553	"	71,400
4/29/29	73073	"	71,400
4/29/29	74160	"	73,300
5/ 1/29	76176	"	72,400
5/ 8/29	76725	"	74,800
5/11/29	73982	"	81,200
5/14/29	76663	"	70,300
5/14/29	73027	"	70,500
5/14/29	73329	"	71,500
5/15/29	74312	"	73,800
5/15/29	73283	"	72,100
5/18/29	73712	"	71,300
5/20/29	74190	"	75,200
5/20/29	76956	"	74,400
5/24/29	76545	"	73,200
5/25/29	76521	"	71,100

Shipments to Wilson Cypress Company of Palatka, Florida, of Over 70,000 Pounds Included in Restitution Claim

Destination Palatka Unless Otherwise Shown

Date	Car No.	Origin	Weight
[fol. 3048]			
5/29/29	A. C. L. 74195	"	85,400
5/29/29	71069	"	70,800
5/29/29	76997	"	78,000
5/30/29	75438	"	72,400
5/30/29	73952	"	81,600
5/31/29	73005	"	82,100
6/ 1/29	75188	"	82,000
6/ 5/29	75522	"	76,800
6/20/29	76813	"	72,100
6/22/29	76064	"	70,900
6/21/29	73988	"	70,100
6/25/29	76136	"	71,300
6/25/29	70355	"	70,300
6/25/29	76386	"	74,100
6/25/29	76363	"	83,600
6/25/29	73191	"	72,800
6/27/29	76906	"	72,900
7/13/29	76136	"	72,900
7/12/29	74339	"	73,400
7/18/29	76286	"	70,600
7/22/29	73874	"	75,400
7/22/29	73817	"	77,000
7/23/29	76136	"	75,600
7/23/29	73937	"	73,900
7/25/29	72610	"	70,900
7/26/29	76575	"	71,200
7/26/29	73895	"	72,000
7/29/29	76429	"	70,200
7/29/29	76471	"	71,400
7/31/29	76697	"	72,500
8/ 3/29	76136	"	70,100
8/ 3/29	74307	"	71,200
8/ 3/29	76047	"	78,200
8/ 3/29	76971	"	71,900
8/ 2/29	76710	"	86,600
8/ 2/29	75603	"	73,600
8/ 2/29	72804	"	74,100
8/ 3/29	76530	"	77,500
8/ 6/29	75690	"	73,600
8/ 6/29	76205	"	83,000
8/ 6/29	76662	"	82,500
8/ 5/29	76167	"	77,000
8/ 5/29	76492	"	80,400
8/ 7/29	73817	"	70,900
8/ 9/29	73363	"	73,800
8/10/29	76776	"	74,600
8/10/29	73065	"	77,800
[fol. 3049]			
8/13/29	76095	"	75,700
8/13/29	70311	"	74,300
8/15/29	74307	"	73,000
8/15/29	75515	"	82,600
8/15/29	74044	"	83,000
8/15/29	76530	"	78,200
8/15/29	76662	"	96,900
8/14/29	73995	"	77,600

Date	Car No.	Origin	Weight
8/14/29	A. C. L. 76971	Hines, Fla.	80,900
8/14/29	76891	"	71,200
8/17/29	75379	"	81,300
8/17/29	76136	"	72,300
8/22/29	76906	"	74,000
8/23/29	76110	"	77,500
8/23/29	73873	"	76,300
8/23/29	73097	"	75,700
8/15/29	76257	"	78,100
9/24/29	76151	"	71,600
9/24/29	76226	"	71,400
9/24/29	76490	"	75,600
9/24/29	74188	"	81,500
9/24/29	76198	"	73,500
9/24/29	73874	"	74,800
9/24/29	73840	"	73,100
9/24/29	74068	"	72,300
9/24/29	74317	"	71,100
9/24/29	76257	"	70,500
9/24/29	74339	"	70,300
9/24/29	76110	"	70,700
9/24/29	76835	"	70,400
9/24/29	76047	"	70,000
9/24/29	73817	"	71,400
9/24/29	76502	"	75,800
9/24/29	76471	"	72,200
9/26/29	76776	"	70,700
9/26/29	76123	"	71,100
9/26/29	76467	"	82,100
9/26/29	76136	"	73,500
9/26/29	74316	"	72,800
9/26/29	76592	"	73,100
9/26/29	76321	"	71,000
9/26/29	76860	"	71,100
9/28/29	73835	"	71,100
9/28/29	73817	"	76,900
9/28/29	76800	"	74,000
9/28/29	73874	"	70,100
9/28/29	76755	"	78,800
[fol. 3050]			
10/ 1/29	74316	"	74,300
10/ 1/29	76656	"	80,300
10/ 1/29	76860	"	71,000
10/ 1/29	76592	"	73,300
10/ 1/29	76906	"	82,200
10/ 1/29	76671	"	70,100
10/ 1/29	76167	"	75,200
10/ 1/29	76123	"	77,700
10/ 1/29	76697	"	73,900
10/ 1/29	74047	"	85,300
10/ 1/29	73840	"	72,800
10/ 3/29	76432	"	73,600
10/ 3/29	76176	"	72,900
10/ 3/29	76502	"	71,300
10/ 3/29	76479	"	73,900
10/ 3/29	76517	"	72,400
10/ 3/29	76471	"	74,600
10/ 3/29	74154	"	70,400
10/ 3/29	76860	"	71,000
10/ 5/29	73895	"	73,700
10/ 5/29	76122	"	72,200
10/ 5/29	76226	"	74,200
10/ 5/29	73976	"	76,600
10/ 5/29	76708	"	70,800
10/ 5/29	76656	"	74,900
10/ 5/29	76923	"	70,100

Shipments to Wilson Cypress Company of Palatka, Florida, of Over 70,000 Pounds Included in Restitution Claim

Destination Palatka Unless Otherwsie Shown

Date	Car No.	Origin	Weight
10/ 5/29	A. C. L. 76136	Hines, Fla.	73,100
10/ 5/29	73863	"	73,900
10/ 5/29	76568	"	73,700
10/ 5/29	76971	"	70,100
10/ 5/29	76776	"	74,700
10/ 8/29	75424	"	74,800
10/ 8/29	76688	"	77,900
10/ 8/29	74109	"	84,100
10/ 8/29	76832	"	72,100
10/ 8/29	76019	"	83,000
10/ 8/29	76599	"	73,700
10/ 8/29	76594	"	73,300
10/ 8/29	76852	"	80,000
10/ 8/29	74362	"	81,500
10/ 8/29	76267	"	71,300
10/ 8/29	76564	"	71,900
10/ 8/29	73937	"	75,900
10/ 8/29	76755	"	74,600
10/10/29	76471	"	74,000
10/10/29	76178	"	72,100
10/10/29	76502	"	73,400
10/10/29	76479	"	70,800
10/10/29	76136	"	70,000
[fol. 3051]			
10/10/29	73810	"	72,900
10/10/29	76598	"	70,200
10/10/29	76182	"	72,100
10/10/29	73895	"	88,400
10/10/29	76981	"	75,600
10/10/29	73932	"	72,700
10/10/29	76123	"	75,500
10/10/29	76697	"	74,100
10/10/29	73796	"	75,300
10/12/29	76688	"	81,600
10/12/29	76594	"	79,500
10/12/29	76923	"	75,900
10/12/29	76886	"	72,300
10/12/29	74109	"	81,100
10/12/29	73864	"	74,900
10/12/29	76599	"	70,800
10/12/29	76262	"	70,700
10/12/29	76467	"	70,100
10/12/29	76019	"	73,600
10/12/29	76764	"	71,900
10/15/29	76136	"	73,800
10/15/29	76860	"	72,900
10/15/29	76502	"	72,600
[fol. 3052]			
10/15/29	76492	"	78,200
10/17/29	73863	"	70,200
10/17/29	74316	"	72,300
10/17/29	76592	"	71,100
10/17/29	76564	"	70,300
10/17/29	76796	"	71,500
10/17/29	76178	"	75,100
10/19/29	76697	"	79,600
10/19/29	74235	"	73,000

Date	Car No.	Origin	Weight
10/19/29	A. C. L. 76365	Hines, Fla.	87,800
10/19/29	73817	"	89,400
10/19/29	76262	"	92,600
10/17/29	76818	"	80,100
10/17/29	76599	"	73,400
10/17/29	74068	"	75,400
10/17/29	76801	"	78,000
10/22/29	76038	"	72,300
10/22/29	76182	"	77,700
10/22/29	76598	"	72,800
10/22/29	76257	"	77,300
10/22/29	73875	"	77,600
10/22/29	76820	"	71,300
10/22/29	76776	"	72,300
10/22/29	74362	"	74,700
10/22/29	76981	"	70,300
10/22/29	76947	"	73,200
10/22/29	76971	"	72,400
10/22/29	76502	"	70,400
10/22/29	76226	"	71,800
10/22/29	76656	"	75,800
10/24/29	76852	"	73,100
10/24/29	76422	"	75,600
10/24/29	76151	"	72,100
10/24/29	76764	"	71,500
10/24/29	76167	"	71,500
10/24/29	76136	"	73,500
10/24/29	76094	"	74,900
10/24/29	76832	"	71,400
10/24/29	73817	"	71,600
10/26/29	76613	"	72,800
10/26/29	73976	"	75,700
10/26/29	76375	"	76,400
10/26/29	74123	"	74,800

[fol. 3053]

10/26/29	76262	"	84,200
10/26/29	76710	"	74,600
10/26/29	76742	"	75,200
10/26/29	76502	"	72,700
10/29/29	74175	"	76,000
10/29/29	74130	"	74,300
10/29/29	76755	"	71,800
10/29/29	74294	"	84,500
10/29/29	74267	"	75,200
10/29/29	76708	"	74,700
10/29/29	76226	"	73,100
10/29/29	76471	"	74,700
10/31/29	76429	"	72,800
10/31/29	76798	"	81,100
10/31/29	74322	"	79,200
10/31/29	76502	"	75,900
10/31/29	73976	"	78,700
10/31/29	76818	"	77,900
10/31/29	76375	"	76,200
10/31/29	74235	"	85,400
10/31/29	76467	"	73,000
10/31/29	76310	"	77,100
10/31/29	76592	"	77,500
10/31/29	76854	"	74,700
10/31/29	73998	"	77,200
10/31/29	74123	"	88,300
11/ 2/29	76042	"	75,000
11/ 2/29	76658	"	71,400
11/ 2/29	74130	"	71,500

Shipments to Wilson Cypress Company of Palatka, Florida, of Over 70,000 Pounds Included in Restitution Claim

Destination Palatka Unless Otherwise Shown

Date	Car No.	Origin	Weight
11/ 2/29	A. C L. 73864	Hines, Fla.	71,400
11/ 2/29	73895	"	72,300
11/ 2/29	76710	"	77,200
11/ 2/29	76471	"	70,700
11/ 2/29	76517	"	73,900
11/ 5/29	76151	"	70,900
11/ 5/29	74123	"	79,800
11/ 5/29	73998	"	78,900
11/ 5/29	76375	"	73,900
11/ 5/29	76854	"	72,000
11/ 5/29	76432	"	71,200
11/ 7/29	76517	"	70,200
11/ 7/29	76492	"	71,000
11/ 7/29	73932	"	70,400
11/ 7/29	76852	"	74,100

[fol. 3054]

11/ 7/29	73908	"	76,900
11/ 7/29	74175	"	77,400
11/ 7/29	76139	"	72,800
11/ 7/29	76594	"	71,400
11/ 9/29	76833	"	73,400
11/ 9/29	76036	"	73,300
11/ 9/29	74154	"	77,000
11/ 9/29	73840	"	70,200
11/ 9/29	76178	"	79,800
11/ 9/29	76981	"	84,300
11/12/29	74139	"	71,600
11/12/29	76871	"	71,900
11/14/29	76592	"	76,800
11/14/29	76151	"	74,800
11/14/29	76182	"	70,600
11/14/29	76262	"	79,800
11/14/29	76710	"	81,000
11/16/29	76123	"	70,000
11/16/29	74235	"	71,200
11/19/29	76375	"	70,900
11/23/29	76820	"	78,200
11/26/29	74204	"	78,100
11/26/29	73936	"	73,200
11/26/29	76517	"	70,600
11/ 2 /29	76658	"	73,400
11/26/29	76262	"	72,200
11/20/29	76835	"	70,100
11/20/29	76854	"	76,500
11/20/29	76599	"	74,500
11/20/29	76592	"	83,600
11/20/29	76776	"	70,500
12/ 3/29	76697	"	71,200
12/ 3/29	76432	"	73,700
12/ 3/29	76339	"	80,900
12/ 3/29	73976	"	74,200

[fol. 3055]

12/ 5/29	76479	"	72,000
12/ 5/29	76796	"	71,600
12/ 5/29	74330	"	70,400
12/ 5/29	76364	"	70,400

Date	Car No.	Origin	Weight
12/ 7/29	A. C. L. 76182	Hines, Fla.	72,400
12/ 9/29	76594	"	78,200
12/10/29	76820	"	75,400
12/12/29	73751	"	71,400
12/12/29	74330	"	70,700
12/12/29	74188	"	71,400
12/12/29	76800	"	70,300
12/12/29	76136	"	72,100
12/14/29	73864	"	72,700
12/14/29	76854	"	72,300
12/17/29	76658	"	70,500
12/21/29	76568	"	70,100
12/21/29	73998	"	74,800
12/21/29	76064	"	73,900
1/ 7/30	76854	"	76,500
1/11/30	74111	"	70,000
1/11/30	74294	"	77,700
1/11/30	76833	"	73,400
1/11/30	76971	"	71,000
1/21/30	76706	"	71,100
2/ 1/30	76364	"	70,100
2/ 4/30	76226	"	70,700
2/ 8/30	73976	"	71,100
2/13/30	76375	"	75,000
2/13/30	73888	"	70,700
2/18/30	76519	"	71,900

[fol. 3056]

2/22/30	73929	"	71,400
2/22/30	76167	"	70,200
2/22/30	76134	"	77,600
2/25/30	76007	"	88,300
3/ 4/30	76854	"	70,300
3/ 6/30	76594	"	70,800
3/ 8/30	76123	"	72,800
3/ 8/30	76564	"	72,800
3/ 8/30	76801	"	71,200
3/ 8/30	76732	"	75,200
3/ 8/30	76599	"	74,500
3/ 8/30	73976	"	78,600
3/ 8/30	73937	"	76,100
3/11/30	76310	"	70,200
3/11/30	74322	"	71,900
3/11/30	76024	"	72,800
3/11/30	76594	"	73,300
3/13/30	76852	"	71,900
3/15/30	76800	"	70,100
3/15/30	74068	"	82,600
3/15/30	76581	"	75,500
3/15/30	76776	"	76,200
3/15/30	76257	"	70,400
3/18/30	76599	"	73,400
3/18/30	74012	"	72,700
3/18/30	73909	"	76,700
3/20/30	74278	"	75,000
3/20/30	73976	"	70,700
3/20/30	76492	"	70,600
3/22/30	76490	"	77,000
3/22/30	76182	"	70,400
3/22/30	76134	"	71,500
3/22/30	74356	"	74,300
3/22/30	74231	"	70,800
3/22/30	76047	"	80,900

[fol. 3057]

Shipments to Wilson Cypress Company of Palatka, Florida, of Over 70,000 Pounds Included in Restitution Claim

Destination Palatka Unless Otherwise Shown

Date		Car No.	Origin	Weight
3 25 30	A. C. L.	73826	Hines, Fla.	74,500
3 5 30		76262	"	72,200
3 25 30		76429	"	78,200
3 25 30		74346	"	78,900
3 25 30		74317	"	73,500
3 25 30		73929	"	79,500
3 25 30		76886	"	71,100
3 27 30		76539	"	80,400
3 27 30		73936	"	73,100
3 27 30		74316	"	71,400
3 27 30		76564	"	70,900
3 27 30		73998	"	71,300
3 27 30		76801	"	72,200
3 29 30		76024	"	70,800
3 20 30		76592	"	70,800
3 20 30		76764	"	70,500
4 1 30		76321	"	74,000
4 1 30		74278	"	76,100
4 1 30		74316	"	73,200
4 1 30		73908	"	72,200
4 1 30		76860	"	72,600
4 1 30		76854	"	75,800
4 1 30		74130	"	72,800
4 3 30		76852	"	82,500
4 3 30		73956	"	73,100
4 3 30		76697	"	73,400
4 3 30		76422	"	78,500
4 3 30		76539	"	80,900
4 3 30		74231	"	71,300
4 3 30		76658	"	70,300
4 3 30		76707	"	71,400
4 3 30		76042	"	71,600
4 5 30		76739	"	73,600
4 5 30		76595	"	73,700
4 5 30		76832	"	75,200
4 5 30		76226	"	74,600
4 5 30		73937	"	72,300
4 5 30		76798	"	74,100
4 5 30		76564	"	76,700
4 5 30		76476	"	70,100
4 8 30		76592	"	77,200
4 8 30		73888	"	71,800
4 8 30		76619	"	73,900
4 8 30		76906	"	76,800
4 8 30		73909	"	72,000
4 8 30		76606	"	80,100

[fol. 3058]

4 10 30		76732	"	74,100
4 10 30		73908	"	77,700
4 10 30		76136	"	75,700
4 10 30		76047	"	71,200
4 10 30		74278	"	72,700
4 10 30		76764	"	75,600
4 12 30		76119	"	73,900
4 12 30		76736	"	70,500
4 12 30		76502	"	73,800
4 12 30		76742	"	72,100

Date		Car No.	Origin	Weight
4/12/30	A. C. L.	74362	Hines, Fla.	76,700
4/12/30		73874	"	71,900
4/12/30		76364	"	79,200
4/12/30		74012	"	70,200
4/12/30		73888	"	70,000
4/12/30		76832	"	70,100
4/12/30		76568	"	76,300
4/12/30		76257	"	76,800
4/12/30		76710	"	72,700
4/15/30		74111	"	74,000
4/15/30		76167	"	71,200
4/15/30		76801	"	73,100
4/15/30		74330	"	70,900
4/15/30		76432	"	75,700
4/15/30		76539	"	70,200
4/15/30		76436	"	74,800
4/15/30		73937	"	77,600
4/15/30		76800	"	72,000
4/15/30		76324	"	73,800
4/15/30		76708	"	73,300
4/15/30		74130	"	74,600
4/15/30		76818	"	72,700
4/15/30		73976	"	70,600
4/15/30		76599	"	80,300
4/17/30		74362	"	81,400
4/17/30		76606	"	77,600
4/17/30		73908	"	83,600
4/17/30		76007	"	76,800
4/17/30		74012	"	71,100
4/17/30		74294	"	72,900
4/17/30		73909	"	70,700
4/17/30		76440	"	80,400
4/17/30		74154	"	74,000
4/17/30		76339	"	78,200
4/17/30		76302	"	74,600
4/19/30		76257	"	73,500
4/19/30		76594	"	70,600
4/19/30		76134	"	75,900
4/19/30		76502	"	83,700

[fol. 3059]

4/19/30		76835	"	76,700
"		76141	"	74,200
"		76708	"	74,800
"		74130	"	73,000
4/19/30		76706	"	71,500
4/22/30		74188	"	81,700
"		76310	"	74,200
"		76364	"	75,100
"		76617	"	73,200
"		75732	"	71,100
"		76007	"	72,600
4/22/30		74356	"	72,100
"		76568	"	74,200
"		73908	"	73,800
"		74322	"	73,000
"		76440	"	72,400
"		76742	"	72,100
"		76226	"	81,000
"		76519	"	72,000
"		76432	"	79,000
"		76276	"	71,300
"		76818	"	72,500
"		76490	"	70,800
4/24/30		74278	"	71,100
4/24/30		76800	"	73,500

Shipments to Wilson Cypress Company of Palatka, Florida, of Over 70,000 Pounds Included in Restitution Claim

Destination Palatka Unless Otherwise Shown

Date	Car No:	Origin	Weight
"	A. C. L. 76024	Hines, Fla.	70,300
"	74154	"	84,800
"	74330	"	77,900
"	76119	"	75,900
"	76154	"	75,800
4/26/30	73835	"	76,900
"	76429	"	76,700
"	76671	"	74,700
"	74175	"	71,100
"	74362	"	71,500
4/29/30	73817	"	70,200
"	76119	"	73,600
"	74278	"	76,000
"	76134	"	71,800
"	76479	"	75,200
"	76599	"	71,100
5/1/30	74362	"	70,700
"	76798	"	70,900
"	73909	"	78,800
"	76007	"	72,600
"	76736	"	70,000
"	73932	"	71,400
"	76739	"	75,800

[fol. 3060]

4/28/30	76422	"	84,100
"	76594	"	73,800
"	76110	"	71,100
"	76710	"	70,200
"	76755	"	74,400
"	74231	"	76,700
"	76151	"	71,900
5/3/30	76310	"	78,500
"	74231	"	70,700
"	76151	"	72,200
"	74129	"	71,600
"	74175	"	71,300
"	74356	"	73,900
"	73883	"	78,600
"	74130	"	78,900
"	74316	"	70,500
"	74111	"	70,400
"	76923	"	75,100
"	74141	"	70,200
"	76658	"	70,700
5/6/30	76339	"	77,000
"	76042	"	78,100
"	74188	"	82,700
"	73976	"	72,900
5/8/30	73840	"	74,600
"	76198	"	72,600
"	76467	"	71,500
"	76471	"	71,400
"	76801	"	75,800
"	76321	"	76,400
"	74231	"	71,800
5/6/30	74362	"	72,400
"	76302	"	77,800
"	73988	"	77,100
"	76007	"	72,000

Date	Car No.	Origin	Weight
5/13/30	A. C. L. 76375	Hines, Fla.	72,200
"	76686	"	72,600
"	76042	"	75,100
"	76479	"	81,200
"	76697	"	73,000
5/15/30	76796	"	72,800
"	74362	"	70,800
"	74330	"	74,200

[fol. 3060a]

5/15/30	76519	"	71,100
"	76755	"	81,600
"	74294	"	70,400
"	76151	"	81,800
"	76801	"	70,100
"	76007	"	73,600
"	74278	"	73,000
"	76364	"	73,700
5/17/30	76517	"	72,600
"	74339	"	70,100
"	76860	"	84,900
"	76707	"	75,200
"	76708	"	76,300
"	76490	"	71,800
"	74111	"	71,500
"	76908	"	71,800
"	76467	"	102,100
"	76619	"	71,400
5/20/30	74316	"	71,400
"	76007	"	75,600
"	76755	"	72,500
"	76801	"	76,000
5/22/29	72473	"	98,300
5/25/29	72229	"	91,700
5/30/29	76282	"	77,400
6/19/29	73107	"	70,100
6/25/29	74363	"	73,700

[fol. 3061]

6/19/29	73107	"	70,100
11/28/29	76047	"	73,600
11/28/29	73835	"	70,400
11/28/29	74330	"	73,200
7/23/29	76835	"	83,138
9/13/29	75449	"	70,500
9/14/29	75621	"	76,300
9/18/29	75578	"	80,100
9/19/29	74254	"	74,500
9/20/29	75442	"	79,700
9/27/29	73666	"	78,300
11/ 7/29	76274	"	73,300
11/15/29	72495	"	72,600
9/20/29	75442	"	79,700
9/18/29	75578	"	80,100
9/14/29	75621	"	76,300
11/19/29	72563	"	72,600
11/20/29	76134	"	74,200
11/20/29	73116	"	77,600
11/20/29	74368	"	81,800
11/20/29	73142	"	91,400
11/20/29	72618	"	79,300
11/19/29	73712	"	78,400
11/22/29	73899	"	71,800

Shipments to Wilson Cypress Company of Palatka, Florida, of Over 70,000 Pounds Included in Restitution Claim

Destination Palatka Unless Otherwise Shown

Date	Car No.	Origin	Weight
11/22/29	A. C. L. 73145	Hines, Fla.	78,300
11/22/29	76038	"	75,400
11/22/29	76094	"	80,500
11/ 7/29	72479	"	88,300
11/ 7/29	75100	"	86,300
11/13/29	76688	"	93,100
11/13/29	75078	"	89,400
11/13/29	72314	"	83,100
11/28/29	73627	"	92,800
11/23/29	75413	"	75,600
11/23/29	72787	"	86,700
11/13/29	73908	"	98,300
11/29/29	76096	"	94,800
11/29/29	73122	"	84,800
11/29/29	72248	"	79,200
11/29/29	72591 76182	"	173,600
[fol. 3062]			
11/30/29	73192	"	94,200
11/30/29	75384	"	89,100
11/30/29	72730	"	85,900
11/30/29	76301	"	95,900
11/30/29	72769	"	77,400
11/30/29	72153	"	82,900
12/ 2/29	74354	"	76,200
12/ 2/29	73216	"	80,500
12/ 3/29	72061	"	81,000
12/ 3/29	76887	"	76,000
12/ 2/29	74012	"	80,500
12/ 5/29	70358	"	78,600
12/ 5/29	72446	"	74,100
12/ 5/29	72496	"	85,300
12/ 5/29	72587	"	80,400
12/ 5/29	73384	"	80,900
12/ 5/29	75126	"	73,100
12/ 7/29	73363	"	75,000
12/ 7/29	73754	"	78,100
12/ 7/29	75272	"	76,300
12/ 7/29	72186	"	70,500
12/ 9/29	72117	"	74,400
12/ 9/29	76012	"	76,500
12/ 6/29	73283	"	76,400
12/ 7/29	76856	"	73,400
"	74204	"	78,300
12/10/29	75117	"	72,000
12/11/29	76828	"	77,800
12/11/29	72787	"	70,000
"	76580	"	73,800
"	74321	"	78,500
"	37899	"	75,600
"	72424	"	76,400
"	70311	"	75,800
12/10/29	72521	"	70,500
12/12/29	72506	"	70,000
"	72626	"	76,000
"	73445	"	80,300
12/13/29	76858	"	80,600
"	73402	"	87,300
"	73222	"	71,400
"	76871	"	70,300
12/14/29	75532	"	82,000

[fol. 3063]

Date	Car No.	Origin	Weight
12/14/29	A. C. L. 75234	Hines, Fla.	81,500
"	75698	"	82,100
"	73671	"	76,400
"	76519	"	79,600
"	76061	"	81,800
12/16/29	75130	"	83,600
"	73008	"	82,800
"	72037	"	80,300
"	73625	"	78,700
"	73086	"	77,500
"	76058	"	80,900
12/17/29	72283	"	77,400
"	73115	"	78,000
"	72248	"	74,200
12/21/29	72486	"	78,500
12/18/29	74377	"	77,400
"	73170	"	70,700
"	73975	"	81,700
"	73924	"	76,100
"	73131	"	72,800
12/19/29	72849	"	85,900
12/19/29	72893	"	70,000
12/20/29	72890	"	75,100
12/21/29	76521	"	72,200
12/23/29	75486	"	72,800
"	75618	"	70,600
"	73228	"	70,900
1/ 1/30	74278	"	70,700
"	73975	"	74,500
1/ 2/30	74149	"	70,100
"	72034	"	76,000
1/ 3/30	72626	"	70,100
1/ 7/30	72175	"	77,200
1/ 7/30	72282	"	80,200
1/ 6/30	75285	"	81,900
1/ 8/30	6374	"	71,600
1/ 8/30	75234	"	77,100
"	72570	"	81,000
"	6234	"	79,900
1/ 9/30	73461	"	76,300
1/11/30	76094	"	92,600
	73187	"	70,700

[fol. 3064]

1/13/30	75256	"	75,200
"	73406	"	81,600
1/11/30	72375	"	72,500
"	75553	"	75,000
"	72624	"	73,500
1/14/30	75649	"	71,600
"	73309	"	73,300
1/15/30	6823	"	73,200
1/16/30	72674	"	75,500
"	75151	"	75,400
"	74204	"	81,000
1/17/30	73394	"	73,700
1/15/30	73616	"	73,900
1/18/30	75316	"	75,200
1/20/30	73135	"	85,300
1/22/30	73363	"	71,700
"	75472	"	75,200
	74353	"	75,200

Shipments to Wilson Cypress Company of Palatka, Florida, of Over 70,000 Pounds Included in Restitution Claim

Destination Palatka Unless Otherwise Shown

Date of Shipment	Car No.	Origin	Weight
"	A. C. L. 72132	Hines, Fla.	74,700
1/22/30	72527	"	80,500
"	73793	"	83,500
"	6435	"	87,000
1/23/30	72618	"	71,000
"	75533	"	85,100
1/24/30	75463	"	72,400
1/25/30	70050	"	71,500
"	75310	"	74,200
1/27/30	76359	"	72,400
"	76191	"	81,100
"	75212	"	72,800
1/28/30	72004	"	70,400
1/29/30	73712	"	83,300
"	73734	"	73,100
1/28/30	74107	"	74,700
"	72138	"	83,000
"	76640	"	74,300
"	76263	"	74,700
1/29/30	73100	"	74,400
1/31/30	72269	"	70,000
"	72500	"	71,700
2/1/30	75472	"	73,300
"	72798	"	80,000
"	72509	"	74,100
2/4/30	73135	"	77,800
"	75239	"	86,200
"	73447	"	81,300

[fol. 3065]

2/5/30	72600	"	75,800
"	75387	"	73,500
"	72678	"	71,200
2/3/30	75548	"	74,700
2/3/30	73050	"	71,500
2/6/30	72375	"	79,900
"	73420	"	70,900
"	76640	"	75,700
"	76263	"	73,300
"	73100	"	78,000
"	76359	"	84,300
"	73407	"	80,800
2/7/30	75345	"	72,300
"	72081	"	83,500
"	73959	"	79,000
"	75538	"	70,300
2/8/30	73234	"	76,300
"	72024	"	71,200
2/10/30	75235	"	76,700
"	72527	"	80,700
2/12/30	75009	"	81,500
"	76733	"	78,700
2/13/30	73975	"	80,500
"	72486	"	74,700
"	75134	"	71,600
2/15/30	73645	"	83,300
2/14/30	75208	"	85,300
"	73270	"	83,200

Date	Car No.	Origin	Weight
2/15/30	A. C. L. 74017	Hirles, Fla.	71,300
"	75279	"	73,400
"	72024	"	72,500
"	75367	"	74,800
"	75080	"	74,400
2/17/30	73432	"	73,800
2/18/30	76191	"	74,300
2/18/30	72628	"	80,400
2/19/30	73999	"	72,800
"	74353	"	75,100
	72375		70,900
[fol. 3066]			
2/20/30	76435	"	74,700
2/22/30	75546	"	77,800
"	72328	"	71,000
"	72339	"	72,700
2/26/30	73010	"	70,100
"	72540	"	83,500
"	72530	"	76,500
2/27/30	76544	"	89,200
"	5807	"	81,100
3/ 1/30	76856	"	82,500
"	76579	"	78,000
2/28/30	72983	"	72,500
3/ 4/30	73806	"	78,200
"	75548	"	78,100
"	75693	"	73,400
"	72488	"	71,300
"	73360	"	78,000
3/ 5/30	72917	"	78,000
3/ 6/30	75094	"	72,100
"	72967	"	71,700
3/ 7/30	72260	"	71,600
"	73308	"	70,100
"	72763	"	75,700
3/ 8/30	72479	"	71,400
"	72570	"	72,500
3/10/30	5797	"	77,300
3/10/30	73359	"	79,500
"	72025	"	76,000
3/11/30	75274	"	78,600
"	72917	"	70,400
"	72229	"	82,600
"	74221	"	82,200
"	72967	"	71,200
"	75532	"	74,500
"	73324	"	73,400
3/12/30	6881	"	70,000
"	72434	"	75,400
"	72381	"	81,900
"	72488	"	73,200
3/13/30	72875	"	74,900
[fol. 3067]	75176	"	74,600
3/14/30	72147	"	74,000
"	72628	"	74,000
"	73959	"	80,200
	75274	"	74,600
	72917	"	73,300
	72025	"	77,100
	72509	"	

Shipments to Wilson Cypress Company of Palatka, Florida, of Over 70,000 Pounds Included in Restitution Claim

Destination Palatka Unless Otherwise Shown

Date	Car No.	Origin	Weight
3/14/30	A. C. L. 75115	Hines, Fla.	79,500
"	72074	"	101,500
"	73097	"	76,100
3/17/30	75235	"	72,200
"	72105	"	70,500
"	75393	"	78,400
"	75227	"	83,900
"	76522	"	82,400
3/18/30	76725	"	71,500
"	75018	"	78,500
3/20/30	75384	"	74,500
"	73782	"	77,200
"	75579	"	77,100
"	72620	"	70,900
3/27/30	72095	"	73,500
3/31/30	73627	"	83,300
3/31/30	72313	"	78,100
4/2/30	76904	"	72,800
4/12/30	5807	"	79,800
4/16/30	75481	"	82,900
"	72639	"	82,700
"	70233	"	82,300
4/16/30	73391	"	75,800
"	73397	"	78,900
4/19/30	75624	"	78,800
4/18/30	72479	"	73,100
4/19/30	76999	"	73,400
4/22/30	73359	"	93,800
"	72629	"	76,200
"	75001	"	80,900
"	75234	"	86,500
4/24/30	73055	"	81,300
4/30/30	72752	"	94,600
5/7/30	75635	"	70,300
"	72601	"	71,700
5/14/30	76630	"	75,700
"	72989	"	80,400
"	72123	"	70,500

[fol. 3068]

5/30/30	73983	"	70,500
"	73391	"	70,300
6/10/30	75129	"	71,200
"	74393	"	75,000
"	73297	"	79,800
6/11/30	75474	"	71,800
6/23/30	72531	"	73,200

[fol. 3069] EXHIBIT NO. 144

Wilson Cypress Company—Month of November, 1929

Pine Logs

Statement of Log Movement—Hines to Cross City, Florida

Pro. No.	Date of shipment	Total weight	Total amount charged	Excess charged
7165	11/5/29	56,600	14.15	....
7166	11/5/29	65,700	16.88	....
7204	11/7/29	73,300	18.33	....
7217	11/8/29	65,800	16.45	....
7242	11/9/29	54,900	13.73	....
7356	11/14/29	54,800	13.70	....
7357	11/15/29	72,600	19.80	1.65
7358	11/14/29	57,600	14.40	....
7363	11/20/29	79,700	23.35	3.42
7364	11/18/29	80,100	23.55	3.52
7365	11/14/29	76,300	21.65	2.57
7367 (2 cars)	11/29/29	173,600	48.30	4.90
7392	11/16/29	55,500	13.88	....
7393	11/19/29	72,660	19.83	1.66
7422	11/20/29	74,200	18.55	....
7423	11/20/29	77,600	22.30	2.90
7424	11/20/29	59,400	14.85	....
7425	11/20/29	81,800	20.45	....
7426	11/20/29	91,400	29.20	6.35
7427	11/20/29	79,300	23.15	3.32
7428	11/19/29	78,400	19.60	....
7459	11/22/29	68,400	17.10	....
7460	11/22/29	69,000	17.25	....
7461	11/22/29	71,800	17.95	....
7462	11/22/29	78,300	22.65	3.07
7463	11/22/29	75,400	18.85	....
7464	11/22/29	80,500	20.13	....
7486	11/7/29	88,300	27.65	5.58
7487	11/7/29	86,300	26.65	5.08
7568	11/28/29	65,100	16.28	....
7560	11/13/29	67,900	17.45	.48
7561	11/13/29	93,100	24.55	1.27
7562	11/13/29	89,400	28.20	5.85
7563	11/13/29	83,100	25.05	4.27
7569	11/28/29	65,200	16.30	....
7570	11/28/29	65,600	16.40	....
7571	11/28/29	92,800	29.90	6.70
7572	11/29/29	60,300	15.08	....
7573	11/23/29	75,600	21.30	2.40
7574	11/23/29	86,700	26.85	5.17
7576	11/13/29	98,300	27.15	2.57
7605	11/29/29	94,800	25.40	1.70
7606	11/29/29	84,800	25.90	4.70
7607	11/29/29	79,200	23.10	3.30
7673	11/30/29	94,200	30.60	7.05
7674	11/30/29	89,100	28.05	5.77
7675	11.30.29	85,900	26.20	4.85
7676	11/30/29	95,900	25.95	1.97
7677	11/30/29	77,400	22.20	2.85
7678	11/30/29	82,900	24.95	4.22
		3,926,560	$1,091.19	109.14

Average weight per car for month of November, 1929—76,991.37 pounds.

[fol. 3070]

TRUE EXHIBIT 145

Docket 18364

Shipment of Over 70,000 Pounds to Putnam Lumber Co. (Cross City, Florida)

Date	Origin	Car No.	Weight	Date	Origin	Car No.	Weight
11/1/30	Otter Creek	A.C.L.91894	70,000	9/30/30	Carbur	A.C.L.74426	71,400
2/12/31	"	" 92980	70,400	10/1	"	" 74411	78,800
2/26/31	"	" 91504	72,400	"	"	" 74424	83,000
2/19/31	Secotan	" 91344	72,200	10/3	"	" 74418	79,400
10/27/30	Lebanon	" 91129	73,300	10/4	"	" 74427	70,000
10/25/30	"	" 92310	70,000	"	"	" 74432	84,600
9/3/30	Carbur	" 74454	73,700	"	"	" 74445	71,800
9/4/30	"	" 74441	73,400	10/8	"	" 74420	76,600
9/5/30	"	" 74464	75,300	"	"	" 74403	71,700
9/9/30	"	" 74483	70,500	"	"	" 74416	74,000
"	"	" 74425	70,000	10/9	"	" 74493	78,300
9/11/30	"	" 74451	76,300	"	"	" 74441	72,000
9/12/30	"	" 74426	72,400	10/10	"	" 74464	82,600
9/15/30	"	" 74489	83,900	"	"	" 74424	73,800
9/16/30	"	" 74495	81,800	"	"	" 74465	70,100
"	"	" 74424	85,600	"	"	" 74465	70,900
9/17/30	"	" 74492	73,300	10/13	"	" 74425	72,500
9/19/30	"	" 72200	72,200	10/14	"	" 74461	73,700
9/18/30	"	" 74481	72,100	10/16	"	" 74465	72,300
"	"	" 74427	73,900	"	"	" 76632	74,380
9/19/30	"	" 74422	74,200	10/18	"	" 74400	86,000
9/20/30	"	" 74424	81,000	"	"	" 74495	80,200
9/23/30	"	" 74407	72,200	10/24	"	" 74482	84,900
"	"	" 74488	73,600	10/25	"	" 74464	70,100
"	"	" 74427	71,100	10/27	"	" 74488	80,000
"	"	" 74454	76,500	"	"	" 74426	79,200
9/24/30	"	" 74441	70,300	"	"	" 74432	78,000
9/25/30	"	" 74414	76,500	"	"	" 74425	83,700
"	"	" 74465	83,700	10/28	"	" 74413	78,700
"	"	" 74426	76,300	"	"	" 74466	87,600
9/26/30	"	" 74411	74,700	"	"	" 74477	87,200
9/27/30	"	" 74437	74,800	"	"	" 75462	82,300
"	"	" 74483	70,800	"	"	" 74471	75,400
10/29/30	"	" 74441	75,700	10/4/30	"	" 74458	92,700
10/31/30	"	" 74431	79,200	10/8	"	" 74400	88,300
"	"	" 74407	71,200	"	"	" 74492	95,100
"	"	" 74429	84,200	10/10	"	" 74475	97,300
"	"	" 74454	77,800	9/27	"	" 74488	93,000
"	"	" 74462	71,500	10/15	"	" 74482	94,900
"	"	" 74425	78,800	"	"	" 74483	93,100
"	"	" 74471	85,500	10/18	"	" 74418	92,200
11/4	"	" 74425	72,400	"	"	" 74458	93,200
"	"	" 74467	73,900	10/27	"	" 74414	96,800
"	"	" 74462	84,200	10/28	"	" 74476	115,900
"	"	" 74424	80,400	10/8	"	" 74415	90,100
11/5	"	" 74476	75,600	11/11	"	" 74437	88,200
"	"	" 74471	81,500	3/19/31	Secotan.	" 90894	70,000
[fol. 3071]							
11/8	"	" 71500	71,500				
11/10	"	" 74467	73,700				
11/11	"	" 74447	72,100				
"	"	" 74415	74,900				
11/12	"	" 74411	71,100				
"	"	" 74483	77,800				
"	"	" 74424	78,300				
"	"	" 71300	71,300				

Docket 18364

Shipment of Over 70,000 Pounds to Putnam Lumber Co. (Cross City, Florida)

Date	Origin	Car No.	Weight	Date	Origin	Car No.	Weight
11/14	"	" 74424	78,300				
11/15	"	" 70000	70,000				
"	"	" 74475	76,400				
"	"	" 74441	82,400				
11/17	"	" 74489	72,200				
"	"	" 74461	76,400				
9/13/30	"	" 74407	91,500				
9/19/30	"	" 74400	94,300				
9/23/30	"	" 74461	95,700				
10/1/30	"	" 74445	91,000				
10/2/30	"	" 74449	106,600	107 Cars from Carbur out of a total movement of 589 cars weighed over 70,000 pounds.			
"	"	" 74483	90,400				

[fol. 3072] EXHIBIT No. 149

Southern Hardwood Traffic Association, 1323-41 Bank of Commerce Bldg.

Annual Shipments Over 500,000 Cars

March 30, 1932.

Memorandum of Rough Material Rates agreed upon between Shippers and Carriers at Joint Conference Called by Southern Hardwood Traffic Association, Albert Pike Hotel, Little Rock, Arkansas, Tuesday, March 29, 1932

Representation

Mr. L. R. Steidel, Hamlen Stave Company, Little Rock, Ark.

Mr. Maury Jenkins, Hudson & Dugger Company, Little Rock, Ark.

Mr. Willard Wrape, Wrape Stave Company, Little Rock, Ark.

Mr. E. R. Norton, Norton-Wheeler Stave Co., Pine Bluff, Ark.

Mr. Wm. M. Dumph, Little Rock, Ark.

Mr. W. W. Roberts, Wilson Stave Company, Little Rock, Ark.

Mr. J. C. Murray, Little Rock Chamber of Commerce, Little Rock, Ark.

Mr. F. T. Dooley, Pres., Southern Hardwood Traffic Assn. Memphis, T.

Mr. C. A. Now, A. S. M., Southern Hardwood Traffic Assn. Memphis, T.

Carriers:

Mr. D. R. Lincoln, F. T. N., Missouri Pacific Railroad Co., St. Louis, Mo.

Mr. H. R. Wilson, G. F. A., Missouri Pacific Railroad Co., Little Rock, Ark.

Mr. J. R. Staley, A. G. F. A., Missouri Pacific Railroad Co., St. Louis, Mo.

Mr. G. E. Schnitzer, G. F. A., Chicago, Rock Island & Pacific Ry., Little Rock, Ark.

Mr. H. D. Agnew, G. T. M., Missouri & North Arkansas Ry., Harrison, Ark.

Mr. A. J. Leber, A. G. T. A., St. Louis Southwestern Ry., St. Louis, Mo.

Mr. Frank Pattie, A. G. F. & P. A., St. Louis Southwestern Ry., Little Rock, Ark.

Mr. H. P. Norden, A. G. F. A., St. Louis-San Francisco Ry., St. Louis, Mo.

The carriers agreed to establish and shippers agreed to accept the following rates on logs, bolts, billets, rough staves and heading for single line application subject to usual rough material rules and reshipping requirements:

Distances	Rates per car regardless of weight
25 miles and less	$12.00
50 miles and over 25 miles	15.00
75 miles and over 50 miles	17.50
100 miles and over 75 miles	22.50

[fol. 3073] The new rates are to be applied state and interstate in Arkansas, Louisiana and Missouri on the Missouri Pacific Railroad, Chicago, Rock Island and Pacific Railway, St. Louis Southwestern Railway, St. Louis-San Francisco Railway and Missouri & North Arkansas Railway—this agreement not to be made the basis for increasing present rates.

To Memphis, $5.00 per car is to be added to the foregoing scale for through distances, except that the Cotton Belt

reserves the right to add an arbitrary of $10.00 per car on account of its expensive entrance to the Memphis terminal.

Rates are to be issued by the carriers experimentally in an effort to meet highway competition and will be published at the earliest possible uniform date, also to expire by limitation December 31, 1932. Shippers agreed not to litigate withdrawal of these rates at that time if carriers decided to let same expire.

Shippers will undertake to give the rail lines all business possible in order to justify them in operating these rates.

(Signed) C. A. New, Assistant Secretary-Manager.

can/b.

[fol. 3074]

EXHIBIT No. 150

I. C. C. Docket No. 18364

Witness M. W. Thomas

Statement of the Movement of Logs, Lumber and Other Forest Products on the Central of Georgia Railway for Years 1927 to 1931, Inclusive

Commodity	1927			1928			1929		
	No. Cars	Total No. tons	Total revenue	No. cars	Total No. tons	Total revenue	No. cars	Total No. tons	Total revenue
Logs	15,209	430,786	323,590	9,271	269,666	224,312	11,674	345,900	286,109
Lumber, shingles and laths	53,420	1,347,834	2,532,160	50,006	1,269,868	2,397,839	50,476	1,299,978	2,594,620
Posts, poles and piling	1,024	25,527	40,858	976	27,363	44,650	2,197	57,974	139,479
Box and crate materials	2,103	34,501	56,187	2,753	51,485	85,422	2,280	49,019	87,063
Cooperage materials	1,329	33,722	49,375	31	675	1,075	122	3,042	5,221
Ties, railroad	1,424	40,389	59,568	736	19,664	25,435	1,028	28,347	41,510

Commodity	1930			1931		
	No. Cars	Total No. tons	Total revenue	No. cars	Total No. tons	Total revenue
Logs	6,677	201,547	181,413	3,168	97,583	87,478
Lumber, shingles and laths	30,893	786,182	1,585,203	20,161	504,059	1,023,414
Posts, poles and piling	1,918	49,935	121,990	753	19,490	41,942
Box and crate materials	1,542	28,348	52,477	1,531	27,263	50,084
Cooperage materials	321	7,668	14,046	396	10,334	19,827
Ties, railroad	936	26,188	42,559	273	7,892	10,691

Logs, movement years 1927 to 1931, inclusive:

Total number of cars: 45,999.
Total weight: 1,345,482 tons.
Average per car: 29.3 tons.
Total revenue: $1,102,902.00.
Average revenue per car: $23.98.

[fol. 3075] EXHIBIT #151

These Rates are Issued to Meet Truck Competition

Charges resulting from rates in this Schedule, or as amended, are subject to the provisions of F. L. Speiden's Tariff of Emergency Charges 250-A, I. C. C. 1616, supplements thereto or subsequent issues thereof.

I. C. C. No. 2848.

G. F. O. Special No. 140 (Reduction)

Central of Georgia Railway Company

Rules and Regulations Governing Proportional Rates on Logs, All Kinds, Carloads of any Weight, from Stations on Central of Georgia Railway Company (Named in Rule 9), to Montgomery, Ala., When for Manufacture and Reshipment

Classification governed, except as otherwise provided herein, by Southern Classification No. 49, Agent E. H. Dulaney's I. C. C. No. 34, and by supplements to or successive issues of said publication.

Issued August 11, 1932.

Effective: Interstate September 13, 1932; Intrastate August 15, 1932.

Expires with September 12, 1933, unless sooner cancelled, changed or extended.

On intrastate traffic: Issued on one (1) day's notice under authority of Alabama Public Service Commission Special Approval No. 4483 of August 11, 1932.

By C. D. Chancellor, General Freight Agent, 233 West Broad Street, Savannah, Georgia.

Station Tariff File No. 25.

Desk R—(W. J. C.) 5. File 340/755-H. Printed in U. S. A.

[fol. 3076] Storage, Demurrage and Terminal Charges and Transit Privileges

In the absence of specific provisions in this tariff to the contrary, shipments transported under this tariff will be

subject to all terminal charges and all allowances relating to:

Car rental	Milling	Storage
Car service	Overloading cars, handling of	Switching
Demurrage	Reconsigning	Terminal services
Diversion	Reweighing	Transfer
Drayage		Transit services
Dunnage		

together with all other privileges, charges and rules which in any way increase or decrease the amount to be paid on any shipment between points named in this tariff, or as the same may be amended or changed, or which increase or decrease the value of the service to the shipper, as provided in tariffs published and lawfully on file with the Interstate Commerce Commission.

In the absence of specific provisions in this tariff to the contrary, property destined to points beyond the tracks of roads named herein as issuing lines, is entitled to such privileges and will be subject to such charges, as provided in the tariffs published and lawfully on file with the Interstate Commerce Commission of the carriers granting the privilege or performing the service.

Application of Tariff

The proportional rates on logs (see note), all kinds, carloads of any weight, authorized in Item 1, are applicable only on shipments moving from points of origin to Montgomery, Ala. when the movement is solely via Central of Georgia Railway and will only apply when outbound shipments of lumber from Montgomery, Ala. are forwarded via Central of Georgia Railway to destinations on its line, and via Central of Georgia Railway and its connections to destinations beyond its line to which rates from Montgomery, Ala. apply via Central of Georgia Railway as initial line.

NOTE.—A log is construed to mean a section of a tree exceeding four feet in length, not rived and with bark on, regardless of diameter. Also, sections of trees not exceeding four feet in length when eight inches or more in diameter.

Rule 1. Rates to Apply on Logs Inbound

Logs, carload, intended for handling under proportional rates authorized herein, must be consigned to Montgomery, Ala. proper and freight charges collected on basis of the lawfully published tariff rates.

Rule 2. Rates to Apply on Lumber Outbound

Bills of lading for lumber shipped from Montgomery, Ala. shall be issued by the agent of the Central of Georgia Railway and the rates to be applied shall be those applicable via Central of Georgia Railway as an initial carrier on the lumber from Montgomery, Ala., proper, to final destination in effect on date of shipment from Montgomery, Ala.

Rule 3. Settlement by Claim

Upon evidence as provided for herein, of shipment from Montgomery, Ala. of lumber at published tariff rate applying from Montgomery, Ala. proper, the freight charges on logs into Montgomery, Ala. will be reduced to the basis [fol. 3077] provided in Rule 9, when claim is supported by:

(a) Paid inbound freight bills (see Note 1) covering logs shipped in, and such paid freight bills must clearly indicate the weight of the logs. If the paid freight bills do not show this information or satisfactory evidence thereof is not furnished, such paid freight bills will not be available for securing protection of rates authorized herein.

(b) Copies of bills of lading showing the weight of the lumber shipped out via Central of Georgia Railway. If the copies of bills of lading do not show this information or satisfactory evidence thereof is not furnished, such copies of bills of lading will not be accepted in securing protection of rates authorized herein.

(c) Certificate in the following form:

"Tender is hereby made to the Central of Georgia Railway Company of freight bills numbered and dated as specified below, for the purpose of securing application of net rates as provided in Central of Georgia Railway Company's I. C. C. No. — on the logs covered thereby. This tender

is made in good faith and with the guarantee on our part that such rates may legally be applied under the rules of said Railway as published in its tariff, I. C. C. No. —, supplements thereto or successive issues thereof.

Freight Bill — . Pro. No. —. Date: —— —, ——, Montgomery, Ala.

(Signature of Shipper:) —— ——."

In instances where the shipper at Montgomery, Ala., for commercial reasons, forwards shipments from that point in the name of another party, firm or corporation, the actual shipper must add to the certificate quoted above, the following:

"For commercial reasons the shipment from Montgomery, Ala., in Car — (insert car initial and number) shows consignor as follows: ——.

(Signature of Shipper:) —— ——."

NOTE 1.—When the weight represented by the paid inbound freight bills surrendered is in excess of the weight of the outbound lumber, subject to the ratio shown in Rule 9, the shipper will be given credit for such excess weight which may be used within the life of the freight bill of which such excess weight is a part, except no credit will be given for less than 1,000 pounds.

Rule 4. Change of Ownership of Logs

A transfer by transit users of paid freight bills covering logs will be permitted only where the logs are also transferred by bona fide sale. A certificate to this effect shall be made in the following form on the face of the freight bills:

[fol. 3078] "This is to certify that there has been a bona fide sale to the undersigned of the logs covered by this freight bill.

(Signed) —— ——,

Dated: —— —, ——."

Rule 5. Supervision and Inspection

The traffic handled at the rates and under the rules shown in this tariff shall be subject to the supervision of a representative or representatives of the carrier who shall have

access to the records of the railroads and of the shippers for the purpose of determining the accuracy of such records and to the documents submitted in support of claims for protection of the rates shown in this tariff.

Among other duties, it is the duty of the representative to:

(a) Check, compare and verify the inbound freight bills.

(b) Check the records of the railroads and shippers for the purpose of determining the actual character and weight of the outbound shipments, in order to determine the correctness of the claims.

Rule 6. Time Limit of Freight Bills

The proportional rates authorized in Item 1 will not be protected on shipments held at Montgomery, Ala. for more than twelve months from date of freight bills covering inbound movements nor will the proportional rates be protected on shipments moving from primary point of origin prior to the effective date of this tariff.

Rule 7. Switching Charges

The Central of Georgia Railway will not absorb switching charges of other lines at Montgomery, Ala. on inbound shipments of logs. Such switching charges will be in addition to the rates published herein.

Rule 8. List of Stations and Distances

For list of stations and distances, see Central of Georgia Railway Company's I. C. C. No. 2796 (Distance Table No. 2), G. F. O. Tariff 696-A, supplements to or successive issues thereof.

Rule 9. Basis for Determining Charges and Refunds under Transit Rules

(a) On carload shipments of logs drawn into Montgomery, Ala. from stations on the Central of Georgia Railway (see Note "A" below) and there manufactured and the lumber shipped via Central of Georgia Railway to destinations on its line and via Central of Georgia Railway and its connections to destinations beyond its line, the tariff rate on the inbound movement to Montgomery, Ala. and the

tariff rate on the lumber from Montgomery, Ala. to final destination will be assessed.

[fol. 3079] (b) If the lumber is shipped from Montgomery, Ala. within twelve (12) calendar months after date of paid freight bill covering inbound movement of logs, Central of Georgia Railway will refund the transit user charges assessed for the transportation of the logs into Montgomery, Ala. in excess of charges based on the proportional rates shown in Item 1, subject to the ratio provided in Section (c).

(c) The ratio of the lumber outbound to the logs inbound shall be:

For each pound of lumber shipped out from Montgomery, Ala., proportional rates authorized herein will be applied on not more than three pounds of logs shipped into Montgomery, Ala.

Note A

Central of Georgia Railway Company Stations, viz. (See Rule 8) Southwestern Division

Between Eufaula and Montgomery:
Eufaula to Dingley, Ala., inclusive.

Between Eufaula and Ozark:
Tullis to Springer, Ala., inclusive.

Columbus Division

Between Columbus, Ga., and Andalusia, Ala.:
Girard to Brantley, Ala., inclusive.

Item 1. Proportional Rates

In Cents Per Car of Any Weight

Distances (See Rule 8)	Rates
25 miles and under	1450
50 miles and over 25	1750
75 miles and over 50	2000
100 miles and over 75	2250

[fol. 3080]

EXHIBIT No. 152

I. C. C. Docket No. 18364

Witness M. W. Thomas

Statement of Revenue Per Car of 70,000 Pounds on Logs at Transit Rates from Central of Georgia Railway Company Stations in Alabama to Montgomery Compared with Revenue Assessed by the Trucks for the Same Tonnage from the Vicinity of These Stations to Montgomery. This Statement also Shows Miles to Railroad Stations and Rail Miles from Thence to Montgomery.

To Montgomery, Ala. From	Miles via rail to Montgomery	Revenue per car of 70,000 pounds		Miles to railroad stations
		Via truck	Via rail	
Fitzpatrick, Ala.	28	17 50	17 50	2 5
Thompson, Ala.	33	17 50	17 50	3 0
Union Springs, Ala.	40	17 50	17 50	12 0
Inverness, Ala.	50	17 50	17 50	12 0
Midway, Ala.	53	17 50	20 00	5 0
Ezell, Ala.	59	17 50	20 00	6 0
Hurtsboro, Ala.	60	17 50	20 00	10 0
Comer, Ala.	62	17 50	20 00	5 0
Batesville, Ala.	66	17 50	20 00	3 0
Troy, Ala.	70	17 50	20 00	8 0
Seale, Ala.	75	21 00	20 00	14 0
Eufaula, Ala.	80	21 00	22 50	5 0
Brantley, Ala.	96	21 00	22 50	6 0

[fol. 3081]

EXHIBIT No. 153

I. C. C. Docket No. 18364

Witness M. W. Thomas

Statement of Transit and Normal Rates on Logs, C. L., from C. of Ga. Ry. Stations to Montgomery, Ala., Published in C. of Ga. Ry's G. F. O. Special No. 140, I. C. C. No. 2848, Showing Per Car Revenues at Minimum Weight of 40,000 lbs. and at Average Loading on the C. of Ga. Ry. for Five Year Period, 1927 to 1931, Inclusive.

Miles	Rates in cents		Revenue per car C. L. minimum weight 40,000 pounds			@Average loading 1927 to 1931, inclusive 58,600 pounds		
	Local Per 100 pounds	Transit Per car	A	B	C	A	B	C
5	2.5	$14.50	$10.00	$14.50	145.0	14.65	14.50	87.9
10	2.5	14.50	10.00	14.50	145.0	14.65	14.50	87.9
15	3.0	14.50	12.00	14.50	120.8	17.58	14.50	82.5
20	3.0	14.50	12.00	14.50	120.8	17.58	14.50	82.5
25	3.5	14.50	14.00	14.50	103.6	20.51	14.50	70.7
30	3.5	17.50	14.00	17.50	125.0	20.51	17.50	70.7
35	4.0	17.50	16.00	17.50	109.4	23.44	17.50	74.7
40	4.0	17.50	16.00	17.50	109.4	23.44	17.50	74.7
45	4.5	17.50	18.00	17.50	97.2	26.37	17.50	66.4
50	4.5	17.50	18.00	17.50	97.2	26.37	17.50	66.4
55	4.5	20.00	18.00	20.00	90.0	26.37	20.00	75.8
60	5.0	20.00	20.00	20.00	100.0	29.30	20.00	68.3
65	5.0	20.00	20.00	20.00	100.0	29.30	20.00	68.3
70	5.0	20.00	20.00	20.00	100.0	29.30	20.00	68.3
75	5.5	20.00	22.00	20.00	90.9	32.23	20.00	62.1

EXHIBIT No. 152—Continued

Miles	Rates in cents: Local Per 100 pounds	Rates in cents: Transit Per car	Revenue per car: C. L. minimum weight 40,000 pounds: A	B	C	@Average loading 1927 to 1931, inclusive 58,600 pounds: A	B	C
80	5.5	22.50	22.00	22.50	102.3	32.23	22.50	69.8
85	5.5	22.50	22.00	22.50	102.3	32.23	22.50	69.8
90	6.0	22.50	24.00	22.50	93.8	35.16	22.50	64.0
95	6.0	22.50	24.00	22.50	93.8	35.16	22.50	64.0
100	6.0	22.50	24.00	22.50	93.8	35.16	22.50	64.0
Totals			356.00	372.50	2,140.3	521.54	372.50	1,438.8
Average			17.80	18.63	107.0	26.08	18.63	71.9

A—Local Revenue.
B—Transit Revenue.
C—Percentage that per car revenues at transit rates bears to per car revenues at local rates.

Agent J. H. Glenn's I. C. C. No. A-757.
C. of Ga. Ry's I. C. C. No. 2848.

[fol. 3082]

EXHIBIT No. 154

I. C. C. Docket No. 18364

Witness M. W. Thomas

Statement Comparing Per Car Revenues on Logs at Transit Rates from Central of Georgia Railway Company Stations in Alabama to Montgomery with Per Car Revenue in Georgia for Single Line Hauls Showing Percentage Per Car Revenue at Transit Rates Bear to Per Car Revenue at Local Rates.

Miles	Rates in cents: Local per car	Rates in cents: Transit per car	Revenue per car: C. L. minimum weight 40,000 pounds: A	B	C	Revenue per car: Average loading on C. of Ga., Ry. 1927 to 1931, Inc., 58,600 pounds: A	B	C
5	7.32	14.50	7.32	14.50	198.1	10.72	14.50	135.3
10	8.44	14.50	8.44	14.50	171.8	12.36	14.50	117.3
15	10.00	14.50	10.00	14.50	145.0	14.65	14.50	99.0
20	10.50	14.50	10.50	14.50	138.1	15.38	14.50	94.3
27	11.50	14.50	11.50	14.50	126.1	16.85	14.50	86.4
30	12.00	17.50	12.00	17.50	145.8	17.58	17.50	99.5
35	13.00	17.50	13.00	17.50	134.6	19.05	17.50	91.9
40	13.50	17.50	13.50	17.50	129.6	19.78	17.50	88.5
45	14.00	17.50	14.00	17.50	125.0	20.51	17.50	85.3
50	14.00	17.50	14.00	17.50	125.0	20.51	17.50	85.3
55	14.50	20.00	14.50	20.00	137.9	21.24	20.00	94.2
60	16.00	20.00	20.00	20.00	125.0	23.44	20.00	85.3
65	16.50	20.00	16.50	20.00	121.2	24.17	20.00	82.7
70	17.00	20.00	17.00	20.00	117.6	24.91	20.00	80.3
75	17.50	20.00	17.50	20.00	114.3	25.64	20.00	75.1
80	18.50	22.50	18.50	22.50	121.6	27.10	22.50	83.0
85	19.00	22.50	19.00	22.50	118.4	27.84	22.50	80.8
90	19.50	22.50	19.50	22.50	115.4	28.57	22.50	78.8
95	20.50	22.50	20.50	22.50	109.8	30.03	22.50	74.9
100	21.50	22.50	21.50	22.50	104.7	31.50	22.50	71.4

A—Local revenue.
B—Transit revenue.
C—Percentage that per car revenue at transit rates bear to per car revenues at local rates.

C. of Ga. Ry. Co's. I. C. C. No. 2783.
C. of Ga. Ry. Co's. I. C. C. No. 2848.

[fol. 3083] EXHIBIT No 155

Witness Miles

Statement Showing Local and Reshipping Rates also Truck Competitive Rates on Logs Applicable at Points on the Illinois Central R. R. and the Yazoo and Mississippi Valley R. R. in Tennessee, Mississippi and Louisiana (East of the Mississippi River)

(Rates in Cents Per 100 lbs. except as noted)

Distance	Local Rates on Logs C. L. min. wt. 40,000 pounds				Reshipping Rates C. L. min. 40,000	Truck Competitive Reshipping rates per car
	I. C. R. R.		Y.&M.V.R.R.			
	A	B	A	B	IC-Y&MV	IC-Y&MV
5	4½	4½	4½	4½	2	12.00
10	5	4½	4½	4½	2	12.00
15	6	4½	4½	4½	2	12.00
20	6½	4½	4½	4½	2½	12.00
25	7	4½	4½	4½	2½	12.00
30	7	5	6	6	2½	15.00
35	8	5	6	6	3½	15.00
40	8½	5	6	6	3½	15.00
45	9½	5½	6	6	4	15.00
50	10½	5½	6	6	4½	15.00
55	11	5½	6½	6½	4½	17.50
60	11	5½	6½	6½	5	17.50
65	11½	6½	7	7	5	17.50
70	11½	7	7	7	5	17.50
75	11½	7	7	7	6	17.50
80	11½	7	7	7	6	20.00
85	12½	8½	7	7	6	20.00
90	12½	8½	7	7	6½	20.00
95	13	8½	7	7	6½	20.00
100	13	8½	7	7	6½	20.00

A—Interstate.
B—Intrastate, Mississippi.

Tariff References:

I. C. R. R. Freight Tariff 590-S, I. C. C. 7835.
I. C. R. R. Freight Tariff 510-I, I. C. C. 7423.
Y. & M. V. Freight Tariff 204-F, I. C. C. 7222.
I. C. R. R. Freight Tariff 206-F, I. C. C. 7434.
Y. & M. V. Freight Tarjff 602-M, I. C. C. 7810.
Agent Dulaney's I. C. C. 45.
I. C. System Commerce Bureau
Chicago, Ill., Nov. 17, 1932

[fol. 3084] EXHIBIT No. 156

Witness Wales

Statement Showing Movement of Logs on the Illinois Central System for Years 1928, 1929, 1930, 1931 and Six Months 1932

Year		Movement in tons
1928		1,579,546
1929		1,616,414
1930		819,150
1931		361,447
1932	Jan. Feb. Mar.	64,806
	April, May, June	46,744
		111,650

I. C. System Commerce Bureau.
Chicago, Ill., Nov. 18, 1932.

[fol. 3085] EXHIBIT No. 157

I. C. C. Docket 18364

Witness Perrin

Statement Showing Number Carloads of Long Logs (Except Trainloads) Via Atlantic Coast Line Railroad Between Points in Florida by Months from February, 1931, to August, 1932, Inclusive.

Month	From	To	Miles	Number carloads
February, 1931	Gardner	Nocatee	14	3
	Istachatta	Lacoochee	17	34
	Hooper	Lacoochee	18	3
	Lamont	Perry	22	27
	Russell	Palatka	33	1
	Otter Creek	Cross City	34	10
	Cassia	Bonds Mill	35	2
	Mt. Plymouth	Bonds Mill	39	5
	Brooksville	Leesburg	41	1
	Venus	Avon Park	41	10
	Orange Park	Palatka	42	1
	Cross City	Perry	44	18
	Socotan	Cross City	49	6
	Lake Butler	Jacksonville	53	13
	Rital	Apopka	60	1
	Santa Fe	Jacksonville	65	2
	Rochelle	Cross City	70	14
	Istachatta	Apopka	71	1
	Gainesville	Jacksonville	86	1
	Half Moon	Lacoochee	89	1
	Raiford	Palatka	90	1
	Lisbon	Loughman	92	16
	Altoona	Loughman	93	5
	Brooksville	Kissimmee	96	9
	Astor Park	Loughman	108	2
	Astor	Loughman	111	10
	Astor Park	Jacksonville	182	5
	Astor	Jacksonville	185	6
Total				208

Month	From	To	Miles	Number carloads
March, 1931	Istachatta	Lacoochee	17	14
	Hooper	Lacoochee	18	5
	Lamont	Perry	22	40
	Branford	Lake City	30	1
	Clara	Perry	27	7
	Rochelle	Buffalo Bluff	32	2
	Otter Creek	Cross City	34	9
	Doctors Inlet	Palatka	36	1
	Mt. Plymouth	Bonds Mill	39	1
	Rochelle	Palatka	40	6
	Venus	Avon Park	41	1
[fol. 3086]	Cross City	Perry	44	30
	Raiford	Jacksonville	45	1
	Secotan	Cross City	49	13
	Lake Butler	Jacksonville	53	11
	Miccosukee	Perry	54	2
	Mt. Plymouth	Loughman	68	1
	Rochelle	Cross City	70	7
	Gracys	Jacksonville	79	1
	Gainesville	Jacksonville	86	10
	Lisbon	Loughman	93	14
	Banes Siding	Loughman	104	5
	Astor Park	Loughman	108	25
	Astor	Loughman	111	3
	Cross City	Jacksonville	118	1
	Gainesville	Sanford	118	1
	Gulf-Hammock	Jacksonville	135	2
	Lacoochee	Perry	155	3
	Banes Siding	Jacksonville	179	3
	Astor Park	Jacksonville	182	7
	Mt. Plymouth	Perry	200	1
Total				228
April, 1931	Gardena	Nocatee	14	4
	Istachatta	Lacoochee	17	14
	Hooper	Lacoochee	18	11
	Lamont	Perry	22	5
	Dyal	Jacksonville	24	1
	Clara	Perry	27	2
	Branford	Lake City	30	1
	Rochelle	Buffalo Bluff	32	2
	Otter Creek	Cross City	34	5
	Hines	Perry	34	11
	Russell	Buffalo Bluff	40	3
	Rochelle	Palatka	40	8
	Venus	Avon Park	41	1
	Cross City	Perry	44	11
	Gainesville	Palatka	49	1
	Secotan	Cross City	49	15
	Half Moon	Lake City	50	1
	Lake Butler	Jacksonville	53	15
	Miccosukee	Perry	54	5
	Rital	St. Petersburg	79	1
	Gainesville	Jacksonville	86	6
	Hildreth	Gainesville	97	1
	Astor Park	Kissimmee	97	1
	Grass Fibre	Loughman	99	14
	Astor Park	Loughman	108	30
	Astor	Loughman	111	10
	Lacoochee	Perry	155	5
	Astor	Jacksonville	185	2
	Bradford Farms	Loughman	199	1
Total				187

[fol. 3087] Month	From	To	Miles	Number carloads
May, 1931	Hollister	Palatka	13	1
	Gardner	Nocatee	14	7
	Istachatta	Lacoochee	17	7
	Hooper	Lacoochee	18	4
	Clara	Perry	27	7
	Walkill	Buffalo Bluff	30	3
	Hines	Perry	34	2
	Grove Park	Palatka	36	9
	Rochelle	Palatka	40	2
	Cross City	Perry	44	8
	Secotan	Cross City	49	23
	Gainesville	Palatka	49	5
	Lake Butler	Jacksonville	53	12
	Deland	Palatka	56	1
	Hague	Palatka	60	1
	Minneola	Loughman	60	4
	Sanford	Palatka	71	2
	Hague	Jacksonville	75	1
	Mt. Homer	Loughman	82	1
	Lake Butler	Palatka	82	1
	Gainesville	Jacksonville	86	5
	Grove Park	Jacksonville	91	2
	Rochelle	Jacksonville	95	4
	Banes Siding	Loughman	104	21
	Astor Park	Loughman	108	9
	Howey	Loughman	108	3
	Astor	Loughman	111	39
	Rital	Jacksonville	174	1
	Banes Siding	Jacksonville	179	1
	Astor Park	Jacksonville	182	1
Total				187
June, 1931	Gardner	Nocatee	14	2
	Carbur	Perry	17	22
	Walkill	Palatka	23	2
	Clara	Perry	27	15
	Walkill	Buffalo Bluff	30	1
	Sorrento	Leesburg	32	2
	Hines	Perry	34	19
	Wailing	Leesburg	38	8
	Rochelle	Palatka	40	15
	Cross City	Perry	44	6
	Gardner	Apopka	44	1
	Eugene	Perry	47	1
	Gainesville	Palatka	49	3
	Lake Butler	Jacksonville	53	16
	Miccosukee	Perry	54	4
	Deland	Palatka	56	7
	Dukes	Jacksonville	58	1
	Hague	Palatka	60	1
	Sanford	Palatka	71	4
	Rital	St. Petersburg	79	1
	Homosassa	Drury	86	1
[fol. 3088]				
	Grove Park	Jacksonville	91	1
	Gainesville	Perry	104	1
	Astor Park	Loughman	108	1
	Chiefland	Palatka	109	7
	Astor	Loughman	111	55
	Martin	Jacksonville	117	4
	Tarrytown	Palatka	132	15
	Hague	Tampa	155	1
Total				217

Month	From	To	Miles	Number carloads
July, 1931	Carbur	Perry	17	46
	Clara	Perry	27	10
	Walkill	Buffalo Bluff	30	2
	Hines	Perry	34	13
	Walling	Leesburg	38	4
	Rochelle	Palatka	40	7
	Cross City	Perry	44	26
	Raiford	Jacksonville	45	6
	Eugene	Perry	47	2
	Lake Butler	Jacksonville	53	15
	Prine	Tampa	57	1
	Dukes	Jacksonville	58	11
	Doubling Spur	Loughman	73	1
	Homosassa	Drury	86	1
	Brooksville	Kissimmee	96	1
	Hardeetown	Palatka	107	14
	Astor Park	Loughman	108	1
	Chiefland	Palatka	109	4
	Astor	Loughman	111	13
	Lowell	Jacksonville	114	1
	Martin	Jacksonville	117	2
	Chiefland	Jacksonville	118	10
	Tarrytown	Palatka	132	6
	Martin	Perry	136	2
Total				199
August, 1931	Pasco	Lacoochee	16	1
	Carbur	Perry	17	14
	Altoona	Mt. Dora	19	2
	Brooksville	Lacoochee	21	1
	Green Cove Springs	Palatka	26	1
	Clara	Perry	27	6
	Green Cove Springs	Buffalo Bluff	34	1
	O'Brien	Lake City	35	1
	Cross City	Perry	44	15
	Lake Butler	Jacksonville	53	20
	Haines City	Tampa	54	3
	Dukes	Jacksonville	58	7
	Otter Creek	Lacoochee	77	24
	Gainesville	Jacksonville	86	1
	Branford	Jacksonville	104	20
	Hardeetown	Palatka	107	4
	Old Town	Jacksonville	109	1
[fol. 3089]				
	Citra	Jacksonville	114	2
	Chiefland	Jacksonville	118	3
	Citra	Perry	133	2
	Wagner	Perry	229	3
	Oviedo	Perry	235	1
Total				133
September, 1931	Fort White	Lake City	22	1
	Dyal	Jacksonville	24	1
	O'Brien	Lake City	35	2
	Cross City	Perry	44	10
	Raiford	Jacksonville	45	6
	Homosassa	Ocala	50	1
	Lake Butler	Jacksonville	53	7
	Cross City	Gainesville	60	1
	Otter Creek	Lacoochee	77	24
	Johnson	Jacksonville	79	3
	Gainesville	Jacksonville	86	4

Month	From	To	Miles	Number carloads
September, 1931	Pierson	Jacksonville	90	1
	Gardner	Avon Park	101	2
	Branford	Jacksonville	104	7
	Astor	Loughman	111	97
	Chiefland	Jacksonville	118	4
	Citra	Perry	133	1
	Clara	Jacksonville	135	1
	Chiefland	Loughman	152	7
Total				180
October, 1931	Fort Ogden	Nocatee	7	4
	Sebring	Avon Park	8	2
	Loughman	Kissimmee	11	1
	Davenport	Kissimmee	17	1
	Deland	Sanford	21	4
	Taft	Loughman	21	8
	Ft. White	Lake City	22	1
	Dyal	Jacksonville	24	1
	O'Brien	Lake City	35	1
	Hucoria	Avon Park	35	1
	Venus	Avon Park	41	1
	Venus	Clewiston	41	1
	Cross City	Perry	44	12
	Lake Butler	Jacksonville	53	6
	Campbell	Avon Park	56	4
	Trilby	Loughman	65	2
	Kabel	Kissimmee	65	1
	Mt. Plymouth	Loughman	68	3
	Tidewater	Leesburg	70	1
	Worthington Springs	Palatka	74	1
	Tarrytown	Loughman	76	4
	Otter Creek	Lacoochee	77	5
	Burberville	Loughman	81	8
	Sorrento	Palatka	88	1
[fol. 3090]				
	Chiefland	Brooksville	89	1
	Seville	Loughman	91	15
	Brooksville	Kissimmee	96	4
	Astor	Loughman	111	60
	Palatka	Loughman	121	15
	Chiefland	Loughman	152	50
	Hague	Tampa	155	3
	Agnew	Avon Park	163	1
	Worthington Springs	Kissimmee	182	1
	Mt. Plymouth	Perry	200	6
Total				227
November, 1931	Sorrento	Sanford	19	1
	Santa Fe	Gainesville	21	1
	Clara	Perry	27	9
	Cross City	Perry	44	22
	Lake Butler	Jacksonville	53	1
	Old Town	Perry	54	1
	Campbell	Avon Park	56	1
	Astor Park	Sanford	58	1
	Inverness	Hardeetown	60	2
	Mt. Plymouth	Loughman	68	2
	Burnetts Lake	Jacksonville	72	1
	Usher	Perry	72	2
	Dowling	Lacoochee	73	1
	Tarrytown	Loughman	76	12
	Otter Creek	Lacoochee	77	4

Month	From	To	Miles	Number carloads
November, 1931	Dukes	Palatka	77	2
	Floral City	Loughman	87	9
	Seville	Loughman	91	72
	Ft. White	Perry	99	5
	Gardner	Avon Park	101	1
	Gainesville	Perry	104	2
	Brownsville	Avon Park	105	1
	Astor	Loughman	111	3
	Homosassa	Dewey	119	1
	Crystal River	Kissimmee	134	2
	Otter Creek	Loughman	140	11
	Chiefland	Loughman	152	65
	Lacoochee	Perry	155	6
	Hague	Tampa	155	2
	Mt. Plymouth	Perry	200	9
Total				252
December, 1931	Shingle Creek	Kissimmee	5	1
	Brooksville	Lacoochee	21	2
	Deland	Sanford	21	1
	Santa Fe	Gainesville	21	2
	Clara	Perry	27	2
	Cross City	Perry	44	13
	Lake Butler	Jacksonville	53	1
[fol. 3091]	Old Town	Perry	54	4
	Campbell	Avon Park	56	11
	Palatka	Jacksonville	57	3
	Fesan	Jacksonville	63	1
	Hardeetown	Perry	65	1
	Chiefland	Perry	66	3
	Mt. Plymouth	Loughman	68	4
	Usher	Perry	72	3
	Brooksville	Loughman	85	4
	Seville	Loughman	91	12
	Fort White	Perry	99	6
	Lake Butler	Perry	109	1
	Branford	Perry	113	2
	Rochelle	Perry	114	2
	Homosassa Springs	Perry	128	3
	Homosassa	Perry	130	16
	Clara	Jacksonville	135	4
	Otter Creek	Loughman	140	16
	Chiefland	Loughman	152	33
	Bonds Mill	Cross City	155	1
	Lacoochee	Perry	155	6
	Mt. Plymouth	Perry	200	2
	Lake City	Kissimmee	211	1
Total				161
January, 1932	Loughman	Kissimmee	11	1
	Mascotte	Lacoochee	20	1
	Deland	Sanford	21	1
	Wauchula	Nocatee	28	1
	Torrey	Nocatee	32	1
	Steckert	Jacksonville	32	8
	Altamonte Springs	Loughman	39	9
	Venus	Avon Park	41	4
	Cross City	Perry	44	30
	Lake Butler	Jacksonville	53	8
	Old Town	Perry	54	1
	Inverness	Hardeetown	60	1

Month	From	To	Miles	Number carloads
January, 1932	Ft. White	Jacksonville	91	2
	Raleigh	Perry	94	2
	Raleigh	Jacksonville	101	5
	Deland	Jacksonville	111	11
	Branford	Perry	113	2
	Chiefland	Jacksonville	118	1
	Homosassa	Dewey	119	1
	Lake City	Perry	121	1
	Crystal River	Perry	121	2
	Homosassa	Perry	130	8
	Clara	Jacksonville	135	2
	Otter Creek	Loughman	140	34
	Crystal River	Avon Park	152	2
	Chiefland	Loughman	152	44
	Rochelle	Loughman	158	1
	Mt. Plymouth	Perry	200	10
Total				199
[fol. 3092]				
February, 1932	Loughman	Kissimmee	11	1
	Aulls	Sanford	12	1
	Deland	Sanford	21	1
	Santa Fe	Gainesville	21	1
	Altamonte Springs	Loughman	39	35
	Lake Butler	Jacksonville	53	1
	Old Town	Perry	54	1
	Hernando	Hardeetown	55	1
	Campbell	Avon Park	56	2
	Inverness	Hardeetown	60	1
	Francis	Jacksonville	60	12
	Alachua	Palatka	65	2
	Chiefland	Perry	66	4
	Dukes	Palatka	77	1
	Otter Creek	Perry	78	1
	Hawthorne	Jacksonville	86	8
	Fort White	Jacksonville	91	14
	Rochelle	Jacksonville	95	8
	Brooksville	Kissimmee	96	1
	Deland	Jacksonville	111	18
	Chiefland	Jacksonville	118	5
	Homosassa	Dewey	119	2
	Lake City	Perry	121	1
	Otter Creek	Jacksonville	130	3
	Clara	Jacksonville	135	11
	Otter Creek	Loughman	140	16
	Mt. Plymouth	Jacksonville	141	3
	Chiefland	Loughman	152	32
	Homosassa	Jacksonville	155	4
	Lacoochee	Perry	155	7
	Rochelle	Loughman	158	5
Total				203
March, 1932	Orlando	Kissimmee	18	3
	Clara	Perry	27	2
	Venus	Avon Park	41	3
	Wekiva	Kissimmee	49	1
	Inverness	Hardeetown	60	1
	Francis	Jacksonville	60	6
	Chiefland	Perry	66	1
	Fesan	Palatka	72	3
	Gulf Hammock	Perry	84	1

Month	From	To	Miles	Number carloads
March, 1932	Hawthorne	Jacksonville	86	11
	Fort White	Jacksonville	91	13
	East Alachua	Perry	92	2
	Brooksville	Kissimmee	96	3
	Buchanan	Avon Park	97	2
	Fort White	Perry	99	2
	Gardner	Avon Park	101	1
	Brooksville	Orlando	113	1
	Rochelle	Perry	114	1
	Chiefland	Jacksonville	118	3
	Dukes	Brooksville	122	1
	Otter Creek	Jacksonville	130	16
[fol. 3093]	Clara	Jacksonville	135	3
	Aulls	Jacksonville	136	5
	Wagner	Jacksonville	137	4
	Altamonte Springs	Jacksonville	137	27
	Candler	Jacksonville	139	1
	Gardena	Jacksonville	142	4
	Homosassa	Kissimmee	143	1
	Candler	Perry	146	1
	Chiefland	Loughman	152	29
	Homosassa	Jacksonville	155	9
	Gainesville	Tampa	157	1
	Lake City	Kissimmee	214	2
	Live Oak	Kissimmee	227	1
Total				165
April, 1932	Temple Terrace Jct.	Tampa	10	12
	Loughman	Kissimmee	11	2
	Orlando	Kissimmee	18	2
	Deland	Sanford	21	2
	Clark	Perry	27	5
	Fort White	Gainesville	32	1
	Haines City	Avon Park	39	1
	Venus	Avon Park	41	1
	Hernando	Hardeetown	55	3
	Hall City	Avon Park	55	2
	Francis	Jacksonville	60	9
	Altoona	Orlando	64	1
	Chiefland	Perry	66	1
	Honore	Tampa	72	1
	Hague	Jacksonville	75	1
	Otter Creek	Perry	78	4
	Fort White	Jacksonville	91	11
	Rochelle	Jacksonville	95	5
	Buchanan	Avon Park	97	3
	Hildreth	Jacksonville	97	1
	Gardner	Avon Park	101	2
	Gainesville	Perry	104	1
	Homosassa Springs	Tampa	110	6
	Morriston	Jacksonville	117	4
	Inverness	Perry	124	1
	Otter Creek	Jacksonville	130	19
	Aulls	Jacksonville	136	20
	Candler	Jacksonville	139	6
	Gardena	Jacksonville	142	2
	Apex	Jacksonville	145	14
	Orlando	Jacksonville	147	5
	Chiefland	Perry	152	29
	Homosassa Springs	Jacksonville	153	1
	Homosassa	Jacksonville	155	6
Total				184

[fol. 3094]

Month	From	To	Miles	Number carloads
May, 1932	Hines	Cross City	10	3
	Clara	Perry	27	26
	Hawthorne	Palatka	31	1
	Hall City	Avon Park	55	2
	Hernando	Hardeetown	55	5
	Dukes	Jacksonville	58	22
	Francis	Jacksonville	60	9
	Seville	Jacksonville	84	5
	Fort White	Jacksonville	91	30
	Buchanan	Avon Park	97	1
	Hildreth	Jacksonville	97	1
	Fort White	Perry	99	1
	Chiefland	Linden	100	1
	Gardner	Avon Park	101	1
	Chiefland	Jacksonville	118	7
	Hawthorne	Perry	123	1
	Hines	Jacksonville	128	12
	Otter Creek	Jacksonville	130	19
	Clara	Jacksonville	135	5
	Candler	Jacksonville	139	6
	Apex	Jacksonville	145	6
	Crystal River	Jacksonville	146	2
	Orlando	Jacksonville	147	13
	Chiefland	Loughman	152	19
	Homosassa	Jacksonville	155	2
	Perry	Jacksonville	162	5
	Astor	Jacksonville	185	1
	Lake City	Kissimmee	211	2
Total				208
June, 1932	Perry	Carbur	17	11
	Clara	Perry	27	94
	Danville	Jacksonville	56	1
	Palatka	Jacksonville	57	1
	Dukes	Jacksonville	58	9
	Francis	Jacksonville	60	6
	Otter Creek	Perry	78	1
	Seville	Jacksonville	84	3
	Fort White	Jacksonville	91	8
	Rochelle	Jacksonville	95	2
	Chiefland	Jacksonville	118	2
	Hawthorne	Perry	123	1
	Ocala	Jacksonville	126	1
	Otter Creek	Jacksonville	130	1
	Aulls	Jacksonville	136	1
	Candler	Jacksonville	139	2
	Crystal River	Jacksonville	146	2
	Orlando	Jacksonville	147	11
	Chiefland	Loughman	152	6
	Palatka	Perry	153	1
	Homosassa	Jacksonville	155	5
	Perry	Jacksonville	162	7
	Brooksville	Jacksonville	180	9
Total				185

[fol. 3095]

July, 1932	Secotan	Perry	5	2
	Garbur	Perry	17	9
	Clara	Perry	27	70
	Hines	Perry	34	9

Month	From	To	Miles	Number carloads
July, 1932	Trenton	Gainesville	41	1
	Bradenton	Tampa	41	1
	Lake Butler	Jacksonville	53	2
	Sarasota	Tampa	53	7
	Francis	Jacksonville	60	5
	Hollister	Jacksonville	68	2
	Seville	Jacksonville	84	6
	Fort White	Jacksonville	91	13
	Rochelle	Jacksonville	95	9
	Lake City	Jacksonville	113	7
	Chiefland	Jacksonville	118	1
	Ocala	Jacksonville	126	8
	Wekiva	Jacksonville	134	4
	Homosassa	Kissimmee	143	1
	Lebanon	Jacksonville	143	22
	Oviedo	Jacksonville	143	2
	Crystal River	Jacksonville	146	2
	Orlando	Jacksonville	147	10
	Inverness	Jacksonville	150	3
	Homosassa	Jacksonville	155	6
	Perry	Jacksonville	162	8
	Brooksville	Jacksonville	180	3
Total				213
August, 1932	Carbur	Perry	17	1
	Clara	Perry	27	15
	Wauchula	Nocatee	28	4
	Hines	Perry	34	2
	Sarasota	Tampa	53	5
	Francis	Jacksonville	60	9
	Hollister	Jacksonville	68	3
	Inverness	Tampa	74	1
	Seville	Jacksonville	84	7
	Fort White	Jacksonville	91	14
	Crystal River	Tampa	103	1
	Lake City	Jacksonville	113	11
	Ocala	Jacksonville	126	2
	Juliette	Jacksonville	127	1
	Wekiva	Jacksonville	134	6
	Lebanon	Jacksonville	143	6
	Oviedo	Jacksonville	143	22
	Crystal River	Jacksonville	146	12
	Homosassa	Jacksonville	155	14
	Perry	Jacksonville	162	7
Total				143

Wilmington, N. C., November 15, 1932.

[fol. 3096]

EXHIBIT No. 158

I. C. C. Docket 18364

Witness Perrin

Statement Showing Number of Carloads of Long Length Logs (Except Trainloads) Via Atlantic Coast Line Railroad Between Points on Atlantic Coast Line Railroad in Florida.

Monthly in Years 1930, 1931 and 1932

	1930	1931	1932
January	487	200	199
February	353	208	203
March	270	228	165
April	259	187	184
May	231	187	208
June	167	217	185
July	178	199	213
August	201	133	143
September	390	180	.....
October	489	227	.....
November	386	252	.....
December	175	161	.....
	3,586	2,379	1,500
Average per month	282	198	188

Number cars July, 1930, to July, 1931, inclusive 3,245
Number cars August, 1931, to August, 1932, inclusive 2,453
Reduction 2nd Period 792 (24.4%)

Wilmington, N. C., November 15, 1932.

[fol. 3097]

EXHIBIT No. 159

I. C. C. Docket 18364

Witness: Perrin

Statement Showing Number of Carloads of Lumber, Shingles and Laths, Since November, 1929, Originated by Atlantic Coast Line Railroad; Originated by All Class I Railroads in Southern Region, and Originated by All Class I Railroads in the United States; Also Total Number Transported by Atlantic Coast Line Railroad

	Number carloads originated by:		
1st Period	A. C. L. R. R.	All Class I railroads in Southern region	All Class I railroads in United States	Total number carloads transported by A.C.L.R.R.
4th quarter 1929	19,105	426,156	391,209	25,601
1st " 1930	15,827	107,307	260,034	21,411
2nd " 1930	15,420	107,013	266,716	21,703
3rd " 1930	12,796	86,307	218,847	18,322
4th " 1930	11,882	76,788	189,202	16,557
1st " 1931	10,374	67,555	171,090	14,597
Quarterly average	14,234	95,188	234,516	19,698
2nd Period				
2nd quarter 1931	10,980	75,311	183,890	15,924
3rd " 1931	9,187	65,048	158,785	13,485
4th " 1931	8,570	56,756	132,249	12,231
1st " 1932	7,068	45,851	108,712	9,786
2nd " 1932	6,453	.....	.....	9,185
3rd " 1932	5,212	.....	.....	7,573
Quarterly average	7,911	60,741	145,909	11,364

Decrease quarterly average, 2nd period..	6,323(44.4%)	34,447(36.2%)	88,607(37.8%)	8,334(42.3%)

† July and August 3,475; one half added for September.
* July and August 5,049; one half added for September.

Authority: Bureau Statistics, Interstate Commerce Commission.

Wilmington, N. C., November 15, 1932.

[fol. 3098]

EXHIBIT No. 160

I. C. C. Docket 18364

Witness: Perrin

Statement Showing Number Carloads of Lumber, Shingles and Laths Transported by Atlantic Coast Line Railroad Monthly from All Points of Origin on Atlantic Coast Line Railroad in Florida, for Period November, 1929, to March, 1931, Inclusive, and April, 1931, to August, 1932, Inclusive.

	From all points on A. C. L. R. R. in Florida	
(1st Period)		
November 1929	2,117	
December 1929	1,889	
January 1930	1,693	
February 1930	1,701	
March 1930	1,970	
April 1930	1,818	
May 1930	1,647	
June 1930	1,358	
July 1930	1,373	
August 1930	1,304	
September 1930	1,495	
October 1930	1,482	
November 1930	1,321	
December 1930	1,455	
January 1931	1,165	
February 1931	1,193	
March 1931	1,280	
Total	25,961	
(2nd Period)		
April 1931	1,280	
May 1931	1,121	
June 1931	961	
July 1931	819	
August 1931	951	
September 1931	926	
October 1931	1,066	
November 1931	918	
December 1931	829	
January 1932	824	
February 1932	769	
March 1932	711	
April 1932	629	
May 1932	584	
[fol. 3099]		
June 1932	525	
July 1932	477	
August 1932	463	
Total	13,853	
Reduction, 2nd Period	12,108	(46.6%)
For period July, 1930, to July, 1931, inclusive	15,949	
For period August, 1931, to August, 1932, inclusive.	9,672	
Reduction	6,277	(39.4%)

Wilmington, N. C., November 15, 1932.

[fol. 3100] Exhibit No. 162

I. C. C. Docket 18364

Logs Received by F. S. Buffum Company, Inc., by Truck, During 1932

Origin	R. R.	R. R. Av. Miles Haul	Truck	Feet	Carloads
Vicinity of South Jacksonville					
	F. E. C.	12	16	87,215	20 6
Bayard	F. E. C.	18	28	638,269	150 8
Dunnfore	A. C. L.	11	20	346,958	82
Callahan	A. C. L. S. A. L.	19	30	78,748	18 6
Maxville	S. A. L.	28	30	85,167	20 1
Lem Turner Road			22	437,660	103 4
Green Cove Springs	A. C. L.	26	40	120,226	28 4
Doctor's Inlet	A. C. L.	18	38	138,635	32 8
Tisonia	S. A. L.	18	20	41,353	9 8
McClenny	S. A. L.	26	38	55,343	13 1
Yulee	S. A. L.	24	32	146,642	34 6
Lake City Junction	S. A. L. A. C. L.		55	12,101	3
Woodbine, Ga.	S. A. L.	40	50	53,166	12 6
Twelve Mile Swamp	F. E. C.	25	37	985,305	232 9
Baldwin	S. A. L. A. C. L.	20	32	378,199	89 4
					852 1

28 Cars of Logs Received over S. A. L. Railroad During 1932 Originated as Follows:

	Miles		Miles
2 cars Miccanopy	85	14 cars Sumner	119
1 " Brooksville	164	1 " Rosewood	116
8 " Yulee	24	1 " Waccahoota	78
1 " Fairbanks	63		
		16	
12		12	
		28	

The above cars were loaded with ash logs.

[fols. 3101-3119] Second report and order of the Commission on further hearing omitted, printed, side page 418, ante.

[fol. 3120] Order of Jan. 19, 1933 omitted, printed side page 437, ante.

[fol. 3121] Interstate Commerce Commission, Washington

Feb. 24, 1933.

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of the following:

Petition for postponement of effective date of Order for further hearing, and for reconsideration, filed January 25, 1933,

Answer of Defendant, Atlantic Coast Line Railroad Company, to petition of F. S. Buffum Company, Inc., dated January 21, 1933, for postponement of effective date of order and for further hearing and reconsideration, filed January 30, 1933,

Order of the Commission entered February 7, 1933,

Petition on Behalf of Wilson Cypress Company and Wilson Lumber Company of Florida, for further hearing and reconsideration, filed February 7, 1933,

Motion to set aside the final order of the Interstate Commerce Commission and for further hearing and reconsideration, filed February 9, 1933,

Order of the Commission entered February 13, 1933,

Reply of Atlantic Coast Line Railroad Company to motion to set aside the final order of the Interstate Commerce Commission and for further hearing and reconsideration filed on behalf of the State of Florida and the Florida Railroad Commission, filed February 14, 1933, and

Reply of Atlantic Coast Line Railroad Company to the petition on behalf of Wilson Cypress Company and Wilson Lumber Company of Florida, for further hearing and reconsideration, filed February 14, 1933, in Docket No. 18364, [fol. 3122] Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, the originals of which are now on file and of record in the office of this Commission.

In witness whereof I have hereunto set my hand and affixed the Seal of said Commission this 17th day of February, A. D. 1933.

George B. McGinty, Secretary of the Interstate Commerce Commission. (Seal Interstate Commerce Commission.)

[fols. 3123-3140] Petition for postponement of effective date of order for further hearing, and for reconsideration omitted, printed side page 838, ante.

[fol. 3141] BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 18364

[Title omitted]

ANSWER OF DEFENDANT, ATLANTIC COAST LINE RAILROAD COMPANY, TO PETITION OF F. S. BUFFUM COMPANY, INC., DATED JANUARY 21, 1933, FOR POSTPONEMENT OF EFFECTIVE DATE OF ORDER AND FOR FURTHER HEARING AND RECONSIDERATION

Comes now the Atlantic Coast Line Railroad Company, defendant, and for answer to said petition of F. S. Buffum Company, Inc., intervener, respectfully states:

This defendant believes it to be unnecessary to answer separately the various allegations of this petition. When the petitioner, F. S. Buffum Company, Inc., filed, on October 8, 1932, its original petition for leave to intervene and for further hearing, defendant duly filed its answer, dated October 17, 1932, to said petition and fully and specifically replied to each of the allegations thereof. In this answer it was set up, among other things, that this petitioner had not only been dilatory in asserting its interest and in petition-[fol. 3142] ing for leave to intervene, but had likewise failed altogether to show such good cause for the allowance of its intervention at that stage of the proceeding as is contemplated by Rule 11 of the Rules of Practice. The petitioner was nevertheless permitted by the Commission to intervene, and did intervene and offered evidence in the reopened proceeding and was likewise heard in oral argument by its counsel before the presiding Attorney Examiner.

With respect to this new petition for rehearing, it may be observed, in general, that it consists in the main of:

1. A mere reiteration and repetition of matters which were set forth in the original petition abovementioned, which was filed by the same petitioner;

2. A claim that the Attorney Examiner erred in refusing to receive on the rehearing certain evidence, offered by this petitioner, although this evidence was clearly outside of the scope of the order reopening the case, and although it related to the same matters that had been set forth in the

original petition for rehearing and had therefore been considered by the Commission in entering the order of reopening, and in determining and fixing the scope of the issues upon the rehearing, as plainly defined in said order;

3. A reiteration throughout the petition of assertions that various findings of the Commission, as set forth in the report, are not in accordance with what the petitioner conceives to be the weight of the evidence; that these findings are "strongly distorted and highly discolored"; and that [fol. 3143] in the petitioner's view the "evidence shows" various things, although the Commission after full consideration of all of the evidence of both sides has concluded that it shows otherwise. In other words, the Commission is here being asked merely to go over the same ground again;

4. Finally, the petition abounds throughout with criticisms of the Attorney Examiner, and of the Commission itself, of which the very least that can be said is that they closely approach, if not actually transcend, every reasonable limit of propriety—as evidenced by the following, concerning the report of the Commission, which appears on page 17 of this petition:

"Further recital in detail of the errors, omissions, and discolorations of the facts of record is deemed unnecessary. The report as a whole is apparently framed in the attitude of a litigant, attempt(ing) to uphold a preconceived conclusion, contrary to judicial attitude which one is accustomed to find in the Commission's treatment of facts."

Defendant respectfully submits that this litigation has now been prolonged to a point at which the demands of public policy itself would seem to require that it should be ended. Certainly the Commission has accorded to all parties, including the present petitioner, every reasonable opportunity to be fully heard. The case has already been reopened and reheard twice by the Commission. Yet the petitioner is now asking that the Commission reopen and rehear it for the third time. We understand that it was for the very purpose of relieving the Commission, the carriers and the public of the expense and burden of considering endless applications for rehearings that the Commission

has adopted Rule XV (f) of its Rules of Practice, which rule provides as follows:

[fol. 3144] "A second application under paragraph (2) of this rule for rehearing, reargument, reconsideration, or for the vacation of any order, by the same party or parties, and upon the same grounds as a former petition or application, which has been considered and denied, will not be entertained."

This new petition, as we have shown, sets up in large part precisely the same matters which were embraced in the former petition for rehearing, filed by the same petitioner, and that petition was expressly denied by the Commission's order of reopening dated October 21, 1932, except to the extent specifically stated in said order.

It is submitted, therefore, that the petition should be denied.

Respectfully submitted, Atlantic Coast Line Railroad Company, by Robert C. Alston, Carl H. Davis, Frank W. Gwathmey, Its Attorneys.

January 30, 1933.

[fol. 3144a] Before Interstate Commerce Commission

No. 18364

[Title omitted]

Order Denying Petition for Reconsideration Feb. 7, 1933

Upon consideration of petition of intervener F. C. Buffum Company, Inc., for further hearing and reconsideration of the above-entitled proceeding and for postponement of the effective date of the order entered therein on January 9, 1933, and of defendant's answer to said petition;

It is ordered, That said petition be, and it is hereby, denied.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fols. 3145-3159] Petition on behalf of Wilson Cypress Company and Wilson Lumber Company of Florida for fur-

ther hearing in, and reconsideration of, the above entitled proceeding, on the ground of additional newly discovered evidence omitted, printed side page 692, ante.

[fols. 3160-3178] Motion to set aside the final order of the Interstate Commerce Commission and for further hearing in, and reconsideration of, the above entitled proceeding omitted, printed side page 438, ante.

[fol. 3179] BEFORE INTERSTATE COMMERCE COMMISSION

No. 18364

[Title omitted]

ORDER DENYING PETITIONS FOR RECONSIDERATION—Feb. 13, 1933

Upon consideration of petition of The State of Florida and the Florida Railroad Commission and of petition of interveners Wilson Cypress Company and Wilson Lumber Company of Florida for further hearing and reconsideration of the above-entitled proceeding and for annulment of the order entered therein on January 9, 1933, as amended:

It is ordered, That said petitions be, and they are hereby, denied.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 3180] BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 18364

[Title omitted]

REPLY OF ATLANTIC COAST LINE RAILROAD COMPANY TO MOTION TO SET ASIDE THE FINAL ORDER OF THE INTERSTATE COMMERCE COMMISSION AND FOR FURTHER HEARING IN, AND RECONSIDERATION OF THE ABOVE-ENTITLED PROCEEDING, FILED ON BEHALF OF THE STATE OF FLORIDA AND THE FLORIDA RAILROAD COMMISSION, DATED FEBRUARY 4, 1933

Comes now the Atlantic Coast Line Railroad Company, the defendant, and for answer to the motion of the State of

Florida and the Florida Railroad Commission to set aside the final order of the Interstate Commerce Commission and for further hearing in and reconsideration of the above entitled proceeding, respectfully states:

I

This respondent is contemporaneously filing with this Commission its answer to a like petition by Wilson Cypress Company and the Wilson Lumber Company of Florida. The substance of the two petitions is the same, or nearly the same. The answer to one is the answer to both, and [fol. 3181] respondent prays that its answer to the petition of Wilson Cypress Company and Wilson Lumber Company of Florida be treated as an answer to the motion of the State of Florida and the Florida Railroad Commission.

Respectfully submitted, Atlantic Coast Line Railroad Company, by Frank W. Gwathmey, Carl H. Davis, Robt. C. Alston.

February 13, 1933.

[fol. 3182] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 18364

GEORGIA PUBLIC SERVICE COMMISSION

versus

ATLANTIC COAST LINE RAILROAD COMPANY

REPLY OF ATLANTIC COAST LINE RAILROAD COMPANY TO THE PETITION ON BEHALF OF WILSON CYPRESS COMPANY AND WILSON LUMBER COMPANY OF FLORIDA FOR FURTHER HEARING IN, AND RECONSIDERATION OF, THE ABOVE-ENTITLED PROCEEDING, ON THE GROUND OF ADDITIONAL NEWLY DISCOVERED EVIDENCE, WHICH SAID PETITION IS DATED FEB. 4, 1933

Comes now the Atlantic Coast Line Railroad Company, the defendant, and for answer to the petition of Wilson Cypress Company and Wilson Lumber Company of Florida for further hearing in and reconsideration of the above-entitled proceeding on the ground of additional newly discovered evidence, respectfully states:

I

Paragraph I, II, and III of petitioners' petition simply refer to orders and rulings of this Commission entered in this cause. Reference is made to the orders of the Commission in this cause.

II.

(a) Answering paragraph IV, petitioners refer to certain rates of Atlantic Coast Line Railroad Company pro [fol. 3183] vided for in its Lumber Transit Tariff I. C. C. B 2745 filed to become effective December 10, 1932 and in Rule 127 of said tariff as "dealing with net transit rates."

Respondent says that the allegations of said paragraph as to said tariff I. C. C. B 2745 are incorrect. The tariff referred to is A. C. L. R. R. Lumber Transit Tariff No. 12, which cancels A. C. L. R. R. Lumber Transit Tariff No. 11, I. C. C. No. B 2639 and the scale of rates referred to in Rule 127 was originally published in Supplement No. 23 to A. C. L. R. R. I. C. C. No. B 2639, effective September 8, 1932, which was prior to the above mentioned reopened hearing before this Commission in this cause had on November 21 22, 1932. The scale of rates provided for by said I. C. C. B 2745 tariff applies to cross arms, cross ties, lumber, piling, poles, and timber, N. O. S. which is milled, creosoted, stored, trimmed and/or dressed in transit at Montgomery, Alabama. The rates provided for by this tariff do not apply to logs. They are transit rates applicable to certain forest products, other than logs, which move to Montgomery over this respondent's lines, for creosoting and other treatment and which products after such treatment, move to market from Montgomery in a back haul over the lines of respondent. Respondent also charges, in addition to the net transit rate 2½ cents per 100 pounds thereon.

(b) Petitioners further refer in said Paragraph IV to Supplement No. 1 to the above mentioned tariff I. C. C. [fol. 3184] B-2745, which was published effective December 10, 1932, fixing rates on lumber, poles, piling and forest products not otherwise specified, to Charleston, South Carolina from certain points of origin. Respondent answers that said tariff does not apply to logs. It further answers that the aforementioned tariff was put into effect August

29, 1932 and the Supplement No. 1 referred to only added some additional stations thereto.

The above mentioned supplement No. 1 to the Atlantic Coast Line Railroad's Lumber transit tariff, I. C. C. B-2745, specifically designates the rates as "extra charges for back or out of route hauls, which is in addition to through rate and stoppage charge."

The rates provided by this tariff are for hauling forest products described therein, not including logs, to Charleston for milling, creosoting, storing, trimming and/or dressing and for reshipment to Virginia cities or points north thereof on the basis of back or out of route hauls.

The rates set out in petitioners' petition in the last right-hand column of Paragraph IV, page 6, are not the rates which are assessed on the original inbound movements, but represent the net transit rate to which is added the transit charge of 2½ cents per 100 pounds.

(c) Petitioners refer to certain rates of Central of Georgia Railway Company stated in its Tariff I. C. C. No. 2851, effective September 27, 1932 to Augusta and Waynesboro, Georgia. The rates referred to in said tariff of the [fol. 3185] Central of Georgia are applicable only when the raw material shipped in over the Central of Georgia has been manufactured and the manufactured product is shipped out over the Central of Georgia, in the proportion set out in the tariff.

The circumstances and conditions under which this rate or tariff went into effect were considered by this Commission at the reopened hearing of this cause on November 21-22, 1932. This tariff was in effect at the time of said reopened hearing.

(d) Petitioners refer to rates of the Louisville & Nashville Railroad Company in its tariff I. C. C. No. 16022, Supplement 19, effective January 27, 1933. The rates provided for in said tariff apply only to raw materials shipped from point of origin to the manufacturing point, when the products manufactured therefrom move out over the lines of the Louisville & Nashville Railroad, in the proportion set out in the tariff. Said tariff is applicable for distances not in excess of 100 miles. This tariff was put into effect under circumstances and conditions exactly similar to

those considered by this Commission in the reopened hearing in this proceeding had on November 21-22, 1932, and covered by its report of January 9, 1933. The rates provided for in said tariff expire August 6, 1933, unless sooner cancelled, changed or extended.

Petitioners allege that said tariff names rates for the transportation of logs over said railroad from Louisville, Kentucky, to Knoxville, Tennessee, a distance of 277 miles, of $29.50 per car. That statement is incorrect.

[fol. 3186] Reference is made to relations between the Louisville & Nashville Railroad Company and the Atlantic Coast Line Railroad Company. Respondent alleges that it does own a controlling share of the voting shares of stock of the Louisville and Nashville Railroad Company and by virtue of that ownership has the right to elect the Board of Directors. It has never exercised control over the traffic policies of the Louisville and Nashville Railroad Company through the ownership of said stock or in any other way whatsoever.

This has been made known to this Commission in this cause and in other causes, one of which is I. & S. Docket 3625. On November 21-22, 1932 in the reopened hearing of this cause before this Commission at Jacksonville, Florida, the Witness Perrin testified as follows (R. 1774):

"Question. Did you and other officials of the Atlantic Coast Line testify fully in that case (the so-called Sand and Gravel Case) as to the extent to which the Atlantic Coast Line Railroad controls the traffic policies of the Louisville & Nashville?

Answer. We did.

Question. What was the testimony given by yourself and others upon that subject?

Answer. The testimony was to the effect that the Atlantic Coast Line had no control whatever over the traffic policies of the Louisville & Nashville Railroad."

The Atlantic Coast Line Railroad and Louisville and Nashville Railroad operate, for the most part, in widely separated territories. The lines of the Louisville and Nashville with those of the Seaboard Air Line from Jacksonville to Pensacola, Florida, make the dividing line in Florida, and the rates south of that line are higher than

[fol. 3187] the rates north of that line. This fact is recognized a number of times by this Commission in this cause and in the reopened hearing therein.

(e) Petitioners refer to rates of the Savannah & Atlanta Railway, in its tariff I. C. C. No. 115, effective July 14, 1930. Respondent calls the Commission's attention to the fact that this tariff was in effect long prior to the reopened hearing had in this case on November 21-22, 1932. The rates stated in this tariff apply only when the products milled from the inbound logs are re-shipped via the Savannah & Atlanta Railway, in accordance with the terms of this tariff.

(f) Petitioners refer to Southern Railway Supplement 7 to tariff I. C. C. 10425, effective December 31, 1932, to expire December 3, 1933. This tariff applies on logs, etc. from Southern Railway stations to Knoxville, Tennessee, from C. N. O. & T. P. stations to Dayton, Tennessee, and from Southern Railway stations to Fayette, Tennessee. The rates under this tariff were published to meet truck competition and are published to expire December 3, 1933 unless sooner cancelled, changed or extended. This Supplement No. 7 was issued in circumstances and conditions already dealt with by this Commission in its reopened hearing of this case on November 21-22, 1932, wherein representatives of the Southern Railway testified. Petitioners state that the rates under the above-mentioned tariff "are almost exactly on the level of the Cummer scale", etc. The Cummer scale of rates has been held by this Commission in this cause, to be unjust and unreasonable, and by [fol. 3188] the United States District Court for the Northern District of Georgia, in the restitution proceedings in this cause, to be unjust, unreasonable, and confiscatory.

The witness, Mr. C. D. Thomas, Assistant General Freight Agent of the Southern Railway System, gave evidence in reference to like situations and rates which had been put into effect by the Southern Railway (R. 1722, evidence Nov. 21-22, 1932). The rates there referred to were described by Mr. Thomas as "truck competitive log rates." The witness Thomas refers in that evidence to Southern Railway's Tariff No. I. C. C. A-10425 and to certain supplements thereto, however, not including Supplement No. 7. The situations described in Mr. Thomas'

testimony in the reopened hearing are exactly similar to those described in this paragraph of the petition.

(g) Petitioners refer to Atlanta, Birmingham & Coast Railroad Company rates under its tariff No. 18, effective October 10, 1927. This tariff specifically excludes logs and besides, the rates under this tariff referred to in petitioners' petition are not rates on the articles which are covered by the tariff, but are only additional charges for the back haul in a transit arrangement.

(h) Petitioners refer to Seaboard Air Line Railway Company's tariff I. C. C. No. A-7528, Supplement No. 8, effective December 11, 1932. This tariff covers rates from stations between Branchville, Va. and Littleton, N. C. (including Branchville and Littleton), and between Severn, N. C. and Lewiston, N. C. (including Severn and Lewiston) to Boykins, Va. Those rates expire June 30, 1933, unless [fol. 3189] sooner cancelled, changed or extended.

Petitioners also refer to Seaboard Air Line's Tariff I. C. C. A-7528, Supplement No. 9, effective December 11, 1932. This tariff expires December 11, 1933 unless sooner cancelled, changed or extended. The scale of rates prescribed by this tariff and Supplements 8 and 9 thereto are stated by petitioners to be "approximately the same as the Cummer scale for said distance," etc. Attention has already been called to the fact that this Commission has held the Cummer scale of rates to be unjust and unreasonable and that the United States District Court for the Northern District of Georgia has also held the Cummer scale of rates to be unreasonable, unjust and confiscatory. The weight of the logs referred to are stated by petitioners to be shown by the record in this cause to be from 10 to 14 pounds per foot. The reference to the record made in the petition does not bear out this statement. There was no discussion in the record at this point, of movement of logs to Boykins, Virginia.

The Supplements to the aforementioned tariff were put into effect in circumstances and conditions exactly analogous to those considered by this Commission in the reopened hearing in this case had on November 21-22, 1932.

(i) Petitioners refer to tariff I. C. C. No. A-760 of the Norfolk and Southern Railroad Company, effective May 15,

1931. This tariff provides for transit rates and besides does not apply to logs..

[fol. 3190] (j) Petitioners refer to tariff I. C. C. No. 558 of the Georgia and Florida Railroad, effective May 6, 1931. This tariff applies only to logs which are shipped over the Georgia and Florida's lines to the transit point and the products manufactured therefrom are reshipped over the same lines in the proportion prescribed in the tariff. The rates in this tariff are alleged by petitioners to be "but slightly more than one-half the rates prescribed by this Commission for application to the transportation of logs over the lines of the Atlantic Coast Line Railroad Company in Florida." They are, therefore, on parity with the rates which have been adjudged by the United States District Court for the Northern District of Georgia, in the restitution feature of this case, to be unreasonable.

III.

Answering the remainder of said petition, respondent says that many of the matters and things referred to therein have heretofore been directly covered by the previous hearings in this cause, and those things which have not been directly covered have been covered in kind; that is, that circumstances like those alleged in this petition were considered by this Commission in the reopened hearing of this case on November 21-22, 1932.

The Atlantic Coast Line Railroad Company for the year 1932 barely earned its operating expenses and after paying its fixed charges, was in deficit approximately six millions dollars. It is important that the losses which are being imposed upon it by the circumstances of this cause, be lessened as early as practicable.

[fol. 3191] IV

This respondent respectfully called attention to Rule XV(f) of the Commission's Rule of Practice, which provides as follows:

"A second application under paragraph (2) of this rule, for rehearing, reargument, reconsideration, or for the vacation of any order, by the same party or parties, and upon the same grounds as a former petition or application, which has been considered and denied, will not be entertained."

It is respectfully submitted that the petition now under consideration sets up, in large measure, the matters and things which have been heretofore considered; and when not exactly the same things and matters, it sets up only matters of the same kind which have been heretofore considered.

V

Respondent respectfully submits that this cause has been under consideration by this Commission since May 26, 1926. It is fast approaching seven years of procedure before this Commission and litigation in the courts.

It is respectfully submitted that the prayers of petitioners' petition be denied and that the order entered by this Commission to become effective February 25, 1933 should not be interfered with.

Respectfully submitted, Atlantic Coast Line Railroad Company, by Frank W. Gwathmey, Carl H. Davis, Robt. C. Alston.

February 13, 1933.

[fol. 3192] IN UNITED STATES DISTRICT COURT

In Equity. Nos. 690, 691 and 695

[Title omitted]

Consolidated Petitions for Injunction

PETITION FOR APPEAL—Filed April 19, 1933

Come now the State of Florida and Eugene S. Matthews, Mamie Eaton-Greene and W. B. Douglass, as and constituting the Florida Railroad Commission, complainants in constituent cause No. 690 above, and Wilson Cypress Company, a corporation, and Wilson Lumber Company of Florida, a corporation, complainants in constituent cause No. 691, and F. S. Buffum Company, Incorporated, a corporation, complainant in constituent cause No. 695 above, and jointly and severally, feeling themselves aggrieved by the final order and decree of the United States District Court for the Northern District of Georgia, dated February 24th, 1933, and entered February 24th, 1933, in the above entitled consolidated cause, do jointly and severally pray that an

[fols. 3193 & 3194] appeal to the Supreme Court of the United States be allowed to them jointly and severally from said final decree, and that citation be issued as provided by law, and a transcript of the record, proceedings and documents upon which said decree was based, duly authenticated, be sent to the Supreme Court of the United States.

Cary D. Landis, Attorney General of the State of Florida. T. T. Turnbull, Special Counsel for Florida Railroad Commission. Henry P. Adair, August G. Gutheim, J. V. Norman, C. G. Ashby, Solicitors for Wilson Cypress Company and Wilson Lumber Company of Florida. Julian E. Fant, F. C. Hillyer, Solicitors for F. S. Buffum Company, Incorporated.

[File endorsement omitted.]

[fol. 3195] IN UNITED STATES DISTRICT COURT

In Equity. Nos. 690, 691 and 695

[Title omitted]

Consolidated Petitions for Injunction

ASSIGNMENT OF ERRORS—Filed April 19, 1933

The State of Florida and Eugene S. Matthews, Mamie Eaton-Greene and W. B. Douglass, as and constituting the Florida Railroad Commission, complainants in constituent cause No. 690, and Wilson Cypress Company and Wilson Lumber Company of Florida, complainants in constituent cause No. 691, and F. S. Buffum Company, Incorporated, complainant in constituent cause No. 695, by their respective counsel, come now, jointly and severally, and in connection with their petition for appeal file the following joint and several assignment of errors on which they will rely on their appeal to the Supreme Court of the United States from the final order or decree of the District Court herein, dated February 24th, 1933.

The District Court erred:

1. In denying the relief prayed in the bills of complaint and supplemental bills of complaint herein.

2. In failing and refusing to suspend, annul and permanently enjoin the orders of the Interstate Commerce Commission herein involved.

[fol. 3196] 3. In holding that an unjust discrimination against interstate commerce had been made to clearly appear.

4. In failing to find that no substantial disparity exists between the Florida Intrastate rates on logs and the general level of rates on logs in interstate commerce in the southern carrier rate group.

5. In failing and refusing to hold that the report and order of the Interstate Commerce Commission of July 5, 1932, as amended, and the report and order of said Commission of January 9, 1933, were unreasonable and arbitrary.

6. In failing and refusing to find that the Interstate Commerce Commission had not made the findings declared by the Supreme Court of the United States to be essential pre-requisites to the making of a valid order of the character here attempted to be made by the Interstate Commerce Commission with respect to Florida intrastate rates on logs.

7. In failing and refusing to find that there was no substantial evidence in the record to support the findings declared by the Supreme Court of the United States to be essential pre-requisites to the making of a valid order of the character here attempted to be made by the Interstate Commerce Commission with respect to Florida intrastate rates on logs.

8. In holding that the findings of fact upon which the Interstate Commerce Commission relied to justify its said orders prescribing intrastate rates were warranted by the evidence and were made to clearly appear by the evidence.

9. In failing and refusing to hold that the Interstate Commerce Commission made no finding of the amount of revenue which had been derived in the past by the Atlantic Coast Line Railroad Company from the particular traffic in question under the existing intrastate rate (the Cummer Scale).

[fol. 3197] 10. In failing and refusing to hold that the evidence warranted no finding by the Interstate Commerce Commission of the amount of revenue which had been de-

rived in the past by the Atlantic Coast Line Railroad Company from the particular traffic in question under the existing intrastate rate (the Cummer Scale).

11. In finding that there was no substantial increase in the log traffic after the Cummer Scale of rates was restored following the decision of the Supreme Court upon the former order of the Interstate Commerce Commission.

12. In holding that the refusal of the Interstate Commerce Commission to require the Atlantic Coast Line Railroad Company to produce information as to the number of cars of logs moving within the State of Florida during each of the years 1926, 1927 and 1928, and as to the revenue derived therefrom, constitutes no cause to upset the order of the Interstate Commerce Commission herein involved.

13. In failing and refusing to hold that the Interstate Commerce Commission made no finding of the amount of revenue which can be reasonably expected to be derived from the traffic in question under the increased intrastate rate which the Interstate Commerce Commission had ordered established.

14. In failing and refusing to hold that the evidence warranted no finding by the Interstate Commerce Commission of the amount of revenue which can be reasonably expected to be derived from the traffic in question under the increased intrastate rate which the Interstate Commerce Commission had ordered established.

15. In finding that the future log traffic under the intrastate rate on the Atlantic Coast Line Railroad in Florida will likely amount to at least 7431 cars per year.

[fol. 3198] 16. In holding that if the log traffic done in Florida on the Cummer Scale is at an out-of-pocket loss, the less of it done the better.

17. In failing and refusing to hold that the Interstate Commerce Commission made no finding that the application of the existing intrastate rate (Cummer Scale) resulted in an impairment of the income of the carrier which caused an undue burden upon the carrier's interstate revenues and obstructed the maintenance of an adequate national transportation system.

18. In failing and refusing to hold that the evidence warranted no finding by the Interstate Commerce Commission that the application of the existing intrastate rate (Cummer Scale) resulted in an impairment of the income of the carrier which caused an undue burden upon the carrier's interstate revenues and obstructed the maintenance of an adequate national transportation system.

19. In failing and refusing to hold that the Interstate Commerce Commission made no finding that an undue burden upon the carrier's interstate revenues and obstruction to the maintenance of an adequate national transportation service existed which was of such character and consequence that it was the affirmative duty of the Interstate Commerce Commission as an important step in maintaining an adequate national railway system to remove such burden and obstruction.

20. In failing and refusing to hold that the evidence warranted no finding by the Interstate Commerce Commission that an undue burden upon the carrier's interstate revenues and obstruction to the maintenance of an adequate national transportation service existed which was of such character and consequence that it was the affirmative duty of the Interstate Commerce Commission as an important step in maintaining an adequate national railway system [fol. 3199] to remove such burden and obstruction.

21. In failing and refusing to hold that the Interstate Commerce Commission made no finding that the alteration of the intrastate rates would produce, or was likely to produce an additional and greater amount of income, and made no finding, that such additional and greater amount of income was necessary to prevent an existing undue burden upon the carrier's interstate revenues and necessary to maintain an adequate national transportation service.

22. In failing and refusing to hold that the evidence warranted no finding by the Interstate Commerce Commission that the alteration of the intrastate rates would produce, or was likely to produce an additional and greater amount of income, and that the evidence warranted no finding that such additional and greater amount of income was necessary to prevent an existing undue burden upon the car-

rier's interstate revenues and necessary to maintain an adequate national transportation service.

23. In failing and refusing to hold that the Interstate Commerce Commission made no finding of the quantity or extent of any burden upon the interstate revenues of the carrier caused by the application of the existing Florida intrastate rate (Cummer Scale).

24. In failing and refusing to hold that the evidence warranted no finding by the Interstate Commerce Commission of the quantity or extent of any burden upon the interstate revenues of the carrier caused by the application of the existing Florida intrastate rate (Cummer Scale).

25. In failing and refusing to hold that in making said orders the Interstate Commerce Commission considered and gave effect to rate comparisons, system average costs and other matters relating to costs of transportation which were incompetent and insufficient to furnish the basis for [fol. 3200] the conclusions reached therefrom and incompetent and insufficient to furnish the basis for any such reports and order.

26. In finding that "In 1928 and 1932 comparisons of these rates (Cummer Scale) with other rates on logs and on similar traffic in the same and neighboring territories showed them to average less than half of most other comparable interstate nad intrastate rates, and to be much the lowest of any of them."

27. In finding that on the question of the cost of the service figures were considered which showed the average cost of hauling logs over the Atlantic Coast Line Railroad system.

28. In holding that Appendix E of the report of the Interstate Commerce Commission is the conclusion of that Commission "as to the cost of hauling logs in Florida for the distance shown to be the average under the Cummer Scale, based on the evidence which had been produced to it as tending to show such cost."

29. In finding that there was "an out-of-pocket loss to the carrier in the log traffic under these rates (Cummer Scale)."

30. In holding that if it appeared that a loss was produced by the State Rates which would in the future be substantial and that the carrier was not in position to absorb it without detriment to its service and support as an interstate carrier, a sufficient case had been made to find an unjust discrimination against interstate commerce and to require its correction.

31. In failing and refusing to hold that the Interstate Commerce Commission by indirection seeks to determine the reasonableness per se of the Florida intrastate rate (the Cummer Scale), a thing which the Supreme Court of the United States has declared lies with the State authority and not with the Interstate Commerce Commission.

[fol. 3201] 32. In failing and refusing to hold that said Interstate Commerce Commission has attempted to prescribe intrastate rates in Florida applicable to territory for which no interstate rates have been prescribed and in which no general investigation of rate levels whether on interstate or on intrastate traffic has been made, and that in so doing the Interstate Commerce Commission has exceeded its authority.

33. In failing and refusing to hold that the Intrastate rates prescribed in said proceeding before the Interstate Commerce Commission are broader in their scope than the interstate rates prescribed in said proceeding, and that said orders of said Commission prescribing said intrastate rates are consequently unlawful.

34. In holding that the proceeding before the Interstate Commerce Commission was one in which a burden by the State rates on the revenues of the carrier was made an issue so that the Commission could properly so find and on that ground prescribe an intrastate rate.

35. In failing and refusing to hold that the question of whether or not the jurisdictional facts exist which warrant the Interstate Commerce Commission in invading the domain of the State of Florida is a judicial question which the Court was bound to determine for itself in this cause, and in failing and refusing to determine the existence or non-existence of such jurisdictional facts independently of any determination thereof by the Interstate Commerce Commission.

36. In failing and refusing to find that the complainants were entitled to a trial de novo by the Court upon the jurisdictional facts which would warrant the Interstate Commerce Commission in invading the domain of the State of Florida by said reports and orders of said Commission, and in failing and refusing to grant such trial upon such facts.

[fol. 3202] 37. In holding that when the question of the existence of the facts with respect to intrastate rates upon the existence of which the power of the Interstate Commerce Commission to act depends, has been tried before that Commission its conclusion affirming the existence of those facts is sufficient to put the burden upon those who deny it.

38. In holding with respect to the power to deal with intrastate rates "that under the enlarged and positive powers with which the Interstate Commerce Commission is vested its findings of fact within the scope of its powers will not be rejected by the Courts if supported by evidence."

39. In holding that in dealing with intrastate rates a plain case to the contrary of the conclusions reached by the Interstate Commerce Commission is necessary to warrant Court interference.

40. In failing and refusing to find that the report and order of the Interstate Commerce Commission of July 5, 1932, as amended, and the report and order of the Interstate Commerce Commission of January 9, 1933, constitute an unlawful exercise of power by said Commission and are without warrant or authority of law.

41. In failing and refusing to find that the reports and orders of the Interstate Commerce Commission herein involved constitute an unlawful invasion of the sovereign rights of the State of Florida reserved to it under the Constitution of the United States and of the citizens of the State of Florida and are without any warrant or authority of or under the Constitution of the United States.

42. In failing and refusing to find that said Interstate Commerce Commission was and is without jurisdiction to enter said reports and orders herein involved.

[fols. 3203 & 3204] 43. In holding that the particular findings of the Interstate Commerce Commission are sufficient

to support the general finding of unjust discrimination by the state rates against Interstate Commerce by undue burden on the Interstate carrier's revenues, and to justify an order removing the discrimination by establishing the new rate prescribed.

44. In sustaining and upholding the orders of the Interstate Commerce Commission made July 5, 1932, and the order of the Interstate Commerce Commission confirming the same made January 9, 1933.

Wherefore the complainants, jointly and severally, pray that the final order or decree of the District Court dated February 24, 1933, be reversed and that the matter be remanded to said Court with instructions to suspend, annul and permanently enjoin said order of the Interstate Commerce Commission made July 5, 1932, and the order of said Commission confirming the same made January 9, 1933, in the said proceeding before said Commission in its Docket No. 18364 entitled Georgia Public Service Commission v. Atlantic Coast Line Railroad Company.

Cary D. Landis, Attorney General of the State of Florida. T. T. Turnbull, Special Council for Florida Railroad Commission. Henry P. Adair, August G. Gutheim, J. V. Norman, C. G. Ashby, Solicitors for Wilson Cypress Company and Wilson Lumber Company of Florida. Julian E. Fant, F. C. Hillyer, Solicitors for F. S. Buffum Company, Incorporated.

[File endorsement omitted.]

[fol. 3205] IN UNITED STATES DISTRICT COURT

In Equity. Nos. 690, 691 and 695

[Title omitted]

Consolidated Petitions for Injunction

ORDER GRANTING APPEAL—Filed April 22, 1933

The State of Florida, and E. S. Matthews, Mamie Eaton-Greene, and W. B. Douglass, as and constituting the Flor-

ida Railroad Commission, complainants in constituent cause No. 690, and Wilson Cypress Company and Wilson Lumber Company of Florida, complainants in constituent cause No. 691, and F. S. Buffum Company, Incorporated, complainant in constituent cause No. 695, having filed their joint and several petition for appeal from the final decree made and entered on February 24th, 1933, in said Consolidated Cause, and having likewise filed their joint and several assignment of errors and jointly and severally presented a typewritten statement of the basis upon which they jointly and severally contend that the Supreme Court of the United States has jurisdiction upon appeal to review the said final [fols. 3206 & 3207] decree, upon consideration,

It is ordered that the said petition for appeal be and the same hereby is granted, and the complainants are hereby allowed jointly and severally to appeal from said final decree in the above entitled Consolidated Cause,

It is further ordered that said appeal be and the same is hereby entered to the Supreme Court of the United States upon the filing of a bond by the complainants in the sum of Five Hundred & 00/100 ($500.00), with a good and sufficient surety, to be approved by this Court, conditioned upon the said complainants prosecuting said appeal to effect and answering all damages and costs if they fail to make their plea good.

Done and Ordered this 19th day of April, A. D. 1933.

Samuel H. Sibley, United States Circuit Judge. E. Marvin Underwood, United States District Judge. Lonie W. Strum, United States District Judge.

[File endorsement omitted.]

[fols. 3208–3211] Bond on Appeal for $500.00, approved and filed April 22, 1933, omitted in printing.

[fols. 3212-3217] Citation in usual form showing service on Elmer B. Collins et al., filed April 22, 1933, omitted in printing.

[fol. 3218] IN UNITED STATES DISTRICT COURT

In Equity. Nos. 690, 691, and 695

[Title omitted]

Consolidated Petitions for Injunction

NOTICE OF APPEAL—Filed May 2, 1933

To the United States of America, Interstate Commerce Commission, Georgia Public Service Commission, and Atlantic Coast Line Railroad Company, Defendants; and the Honorable the Attorney General of the State of Georgia:

Please take notice that by order of the above entitled Court, made and entered April 19th, 1933, appeal to the Supreme Court of the United States by the State of Florida and Eugene S. Matthews, Mamie Eaton-Greene and W. B. Douglass, as and constituting the Florida Railroad Commission, complainants in constituent cause No. 690, and [fols. 3219-3221] Wilson Cypress Company and Wilson Lumber Company of Florida, complainants in constituent cause No. 691, and F. S. Buffum Company, Incorporated, complainants in constituent cause No. 695, has been taken and allowed in the above entitled consolidated cause.

Cary D. Landis, Attorney General of the State of Florida. T. T. Turnbull, Special Counsel for Florida Railroad Commission. Henry P. Adair, August G. Gutheim, J. V. Norman, C. G. Ashby, Solicitors for Wilson Cypress Company and Wilson Lumber Company of Florida. Julian E. Fant, F. C. Hillyer, Solicitors for F. S. Buffum Company, Incorporated.

Received a copy of the foregoing notice this 19 day of April, A. D. 1933.

Atlantic Coast Line Railroad Company, by F. B. Grier, Carl H. Davis, W. E. Kay, Alston, Alston, Foster & Moise, Its Attorneys. Ga. Public Service Commission, by J. J. E. Anderson, Special Atty. M. J. Youmans, Atty. General of Ga., by J. J. E. Anderson, Assistant.

[File endorsement omitted.]

[fols. 3222-3224] Received a copy of the foregoing notice this 22nd day of April, A. D. 1933.

J. Stanley Payne, for Interstate Commerce Commission.

[File endorsement omitted.]

[fols. 3225-3226] Received a copy of the foregoing notice this 21st day of April, A. D. 1933.

Elmer B. Collins, Special Assistant to the Attorney General for the United States.

[File endorsement omitted.]

[fol. 3227] In United States District Court

In Equity. Nos. 690, 691, and 695

[Title omitted]

Consolidated Petitions for Injunction

Præcipe for Transcript of Record—Filed May 2, 1933

To the Clerk of the above-entitled Court:

Please prepare a transcript of the record in the above entitled consolidated cause in the matter of appeal therein, and include in said transcript in the order given below the following matter, viz:

Matter Entitled in No. 690

1. Bill of Complaint filed by complainants September 9, 1932, together with the Exhibits therein mentioned and made a part thereof.

[fol. 3228] 2. Petition for Intervention by Atlantic Coast Line Railroad Company and Order dated September 14, 1932, granting Petition, filed September 14, 1932.

3. Motion to Dismiss and Answer of Atlantic Coast Line Railroad Company, filed September 14, 1932.

4. Answer of Interstate Commerce Commission, filed September 14, 1932.

5. Temporary Restraining Order made and entered by the Court September 14, 1932.

6. Answer of United States of America, filed September 22, 1932.

7. Supplemental Bill of Complaint filed by complainants February 24, 1933, together with the Exhibits therein mentioned and made a part thereof, and minutes of February 24, 1933, of Court allowing such filing.

8. Answer of United States of America to the Supplemental Bill of Complaint, filed February 24, 1933.

9. Answer of Interstate Commerce Commission to the Supplemental Bill of Complaint, filed February 24, 1933.

10. Motion of Atlantic Coast Line Railroad Company to deny the petition to file the Supplemental Bill of Complaint filed February 24, 1933.

11. Answer of Atlantic Coast Line Railroad Company to the Supplemental Bill of Complaint filed February 24, 1933.

12. Petition of Georgia Public Service Commission to Intervene, filed February 24, 1933, and minutes of February 24, 1933, of Court allowing such intervention.

[fol. 3229] 13. Motion of Georgia Public Service Commission to deny the Petition to file the Supplemental Bill of Complaint, filed February 24, 1933.

14. Answer of Georgia Public Service Commission to the Supplemental Bill of Complaint, filed February 24, 1933.

Matter Entitled in No. 691

15. Bill of Complaint filed by complainants September 9, 1932, together with the Exhibits therein mentioned and made a part thereof.

16. Petition for Intervention by Atlantic Coast Line Railroad Company and Order dated September 14, 1932, granting Petition, filed September 14, 1932.

17. Motion to Dismiss and Answer of Atlantic Coast Line Railroad Company, filed September 14, 1932.

18. Answer of Interstate Commerce Commission, filed September 14, 1932.

19. Temporary Restraining Order made and entered by the Court September 14, 1932.

20. Answer of United States of America, filed September 22, 1932.

21. Supplemental Bill of Complaint filed by complainants February 24, 1933, together with the Exhibits therein men-

tioned and made a part thereof, and minutes of February 24, 1933, of Court allowing such filing.

22. Answer of United States of America to the Supplemental Bill of Complaint, filed February 24, 1933.

23. Answer of Interstate Commerce Commission to the Supplemental Bill of Complaint, filed February 24, 1933.

[fol. 3230] 24. Motion of Atlantic Coast Line Railroad Company to deny the petition to file the Supplemental Bill of Complaint, filed February 24, 1933.

25. Answer of Atlantic Coast Line Railroad Company to the Supplemental Bill of Complaint filed February 24, 1933.

26. Petition of Georgia Public Service Commission to Intervene, filed February 24, 1933, and minutes of February 24, 1933, of Court allowing such intervention.

27. Motion of Georgia Public Service Commission to deny the Petition to file the Supplemental Bill of Complaint, filed February 24, 1933.

28. Answer of Georgia Public Service Commission to the Supplemental Bill of Complaint, filed February 24, 1933.

Matter Entitled in No. 695

29. Bill of Complaint filed by complainant October 14, 1932, together with the Exhibits therein mentioned and made a part thereof.

30. Stipulation extending time for filing of answers, filed November 17, 1932, and order entered upon said stipulation so extending time for filing answers made and entered by the Court November 17, 1932.

31. Motion for leave to file supplemental bill of complaint, filed February 13, 1933, and order allowing such motion, made and entered February 13, 1933.

32. Supplemental bill of complaint filed by complainant February 13, 1933, together with the exhibits therein mentioned, and made a part thereof.

[fol. 3231] 33. Answer of United States of America to the original bill of complaint, filed February 24, 1933.

34. Answer of United States of America to the Supplemental bill of complaint, filed February 24, 1933

35. Answer of Interstate Commerce Commission to Supplemental Bill of Complaint, filed February 24, 1933.

36. Petition of Atlantic Coast Line Railroad Company to intervene and minutes of February 24, 1933, of Court allowing such intervention.

37. Answer of Atlantic Coast Line Railroad Company to the original bill of complaint, filed February 24, 1933.

38. Motion of Atlantic Coast Line Railroad Company to dismiss, filed February 24, 1933.

39. Motion of Atlantic Coast Line Railroad Company to deny the petition to file the supplemental bill of complaint, filed February 24, 1933.

40. Answer of Atlantic Coast Line Railroad Company to the supplemental bill of complaint filed February 24, 1933.

41. Petition of Georgia Public Service Commission to intervene, filed February 24, 1933, and minutes of February 24, 1933, of Court allowing such intervention.

42. Motion of Georgia Public Service Commission to deny the petition to file the supplemental bill of complaint, filed February 24, 1933.

43. Answer of Georgia Public Service Commission to the Supplemental Bill of Complaint, filed February 24, 1933.

[fol. 3232] Matter Entitled in the Consolidated Cause

44. Order of Court made and entered February 24, 1933, consolidating the three proceedings, numbers 690, 691 and 695, into one bill, and directing that said proceedings thereafter proceed as a single cause.

45. Certified copy of transcript of record of the evidence and proceedings before the Interstate Commerce Commission in the matter entitled number 18364, Georgia Public Service Commission versus Atlantic Coast Line Railroad Company, offered in evidence by complainants in said three proceedings numbered 690, 691 and 695 (or in lieu thereof any narrative statement of the record of said evidence and proceedings agreed upon by the parties and/or approved by the Court).

46. Opinion of the Court dated and filed February 24, 1933.

47. Final decree of the Court, dated and filed February 24, 1933.

48. Petition for appeal filed by complainant April 19, 1933.

49. Assignment of Errors filed by complainants April 19, 1933.

50. Statement by complainants of the jurisdiction of the Supreme Court to review upon appeal, filed April 19, 1933.

51. Order of the above entitled Court granting appeal, dated April 19, 1933.

52. Bond on appeal, approved April 19, 1933, filed April 22, 1933.

53. Citation on appeal, dated April 19, 1933.

[fol. 3233] 54. Proof of service, dated April 19, 1933, and acknowledgments of service thereof.

55. This præcipe for transcript of record.

56. All acknowledgments of receipt of copies of petition for appeal, assignment of errors, statement of jurisdiction, order granting appeal, citation on appeal and præcipe for transcript of record; such acknowledgements being signed by attorneys for United States of America, Interstate Commerce Commission, Georgia Public Service Commission and Atlantic Coast Line Railroad Company.

Cary D. Landis, Attorney General of the State of Florida. T. T. Turnbull, Special Counsel for Florida Railroad Commission. Henry P. Adair, August G. Gutheim, J. V. Norman, C. G. Ashby, Solicitors for Wilson Cypress Company and Wilson Lumber Company of Florida. F. C. Hillyer, Julian E. Fant, Solicitors for F. S. Buffum Company, Incorporated.

[File endorsement omitted.]

[fols. 3234 & 3235] [Stamp:] U. S. District Court. Filed in Clerk's Office May 5, 1933. J. D. Steward, Clerk, United States District Court, Northern District of Georgia.

Department of Justice, Office of the Assistant to the Attorney General, Washington,

May 3, 1933.

STATE OF FLORIDA et al.

v.

UNITED STATES et al.

In Equity. Nos. 690, 691 and 695

Olin M. Fuller, Esq., Clerk, U. S. District Court, Atlanta, Georgia:

DEAR SIR: The undersigned acknowledges receipt and service on this date of copy of complainants' "Præcipe for

Transcript of Record" and copy of "Citation," issued in the above-entitled proceedings April 19, 1933.

Copy of this acknowledgment is being sent to Knight, Adair, Cooper & Osborne, Atlantic National Bank Building, Jacksonville, Florida, counsel for complainants.

Yours very truly, Elmer B. Collins, Special Assistant to the Attorney General.

[fols. 3236 & 3237] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 3238] In United States District Court

In Equity. Nos. 690, 691 and 695

[Title omitted]

Consolidated Petitions for Injunction

Order Directing Transmittal of Original Record Upon Appeal—Filed July 28, 1933

This cause coming on to be heard this day upon motion of the complainants for an order directing the original record, instead of a transcript thereof, to be transmitted to the Supreme Court of the United States upon the appeal herein, and it appearing that the parties hereto have by stipulation agreed to the entry of such order, upon consideration

It is ordered and adjudged that the original record herein, instead of a transcript thereof, be, and the same is hereby directed to be transmitted to the Supreme Court of the United States upon the appeal herein.

Done and ordered at Atlanta, Georgia, this 26 day of July, A. D. 1933.

Sam'l H. Sibley, United States Circuit Judge. Louie W. Strum, United States District Judge. E. Marvin Underwood, United States District Judge.

[File endorsement omitted.]

[fol. 3239] IN UNITED STATES DISTRICT COURT

In Equity. Nos. 690, 691 and 695

[Title omitted]

Consolidated Cause

ORDER ENLARGING TIME WITHIN WHICH TO DOCKET THE CASE AND FILE THE RECORD THEREOF—Filed in U. S. Supreme Court May 27, 1933

It appearing that the parties and their respective counsel are distant; and that an enlargement of the time is required to reduce to narrative statement the testimony contained in the voluminous record of evidence and proceedings before the Interstate Commerce Commission, now a part of the record before this Court, and to assemble, prepare and certify the transcript of the record of this Court on the appeal from the decree of this Court, and for other good cause shown,

It is ordered that the time within which the appellants shall furnish, serve and file in the office of the Clerk of this Court their narrative statement of evidence offered before the District Court and their designation for the record of [fols. 3240 & 3241] additional appeal papers which have been filed, and in which to docket the case and file the record therein with the Clerk of the Supreme Court of the United States, be, and it is hereby enlarged to and including Aug. 15, 1933.

Done and ordered, this 16 day of May, A. D. 1933.

Samuel H. Sibley, United States Circuit Judge. E. Marvin Underwood, United States District Judge. Louie W. Strum, United States District Judge.

[fol. 3242] [File endorsement omitted.]

[fol. 3243] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS UPON WHICH APPELLANTS INTEND TO RELY AND OF THE PARTS OF THE RECORD WHICH ARE NECESSARY FOR THE CONSIDERATION THEREOF—Filed Aug. 18, 1933

The State of Florida, E. S. Matthews, et al., constituting the Railroad Commission of Florida, Wilson Cypress Com-

pany, Wilson Lumber Company of Florida, F. S. Buffum [fol. 3244] Company, Inc., appellants in this appeal for the reversal of the decree of the United States District Court for the Northern District of Georgia, Atlanta Division, jointly and severally rely upon all the points raised by their assignments of error herein, including, among others, the following points:

1. The Interstate Commerce Commission has failed to make the basic or essential findings necessary to support its order prescribing intrastate rates on logs for statewide application in Florida over the lines of the Atlantic Coast Line Railroad. There is no substantial evidence before the Commission to support such findings. (This point is applicable to assignments of error numbered 1 to 10, inclusive.)

2. There was no finding and no evidence of the amount of revenue which had been derived by the carrier from the particular traffic in question under the Cummer scale of rates. (This point is applicable to assignments of error numbered 6, 7, 9, 10 and 29.)

3. There was no finding as to the amount of revenue which can reasonably be expected to be derived by the carrier from the traffic in question "under the increased rates". (This point is applicable to assignments of error numbered 12, 13, 14 and 15.)

[fol. 3245] 4. There was no sufficient finding and no evidence upon which the Commission could base a sufficient finding that the alteration of the intrastate rate would produce or was likely to produce additional income necessary to prevent an undue burden and to maintain an adequate (national) transportation system. (This point is applicable to assignments of error numbered 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, and 17 to 31 inclusive.)

5. Such findings and estimates as were made by the Interstate Commerce Commission with respect to the revenue which might be derived in the future from the traffic in question were confined wholly to findings and estimates relating to "normal economic conditions" and had no relation to the economic era in which the said order was made and for which the Interstate Commerce Commission pre-

scribed statewide intrastate rates in Florida. (This point is applicable to assignments of error numbered 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, and 17 to 31 inclusive.)

6. The cost and revenue studies founded upon system averages are insufficient to supply the essential facts as to the particular traffic and revenue and the effect of the intrastate rates, existing and future, upon the income of the carrier. (This point is applicable to assignments of error numbered 1, 2, 3, 5 to 11 inclusive, 14 to 31 inclusive.)

[fols. 3246 & 3247] 7. The Court erroneously assumed that the Interstate Commerce Commission had found the average cost of hauling logs over the Coast Line System, whereas the Commission made no such finding and there was no evidence of record upon which any such finding could be based. (This point is applicable to assignment of Error numbered 27.)

8. The rate comparisons furnish no cause for the invasion of the State domain by the Federal power. (This point is applicable to assignments of error numbered 1 to 5 inclusive.)

9. The jurisdictional facts required by the Constitution and Laws of the United States to justify the invasion of State domain by the Interstate Commerce Commission have not been made to "clearly appear". The record contains no evidence to support the jurisdictional facts which must be made to "clearly appear". The Interstate Commerce Commission is without the power to prescribe intrastate rates unless the "jurisdictional facts" authorizing such action have been made to "clearly appear". (This point is applicable to assignments of error numbered 34 to 37 inclusive.)

[fol. 3248] 10. The existence of such jurisdictional facts is a judicial question which must be determined by the judicial branch of the Government irrespective of any findings which may have been made by the Interstate Commerce Commission. (This point is applicable to assignments of error numbered 34 to 37 inclusive.)

11. The State of Florida in due season demanded a trial de novo upon the jurisdictional facts, the findings and determination of which were essential to justify the invasion

of State domain by the Interstate Commerce Commission. Such trial de novo was refused and the rights of the State of Florida, its Attorney General and the Florida Railroad Commission were duly saved and are relied upon here. (This point is applicable to assignment of error numbered 36.)

12. Neither the showing before the Interstate Commerce Commission nor the investigation made by it was sufficient to warrant that Commission in imposing its will upon the sovereign State, statewide and without exception. (This point is applicable to assignment of error numbered 41.)

13. The investigation and findings with respect to the interstate rates were limited to points of origin in North Florida. The Commission made no investigation with respect to the interstate rates from Florida to Georgia else- [fol. 3249] where than in Northern Florida and was without the power under such circumstances to fix the intrastate rates for statewide application beyond the sphere in which the interstate rates were prescribed. (This point is applicable to assignments of error numbered 32, 33, 34 and 44.)

14. The order of the Interstate Commerce Commission being statewide in its scope was beyond the scope of the issue on which the controversy was tried before the Interstate Commerce Commission. (This point is applicable to assignments of error numbered 32, 33, 34, 42 and 44.)

15. The limitation of the Commission's finding as to the interstate rates and of the order prescribing them for transportation from points in the Northern part of Florida to points in Georgia define the interstate commerce which was deemed to be concerned. In its report the Interstate Commerce Commission found that the interstate commerce involved was potential, no actual movement from Florida to Georgia having been shown. During the two years in which the unlawful order of the Interstate Commerce Commission (heretofore set aside by this Court), and a parity of interstate and intrastate rates were in effect, no movement of logs from Florida to Georgia occurred and the Interstate Commerce Commission in its report of July 5th, [fol. 3250] 1932, so found. So that there was and is no interstate commerce from Florida to Georgia to be protected from unjust discrimination as between persons and

localities. (This point is applicable to assignments of error numbered 32, 33, 34, and 44.)

16. Even if it were possible to find any unjust discrimination against interstate commerce in this proceeding there was no finding and no evidence upon which the Commission could base a finding that that discrimination was of such character and consequence that it was the affirmative duty of the Commission, as an important step in maintaining an adequate national railway, to remove it. (This point is applicable to assignments of error numbered 17 to 26 inclusive, and 30, 43 and 44.)

17. The report and orders of the Interstate Commerce Commission are unreasonable and arbitrary. (This point is applicable to assignments of error numbered 5, 25, 43 and 44.)

18. The rates prescribed by the Interstate Commerce Commission for the transportation of logs in intrastate commerce in Florida between points in Florida was a minimum rate, and not otherwise. The rate prescribed by the Interstate Commerce Commission for the transportation of logs from points in North Florida to destinations in [fol. 3251] Georgia was a maximum rate, and not otherwise. At no time or place has the Interstate Commerce Commission attempted to prescribe other than maximum rates for the transportation of logs in intrastate commerce or in interstate commerce in the Southern Rate Group. The fixing of minimum rates on logs over the Atlantic Coast Line in Florida was arbitrary. (This point is applicable to assignments of error numbered 5, 25, 43 and 44.)

19. At or about the time that said minimum rates were prescribed for the transportation of logs for intrastate commerce in Florida, the Interstate Commerce Commission permitted the establishment of intertsate rates and intrastate rates within and between more than thirteen Southern and Southwestern states, over the lines of more than twenty interstate carriers, for the transportation of logs found by said Commission to be substantially on the level of the Cummer Scale, and upon a level substantially one-half of the minimum scale prescribed by the Interstate Commerce Commission for the transportation of logs in

trastate over the Atlantic Coast Line in Florida. The action of said Interstate Commerce Commission in this regard was arbitrary, oppressive and unreasonable. (This point is applicable to assignments of error numbered 5, 25, 43 and 44.)

[fol. 3252] 20. On January 9th, 1933, and on July 5th, 1932, the times at which the Interstate Commerce Commission entered its second and first reports on the further hearing, there was no substantial disparity between the Cummer Scale of Florida intrastate log rates and the general level of interstate log rates in the Southern Rate Group, as the Interstate Commerce Commission had permitted and was then permitting such general level to be fixed. During the several months preceding the filing of the Commission's second report on further hearing the Commission had permitted and was then permitting the general level of interstate and intrastate log rates in the predominant part of Southern territory to be fixed on a substantial parity with that of the Cummer scale. Hence, the Commission was without the power to interfere with the intrastate rates in Florida. In attempting to do so its action was arbitrary and unreasonable. (This point is applicable to assignments of error numbered 1 to 5, inclusive; and 32 and 33.)

21. The prescription by the Interstate Commerce Commission of the scale of minimum rates for application on Florida intrastate log traffic over the Atlantic Coast Line when newly reduced rates upon the approximate level of the Cummer scale have been permitted by the Interstate Commerce Commission to become effective over many lines of railroads in many states creates a new and most unjust discrimination within the Southern Rate Group. (This point is applicable to assignments of error numbered 3 and 4.)

[fol. 3253] 22. An order of the Interstate Commerce Commission must be set aside even when in form it is within the delegated powers, if it is shown that it is an abuse or misuse of the Federal power delegated. (This point is applicable to Assignments of error numbered 40 to 44, inclusive).

23. The order of the Interstate Commerce Commission was made without any substantial evidence to support it.

This point is applicable to assignments of error numbered 4, 6, 7, 9 to 30 inclusive, and 44).

24. The proceeding was not appropriate nor was the hearing sufficient. (This point is applicable to assignments of error numbered 28, 29, 32, 34 and 36).

25. The order of the Interstate Commerce Commission was beyond the scope of the power conferred upon it by the acts of Congress or any of them. (Applicable to assignments of error numbered 1, 2, 6, 31, 32, 32, 33, 40, 42 and 44).

26. The construction placed upon Section 13 of the Interstate Commerce Act as amended, by the Interstate Commerce Commission and the District Court would render the said section unconstitutional and void. (Applicable to assignments of error numbered 32 to 39 inclusive, and 44).

[fol. 3254] 27. The administrative action taken by the Interstate Commerce Commission under the Interstate Commerce Act as amended is in violation of the rights reserved to the State of Florida under the Tenth Amendment of the Federal Constitution. (Applicable to assignments of error numbered 21, 32, 34, 40, 42 and 44).

28. The District Court should have granted the relief prayed in the bills and supplemental bills and should have granted the permanent injunction prayed. (Applicable to assignments of error numbered 1, 2, 40 to 44 inclusive).

Parts of the Record Necessary for the Consideration of the Points Above Mentioned

And the said appellants respectfully represent that the whole of the record is necessary for the consideration of the points above specified.

Respectfully submitted, Cary D. Landis, Attorney General, State of Florida. Theo. T. Turnbull, Special Counsel, Florida Railroad Commission. Henry P. Adair, August G. Gutheim, Clarence G. [fol. 3255] Ashby, Counsel, Wilson Cypress Company. J. V. Norman, Counsel, Wilson Lumber Company of Florida. Julian E. Fant, F. C. Hillyer, Counsel, F. S. Buffum Company, Inc.

Service of copy of foregoing Statement of Points relied upon is hereby acknowledged this August 18th, A. D. 1933.

J. Crawford Biggs, Solicitor General (A. Q.), for United States of America, Appellee. J. Stanley Payne, for Interstate Commerce Commission.

Service of copy of foregoing Statement of Points relied upon is hereby acknowledged this August 17th A. D., 1933.

J. P. Witchart, Chairman, Georgia Public Service Commission. F. B. Grier, Carl H. Davis, W. E. Kay, Robert C. Alston, Atlantic Coast Line Railroad. M. J. Yeomans, Attorney General, State of Georgia.

[fol. 3256] [File endorsement omitted.]

[fol. 3257] IN SUPREME COURT OF THE UNITED STATES

STIPULATION AS TO PRINTING RECORD AND EXHIBITS—Filed Nov. 20, 1933

It is stipulated by the parties hereto that the following shall govern the printing of the record of the District Court in the appeal in the above-entitled cause:

Omit from printing the following exhibits introduced before the Interstate Commerce Commission in the rehearings in Docket No. 18364, Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, (which are part of Petitioners' Exhibits before the District Court):

[fols. 3258 & 3259] Nos. 56 to 60 inclusive, and No. 62.
No. 100.
No. 129.
No. 130.
No. 139
No. 140.
No. 146.
No. 147.
No. 148.
No. 161.
No. 163.

With the above exceptions the entire record now on file shall be printed in the customary manner.

Counsel for appellants shall, before the cause comes up for argument in the Supreme Court, furnish to the Clerk ten copies of the said exhibits so omitted from printing, which exhibits shall be suitably bound for submission to the justices of the Court, and which shall have the same force and effect and be treated for all purposes as if they were a part of the printed transcript of the record.

It is further agreed that this stipulation shall be printed by the Clerk as part of the record on appeal.

Cary D. Landis, Atty. Genl. of State of Florida; T. T. Turnbull, Special Counsel for Florida Railroad Commission; H. P. Adair, August G. Gutheim, C. G. Ashby, J. V. Norman, Counsel for Appellants. Elmer B. Collins, for United States of America. J. Stanley Payne, for Interstate Commerce Commission. Robt. C. Alston, for Atlantic Coast Line Railroad Co. J. J. E. Anderson, Assistant Atty. Gen., for Georgia Public Service Commision, Appellees.

[fol. 3260] [File endorsement omitted.]

Endorsed on cover: File No. 37,945. N. Georgia D: C. U. S. Term No. 342. State of Florida, Eugene S. Matthews, Mamie Eaton-Greene and W. B. Douglass, etc., et al., Appellants, vs. The United States of America, Interstate Commerce Commission, Georgia Public Service Commission and Atlantic Coast Line Railroad Company. Filed August 14, 1933. File No. 342, O. T., 1933.

No. [illegible]

STATE OF FLORIDA, [illegible] MAMIE EATON-GREENE, [illegible] ETC., ET AL., APPELLANTS,

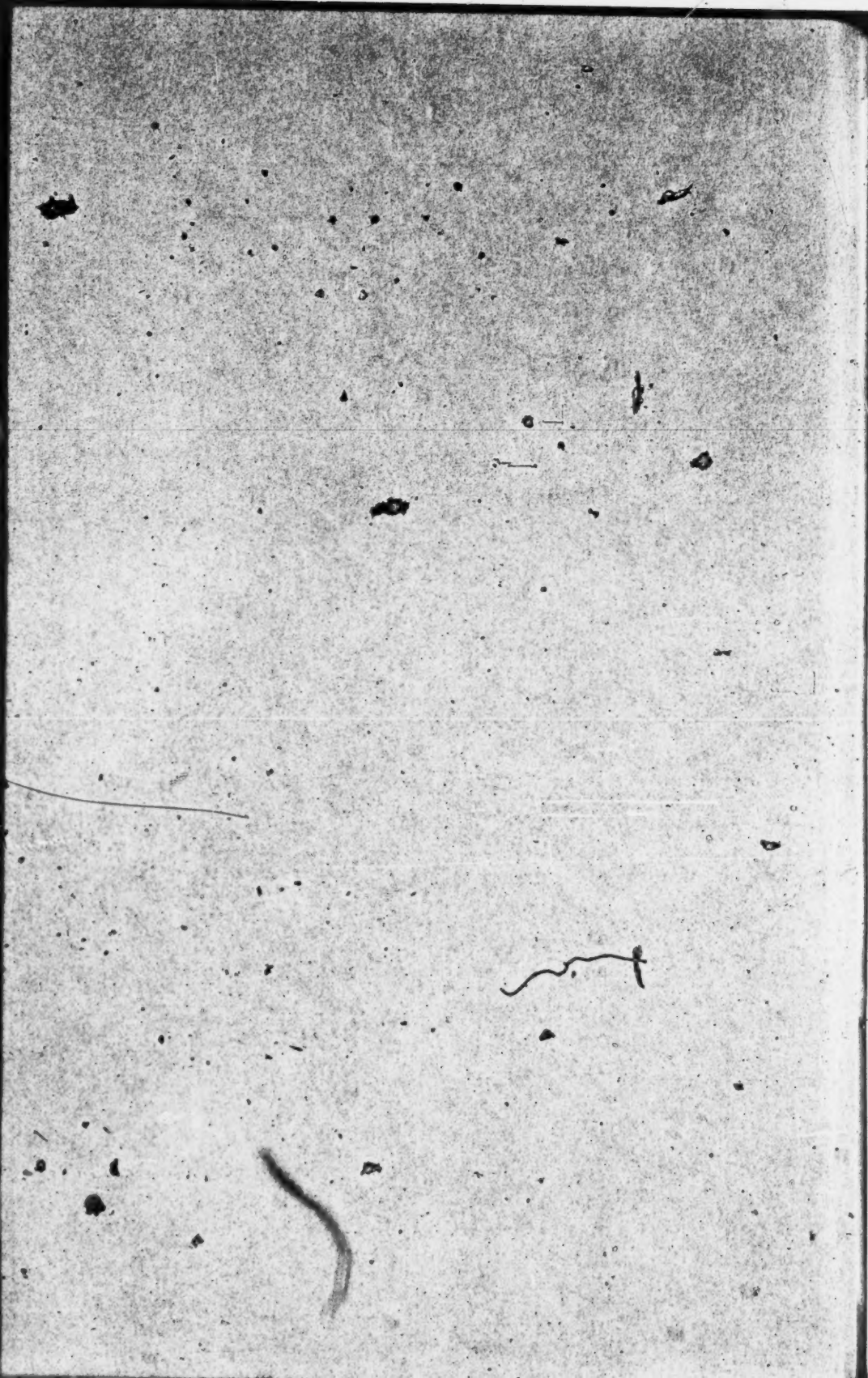
vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, GEORGIA PUBLIC SERVICE COMMISSION, AND ATLANTIC COAST LINE RAILROAD COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.

STATEMENT AS TO JURISDICTION.

[illegible]



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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1933

No. 342

STATE OF FLORIDA, EUGENE S. MATTHEWS, MAMIE EATON-GREENE, AND W. B. DOUGLASS, ETC., ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, GEORGIA PUBLIC SERVICE COMMISSION, AND ATLANTIC COAST LINE RAILROAD COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.

JOINT AND SEVERAL STATEMENT BY COMPLAINANTS OF THE JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES TO REVIEW UPON APPEAL THE ABOVE ENTITLED CONSOLIDATED CAUSE.

(a) The Statutory Provisions Sustaining the Jurisdiction.

The complainants, jointly and severally, rely upon Section 238 of the Judicial Code as amended by the Act of

Congress of February 13, 1925 (Chapter 229, 43 Stat. 938), and also the Urgent Deficiencies Act of October 22, 1913 (Chapter 32, 38 Stat. 219, 220), as sustaining the jurisdiction of the Supreme Court of the United States to review the above entitled consolidated cause upon appeal.

(b) The Decree Sought to be Reviewed.

The decree appealed from was dated February 24, 1933, and entered February 24, 1933. The petition for appeal is presented April 19, 1933.

(c) The Nature of the Case and of the Rulings of the Court.

These three suits were separately instituted for the purpose of enjoining, setting aside and annulling an order of the Interstate Commerce Commission, dated and filed July 5, 1932, and thereafter amended in certain particulars, in a certain proceeding had before said Interstate Commerce Commission entitled Docket No. 18364, *Georgia Public Service Commission, Complainant,* v. *Atlantic Coast Line Railroad Company, Defendant* (reported in 186 I. C. C. 157, and a second report being reported in 190 I. C. C. 588), which said order required the said railroad company to establish, put in force and maintain in intrastate commerce within and throughout the State of Florida certain rates for the transportation of logs.

These suits were filed for the purpose of attacking said order of July 5, 1932, as amended by order of July 28, 1932, of said Interstate Commerce Commission and were heard before the specially constituted district court comprised of Circuit Judge Sibley and District Judges Underwood and Strum. After the filing of the suits and a hearing therein,

but before any final decree or opinion was rendered therein, the Interstate Commerce Commission by an order dated October 21, 1932, reopened said proceeding before it and suspended the operation of its said order of July 5, 1932. Thereafter further proceedings were had before said Interstate Commerce Commission in said Docket No. 18364, and on January 9, 1933, said Commission made and filed a second report and order in said proceeding vacating and setting aside its said order of October 21, 1932, which suspended the operation of said order of July 5, 1932, and in and by said order of January 9, 1933, ordered and directed that said order of July 5, 1932, as amended by order of July 28, 1932, should remain in full force and effect after February 11, 1933. Afterwards said trial court permitted the complainants to file supplemental bills of complaint and said three suits were consolidated. Thereafter, upon the hearing of said consolidated causes, the said judges comprising said trial court concurred in an unanimous opinion, and on February 24, 1933, made and entered said final decree, by which the said trial court, pursuant to said last described opinion, sustained the order of July 5, 1932, of the Interstate Commerce Commission and the order of the Interstate Commerce Commission confirming the same made January 9, 1933, and denied the relief sought in said three suits as consolidated as aforesaid.

(d) Cases Sustaining the Jurisdiction.

Florida v. *United States*, 282 U. S. 194;

Baltimore & O. R. Co. v. *United States*, 277 U. S. 291;

St. Louis & O'Fallon R. Co. v. *United States*, 279 U. S. 461;

Houston E. & W. T. R. Co. v. *United States*, 234 U. S. 342;

New York v. *United States*, 257 U. S. 591.

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No. 342

IN THE SUPREME COURT OF THE UNITED STATES

STATE OF FLORIDA, et al.,
Appellants,

vs.

UNITED STATES OF AMERICA, et al.,
Appellees.

Appeal from the United States District Court for the Northern District of Georgia, Atlanta Division

BRIEF OF APPELLANTS OPPOSING THE MOTION OF ATLANTIC COAST LINE RAILROAD COMPANY TO DISMISS THE APPEAL OR AFFIRM THE DECISION OF THE DISTRICT COURT

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IN THE SUPREME COURT OF THE UNITED STATES

STATE OF FLORIDA, et al.,
Appellants,

vs.

UNITED STATES OF AMERICA, and INTERSTATE COMMERCE COMMISSION; ATLANTIC COAST LINE RAILROAD COMPANY, Intervener,
Appellees.

Appeal from the United States District Court for the Northern District of Georgia, Atlanta Division

---

BRIEF OF APPELLANTS OPPOSING THE MOTION OF ATLANTIC COAST LINE RAILROAD COMPANY TO DISMISS THE APPEAL OR AFFIRM THE DECISION OF THE DISTRICT COURT

Reference to Official Reports of the Opinion Delivered in the District Court, and I. C. C.

The opinion of the Court below was rendered and filed in the Clerk's office on February 24th, 1933 and is cited as "State of Florida, et al., against United States of America, Interstate Commerce Commission; Atlantic Coast Line Railroad Company, Intervener", (not yet reported). The reports and orders of the Interstate Commerce Commission are dated respectively July 5th, 1932 and are cited, "Georgia Public Service Commission vs. Atlantic Coast Line Railroad Company", reported in 186 I. C. C. 157, and January 9th, 1933, cited, "Georgia Public Service Commission vs. Atlantic Coast Line Railroad Company", reported in 190 I. C. C. 588.

Reference to Official Reports of the Opinions Involving an Order of the Interstate Commerce Commission Entered in the Same Proceeding and Set Aside Pursuant to the Decree of the Supreme Court of the United States.

Opinion of the Supreme Court of the United States, dated January 5, 1931, reported in 282 U. S. 194, cited as State of Florida et al vs. United States of America et al;

Opinion of the United States District Court for the Northern District of Georgia, dated January 17th, 1929, reported in 30 Fed. (2d) 116, and cited as "State of Florida, et al., vs. United States of America, et al";

Opinion of the same Court, dated March 22nd, 1929, reported in 31 Fed. (2d) 580, and cited as "State of Florida, et al., vs. United States of America, et al";

Report of the Interstate Commerce Commission dated August 2nd, 1928, cited as "Georgia Public Service Commission vs. Atlantic Coast Line Railroad Company", and reported in 146 I. C. C. 717.

Statement as to Jurisdiction

On April 19th, 1933, the appellants filed and served upon all opposing counsel their separate typewritten statement in compliance with Paragraph 1 of Rule 12 of the Revised Rules of Practice of this Court.

Statement of the Case

This is an appeal from a final decree of the United States District Court for the Northern District of Georgia, Atlanta Division,(1) dated February 24th, 1933, which sitting as a specially constituted three-judge Federal statutory court (38 Stat. at L. 219), denied the relief sought by the appellants (as complainants in equity below) and refused to enjoin an order of the Interstate Commerce Commission contended by the appellants to be unlawful.

The proceedings in the Court below originated in three separate bills and supplemental bills filed respectively by State of Florida and Florida Railroad Commission against the United States of America and Interstate Commerce Commission; Wilson Cypress Company and Wilson Lumber Company of Florida against the United States of America

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(1)—The record being not yet printed no record reference can be made.

and Interstate Commerce Commission; and F. S. Buffum Company, Incorporated against the United States of America and Interstate Commerce Commission. The Atlantic Coast Line Railroad Company intervened in each of the suits.

At the final hearing the several constituent causes were consolidated into a single cause entitled, "State of Florida, et al., complainants, vs. United States of America, and Interstate Commerce Commission; Atlantic Coast Line Railroad Company, Intervener, Respondents". A single final decree was entered in the consolidated cause. The complainants in the constituent and consolidated cause sought and were allowed appeals from the final decree and in due course filed their typewritten statement as to the jurisdiction under Paragraph 1 of Rule 12 of the Revised Rules of Practice of this Court. The Appellee, Atlantic Coast Line Railroad Company filed a statement against the jurisdiction of the Court and with that statement filed a motion to dismiss or affirm the appeal upon the theory that the questions involved in the appeal were unsubstantial. This brief is filed in opposition to such motion under Rule 7, Paragraph 3, and Rule 12, Paragraph 3 of the Revised Rules of Practice of this Court. In this brief we shall examine the merits of the cause no further than to demonstrate the existence of a substantial controversy upon this appeal.

The final decree of the District Court in terms sustained the orders of the Interstate Commerce Commission dated July 5th, 1932 and January 9th, 1933, establishing intrastate rates on logs between points on the Atlantic Coast Line Railroad Company within and throughout the

State of Florida without exception. The order of the Interstate Commerce Commission insofar as it purported to fix intrastate rates was assailed by the State of Florida and the complainants in the other constituent causes as being outside the scope of the issues in the proceeding in which the order was entered and without substantial evidence to support it, as being an arbitrary abuse of Federal power, and as extending beyond the statutory authority of the Interstate Commerce Commission and the limits of the Federal power under the Federal Constitution.

The Original Proceedings Before the Interstate Commerce Commission

The proceedings before the Interstate Commerce Commission were adversary proceedings, instituted by a complaint in which the Georgia Public Service Commission was sole complainant, and the Atlantic Coast Line Railroad Company was sole defendant. The gravamen of the complaint was the alleged unreasonable level of the intrastate rates on logs over six feet in length (except walnut, cherry and cedar) from points of origin in Florida, to destinations in Georgia, and the relationship between that rate on the one hand and the mileage scale of intrastate rates of the same character between points in Florida up to 170 miles on the other hand. The announced purpose of the complaint was to extend the Florida intrastate log rates into interstate commerce from Florida to Georgia.

The Atlantic Coast Line appeared in defense of both the interstate rate and the intrastate rate. The State of Florida was notified pursuant to the laws of congress and

appeared in defense of the intrastate rate. Various interventions were allowed, conditioned that the scope of the proceedings be not broadened. On August 2nd, 1928 the Interstate Commerce Commission filed its report and order. In its report it stated that while the complaint assailed the rates from all Florida points, the record showed that so far as the interstate rates were concerned relief was desired only with respect to the rates on logs "from that portion of Florida lying North of and including Jacksonville, Gainesville, Burnett's Lake and High Springs", described as North Florida, "to destinations in Georgia for distances not exceeding 170 miles". It prescribed interstate rates from points of origin in that small area of North Florida and not elsewhere. (146 I. C. C. 717). No actual movement of logs from Florida to Georgia was shown. But notwithstanding that fact, the Interstate Commerce Commission found that such intrastate rates resulted and would result in undue preference and advantage of shippers of intrastate traffic within the State of Florida, in undue prejudice to shippers of interstate traffic from points in the State of Florida to points in the State of Georgia, and in unjust discrimination against interstate commerce. Accordingly, the Interstate Commerce Commission by its amended and clarified orders fixed statewide, and without exception throughout the State of Florida, intrastate rates for the transportation of logs over the lines of the defendant carrier which were the same as the rates fixed for the non-existent interstate commerce between points in North Florida and Georgia.

The Former Proceedings in the District Court of the United States for the Northern District of Georgia, and in this Court.

Having no recourse to any other remedy The State of Florida thereupon filed its bill in the United States District Court for the Northern District of Georgia, Atlanta Division, that being the forum under the appropriate Federal statute in which it had to proceed, to enjoin the intrastate feature of the order of the Interstate Commerce Commission. Two similar bills were filed by the Florida lumber companies, who are among the appellants in the consolidated cause now at bar. The causes were combined for trial and heard by the United States District Court for the Northern District of Georgia upon hearing and rehearing (30 Fed. 2d 116; 31 Fed. 2d 580). Upon rehearing the District Court declared that the order attacked could not be sustained under Section 3 of the Interstate Commerce Act as amended (the persons and localities section) but could be sustained under Section 13 of the Act as amended, as a burden upon the general revenues of the carrier and thereupon proceeded to enter its decree dismissing the bill of complaint and the supplemental bills.

A direct appeal was taken from the District Court to this Court, and this Court in due course in its opinion and judgment rendered January 5th, 1931 (Florida vs. United States, 282 U. S. 194) reversed the decree of the District Court and ordered "that the portion of the order of the Commission which is now under review with respect to intrastate rates * * * must be set aside." The ultimate ground of the reversal was for "the lack of basic or es-

sential findings required to support the Commission's order. But as an incident to that ultimate finding, this Court examined the scope of the operation of the Federal and State powers and the character and sufficiency of the evidence upon which the Commission attempted to act.

A few days after the coming down of the opinion and before the coming down of the mandate of this Court, the Atlantic Coast Line Railroad Company filed in this Court a motion asserting among other things that the trouble with the order of the Interstate Commerce Commission was procedural only and praying that this Court withhold its mandate until such time as the Interstate Commerce Commission should have made further and additional orders in the proceedings upon the record before the Interstate Commerce Commission. But this Court denied that motion and transmitted its mandate to the District Court. And that mandate in due course was made effective by the order of the District Court and the order of the Interstate Commerce Commission, insofar as it sought to prescribe intrastate rates, was enjoined, annulled and set aside.

The Further Hearings Had Before the Interstate Commerce Commission Under Its Order of April 6, 1931.

At or about the time that the United States District Court for the Northern District of Georgia made, to-wit, on March 7th, 1931, the order that it should have made in the first instance, the complainant, the Georgia Public Service Commission, and the defendant, Atlantic Coast Line Railroad Company, filed simultaneous motions before

the Interstate Commerce Commission which patently were intended to be the one complementary of the other.

The motion of the Georgia Commission requested that the Federal Commission reopen the proceedings and make the determinations required by the situation and prescribe just, reasonable, non-discriminatory and non-prejudicial interstate rates from points in Florida to destinations in Georgia and that those rates be no higher than the Florida intrastate rates in effect at the same time. The motion of the Atlantic Coast Line Railroad Company requested that the Federal Commission reopen the proceedings and make such further findings, reports and orders as it might deem to be requisite or necessary and that it prescribe such intrastate rates in Florida for the transportation of logs for distances up to and beyond 170 miles as might be lawful.

It is thus to be observed that the gravamen and primary purpose of the motion of the Georgia Public Service Commission (like the gravamen of its original complaint) was to invoke the direct Federal power to prescribe reasonable rates for the (non-existent) log traffic in interstate commerce from points in Florida to destinations in Georgia, a thing which the Interstate Commerce Commission had already done in this proceeding by the portion of the order of August 2, 1928, to which no party has ever taken exception. The gravamen and primary purpose of the motion of the Atlantic Coast Line Railroad Company was to invoke direct Federal power to prescribe such intrastate rates "as may be lawful", that is to say, to fix the reasonableness per se of the intrastate rates.

Neither the motion of the Georgia Commission nor the complementary motion of the carrier asserted in issuable

form, or indeed asserted at all, that the level of the Florida intrastate rates was so low as to constitute a revenue burden either upon interstate commerce or upon the general revenues of the carrier.

The State of Florida and the Florida Railroad Commission filed a reply to these motions in which they averred: that in the original proceedings the primary issue was the level of the interstate rate and that the intrastate rate was involved only incidentally in its relation to the interstate rate; that the interstate rates prescribed by the Commission were still in effect and that the Georgia Commission had secured all the relief desired in the proceedings; that the result of the former order of the Commission had been to destroy valuable property and wipe out prosperous communities and likewise to diminish the revenues of the carrier from the transportation of logs; that the Cummer Scale had been voluntarily put into effect by the carrier and had become the lawful state rate in Florida and that no application had been made to the State authorities to change it; that this Court had declared that the reasonableness per se of that rate lay with the State authorities and not with the Interstate Commerce Commission; that the Florida Railroad Commission was ready and willing at any proper time upon the application of anyone to consider and determine in accordance with Florida law the level of the intrastate rate; and that although there had been a parity between the interstate and intrastate rates during the two years in which the former order of the Interstate Commerce Commission had been effective no interstate traffic had developed and none would develop. The reply there-

fore asserted that the motions to reopen the proceedings should be denied.

On April 6, 1931, the Interstate Commerce Commission made an order re-opening the proceeding for "further hearing". The purpose of such "further hearing" was not stated. When the Georgia Public Service Commission proposed to introduce evidence these complainants, directing attention to the state of the record as recited above, asked that the Georgia Public Service Commission, as complainant in the proceeding there, be required to state whether it had abandoned its position that this was not a revenue case and that there was no reason for the increase of any rates. The presiding Examiner ruled that it was not necessary for the Georgia Commission to answer this inquiry, to which ruling an exception was taken.

At the beginning of the re-opened proceedings the State of Florida, through the Chairman of the Florida Railroad Commission, asserted that the authority to determine the reasonableness of the State rates lay with the Florida Railroad Commission; that these rates had been voluntarily initiated more than fifteen years theretofore and when established had become the lawful state rates; that the laws of Florida prohibited any change or increase of those rates without the consent and approval of the Florida Railroad Commission and after due notice to the interested parties and a hearing; that no complaint had ever been made to the Florida Railroad Commission about the level of that rate although its door all that time had been open to anyone dissatisfied with that rate; that the result of the proceedings before the Interstate Commerce Commission had been to injure and destroy intrastate com-

merce within the State of Florida, and to injure and destroy individuals and whole communities in Florida without benefitting anyone in Georgia or in Florida; and that the Florida Railroad Commission considered that the Interstate Commerce Commission was without the power to invade the domain of the State in this matter, but if it had such power it should not exercise it until the Railroad Company had applied to the State of Florida for such relief as it might deem itself entitled to have. To this position the State of Florida throughout these proceedings has steadfastly adhered, and it now and here reasserts that position and insists upon it.

The Georgia Public Service Commission offered no evidence except rate comparisons. Upon the conclusion of its evidence the following motion was made:

> "Come now intervening shipper defendants herein, and in the light of the Examiner's ruling declaring that the undue burden issue is involved in this case by the proceedings of the complainant, respectfully move dismissal of that part of the complaint of the Georgia Public Service Commission, which as thus construed, would allege that the Cummer Scale of the Florida intrastate log rates unduly burdens interstate commerce."

That motion was transmitted to and denied by the Commission.

> Georgia Pub. Serv. Comm. v. Atlantic Coast L. R. Co., 186 I. C. C. 157, 160.

The Examiner, over the objection of these complainants, allowed the Atlantic Coast Line Railroad Company to undertake to prove affirmatively against itself the allegations of the complaint which it had denied in its answer and which it had theretofore expressly disclaimed in stating its position of record in the proceeding.

The insufficiency of the evidence to support the order under attack will be the subject of comment in another portion of this brief. We content ourselves here in pointing out that in the proceedings re-opened by the Commission's order of April 6, 1931, the evidence consisted of rate comparisons and cost studies. Most of the rate comparisons were duplications of those filed in the original proceedings. The cost studies consisted largely of a series of system averages applicable alike to all traffic and were insufficient to demonstrate the cost of the transportation of the particular traffic in question, to-wit, logs. The evidence showed that the dire result prophesied by the Florida interveners that "any material increase in the Florida intrastate rate would either cause them to move their plants to the timber or abandon operations" in the main had been realized. Of the train load shippers, all save one had discontinued transporting logs by the carrier, and millions of dollars of property in plants and communities had been wiped out.

The evidence showed that the traffic in pine logs had all but been destroyed. And that the traffic in cypress and hardwood logs was rapidly running the same course. The presiding Examiner in his proposed report recommended two rates, the one being the rate originally prescribed by the order of the Interstate Commerce Commission which

was condemned by this Court. That rate was to be applicable between all points on the defendant carrier's lines in Florida, except between Hines and Palatka. The rate recommended for the Hines to Palatka movement was 1c per 100 pounds lower than the applicable rate under the scale prescribed by the former order of the Interstate Commerce Commission for that movement. Exceptions were filed to the Examiner's report. On July 5th, 1932, the Commission issued its report and order which is the subject of attack here. The report and order confirmed the interstate rate originally fixed from North Florida points of origin to Georgia destinations by the Order of August 2nd, 1928. No attempt was made in the new report or order to fix interstate rates elsewhere than in that limited area. That report and order found as a fact that no movement from Florida to Georgia had been shown during the two years when the interstate rate and the intrastate rate had been upon the same level. So in its new order the Commission made no finding with respect to persons and localities. But it found the so-called Cummer Scale caused an unjust discrimination against interstate commerce from a revenue standpoint and prescribed for application between all points on the lines of the defendant carrier in Florida the same rate which was prescribed by the order which was set aside by the order of this Court.

Bills in equity were filed to enjoin the order of the Interstate Commerce Commission, the one bill filed by the State of Florida, the other by Wilson Cypress Company and Wilson Lumber Company of Florida. Hearing was had upon them upon September 14th, 1932, and the Court en-

tered a stay of the order of the Commission for not exceeding sixty days.

The Second Re-Opened Proceedings Before the Interstate Commerce Commission.

Meanwhile, in October, 1932, shortly after the filing of the constituent bills in this cause, the appellants the State of Florida and the Wilson Cypress Company and Wilson Lumber Company of Florida filed before the Interstate Commerce Commission their motions and petitions to set aside the order of the Interstate Commerce Commission dated July 5th, 1932 and to re-open the proceedings upon the ground (among others) that at or about the time that the Interstate Commerce Commission was preparing and promulgating its order dated July 5th, 1932, greatly increasing the level of the Florida intrastate rate, the Interstate Commerce Commission was permitting the other trunk line carriers in the Southern and Southwestern rate groups (whose rates had been employed as a standard of comparison for the superseded Cummer Scale) to establish and maintain in interstate commerce (as well as in intrastate commerce) per car rates for the transportation of logs which in practical operation and effect were as low or lower than the Cummer Scale. On October 21st, 1932, the Interstate Commerce Commission entered its order suspending the operation of its order of July 5th, 1932, and the proceedings before it were re-opened the second time for the sole purpose of receiving evidence respecting any change in the rates on logs since the close of the last hearing (that is, taking of the last testimony on July 21st,

1931), the circumstances connected with and the conditions which occasioned such changes, and whether such circumstances and conditions or any of them were present in connection with the log rates of the defendant carrier. Further hearing was had. Meanwhile additional railroads had published tariffs covering the new rates. The record shows that these Newly Reduced Rates had been published by not less than twenty railroads in fourteen Southern and Southwestern States. Such railroads and a general statement of the extent to which the Newly Reduced Rates are applicable over them are as follows:

Nashville, Chattanooga & St. Louis Railway
Between all points on its lines.

Louisville & Nashville Railroad
Between all points on its lines on and South of the Ohio River.

St. Louis-San Francisco Railway
Between all points in Alabama, Mississippi, Florida, Arkansas and Missouri.

Missouri Pacific Railroad
Between all points in Louisiana, Arkansas, Missouri, Oklahoma and Texas.

Illinois Central Railroad
To twelve manufacturing points.

Yazoo & Mississippi Valley Railroad
To twenty manufacturing points.

St. Louis-South Western Railway
Between all Points in Arkansas, Louisiana and Missouri.

Gulf, Mobile & Northern Railroad
Between all points in Mississippi.

Georgia & Florida Railroad
Between all points on its lines.
Chicago, Rock Island and Pacific Railway
Between all points on its lines in Arkansas and Louisiana.
Southern Railway
To nine manufacturing points.
Mobile & Ohio Railroad
To eight manufacturing points.
Seaboard Air Line Railway
To three manufacturing points.
Columbus & Greenville Railroad
To four manufacturing points.
Central of Georgia Railway
To four manufacturing points.
Savannah & Atlanta Railway
To three manufacturing points.
Western Railway of Alabama
To two manufacturing points.
New Orleans & North Eastern Railroad
To one manufacturing point.
Norfolk & Southern Railroad
To one manufacturing point.
Tennessee, Alabama & Georgia Railway.
To two manufacturing points.

The record shows that these Newly Reduced Rates were applicable both in interstate and intrastate commerce on substantially the same level over all or part of all of the railroads specified above within and between Florida, Alabama, Mississippi, Louisiana, Tennessee, Georgia, North

Carolina, Virginia, Kentucky, Missouri, Arkansas, Oklahoma and Texas. As was pointed out above, on some of the railroads the Newly Reduced Rates were made applicable to lumber manufacturing points. On many others, including the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway (Atlantic Coast Line affiliates) they were applicable between all, or nearly all stations, interstate as well as intrastate. There is no doubt that in Louisiana, Mississippi, Alabama, Tennessee, parts of Georgia and Western Florida, the general level of interstate and intrastate rates are on the basis of the Newly Reduced Rates. It will not do to say that the Newly Reduced Rates apply only in the Western portion of Southern territory. The maps attached to the Supplemental Bills show approximately the location of the lines over which they are applicable. For instance, it will be observed that they have largely superseded the so-called "Alabama Scale" in Alabama, (the scale prescribed by the Interstate Commerce Commission for intrastate commerce in Florida was frequently called the "Alabama Scale"). They are in effect in parts of Florida, Georgia, and in Eastern Tennessee as well. We think it fair to say that the Newly Reduced Rates or their substantial equivalent now constitute the general level of intrastate and interstate log rates in the greater part of Southern territory in which the lumber manufacturing industry is still a substantial industry. Some of these were shown to be transit rates, but many of them were shown to be local or proportioned rates. The appellants offered to prove that in practical operation and effect the Florida intrastate scale (the Cummer Scale) was

tantamount to a transit rate, in that substantially all or the greater part of the product manufactured from the logs moved over the lines of the defendant carrier. They offered to prove this by testimony given by the Freight Traffic Manager of the Atlantic Coast Line Railroad in another proceeding. But this testimony was excluded.

Furthermore, the record discloses that the appellant Wilson Cypress Company and Cummer Cypress Company and every other trainload shipper of logs was required by the terms of a written contract with the appellee Atlantic Coast Line Railroad Company (supported by a bond) to ship over the Atlantic Coast Line Railroad and the lines of its connecting carriers, the outbound product manufactured from the inbound logs, providing the rates of competing carriers are not lower. The trainload movement constituted substantially more than the carload movement.

On January 9th, 1933, the Interstate Commerce Commission handed down its second report on further hearing (190, I. C. C. 588). It found as a fact that the Newly Reduced Rates per car of logs regardless of weight are "on substantially the same level as the Cummer Scale" (text 589). Yet notwithstanding all this, the Interstate Commerce Commission fixed the Florida intrastate rate at a level which in practical operation and effect is more than twice that of the new general level which had been established between and throughout most of the Southern and Southwestern rate groups and was rapidly being further extended within them.

The Proceedings in the District Court in the Case at Bar.

Promptly after the filing of the second report of the Interstate Commerce Commission of January 9th, 1933, the appellants respectively tendered their supplemental bills setting up the new and additional facts with respect to the second report and order of the Interstate Commerce Commission on the further hearing, and additional grounds for relief consequent upon it. The supplemental bills were allowed as supplemental pleadings, answers filed, and the causes were consolidated and heard by a Court of three judges on the bills and supplemental pleadings, answers and evidence, and a single decree was rendered thereon on February 24th, 1933. By that decree the orders of the Interstate Commerce Commission in the re-opened proceedings dated July 5, 1932, and the order of the Interstate Commerce Commission in the second re-opened proceeding dated January 9th, 1933, were sustained and the prayers of the bills of complaint to enjoin such orders were refused.

Direct appeal was taken to this Court under section 210 of the Judicial Code (38 Stat. at L. 220). Petition for appeal was duly filed and appeal allowed by the District Court.

THE ASSIGNMENTS OF ERROR AND STATUTES RELIED UPON ON THIS APPEAL

The appellants in due course filed in the District Court their joint and several assignments of errors on which they rely upon the appeal in this Court. A copy of the assignments is printed in the margin.*

The statutes relied upon are set out in the Appendix to this brief.

THE MAJOR QUESTIONS INVOLVED ON THIS APPEAL

The questions raised by this appeal are of far-reaching importance. They involve the scope of the exercise of the National and State sovereignty. With due deference, we here express the view that the Interstate Commerce Commission and the trial court in their decisions have applied to the law and the facts principles which are at variance with the Acts of Congress and with the decisions of this Court. We shall not here attempt to argue in extensio those points, but shall content ourselves merely with a statement of them with no more elaboration than appears to be necessary to that statement.

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*(Title and introductory matter omitted in the printing)

Assignment of Errors.

The District Court erred:

1. In denying the relief prayed in the bills of complaint and supplemental bills of complaint herein.

2. In failing and refusing to suspend, annul and permanently enjoin the orders of the Interstate Commerce Commission herein involved.

3. In holding that an unjust discrimination against interstate commerce had been made to *clearly appear*.

4. In failing to find that no substantial disparity exists between the Florida Intrastate rates on logs and the general level of

POINT I.

On January 9, 1933, and on July 5, 1932, the times at which the Interstate Commerce Commission entered its second and first Reports on the further hearing, there was no substantial disparity between the Cummer Scale of Florida Intrastate Log Rates and the General Level of Interstate Log Rates in the Southern Rate Group, as the Interstate Commerce Commission had permitted and was then permitting such general level to be fixed. During the several months preceding the filing of the Commission's Second Report on Further Hearing the Commission had permitted and was then permitting the General Level of Interstate and Intrastate Log Rates in the predominant part of Southern Territory to be fixed on a substantial parity with that of the Cummer Scale. Hence the Commission was without the power to interfere with the Intrastate Rates in Florida. In Attempting to do so its action was arbitrary and unreasonable.

(Applicable to assignments of Error Nos. 1 to 5, both inclusive, and 32 and 33.)

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rates on logs in interstate commerce in the southern carrier rate group.

5. In failing and refusing to hold that the report and order of the Interstate Commerce Commission of July 5, 1932, as amended, and the report and order of said Commission of January 9, 1933, were unreasonable and arbitrary.

6. In failing and refusing to find that the Interstate Commerce Commission had not made the findings declared by the Supreme Court of the United States to be essential pre-requisites to the making of a valid order of the character here attempted to be made by he Interstate Commerce Commission with respect to Florida intrastate rates on logs.

The Interstate Commerce Commission has never considered or fixed interstate rates on logs to or from points in Florida except from border points in North Florida to Georgia points. The record does not show that a single log has ever moved in interstate commerce from Florida to Georgia. The Interstate Commerce Commission has not sought to justify its invasion of state domain, because of discrimination against persons or localities. It founds its invasion solely upon the revenue features of the Interstate Commerce Act as amended by the Transportation Act of 1920 (Section 13 (4) and Section 15a).

In considering the revenue powers of the Interstate Commerce Commission in this connection, the Supreme Court in the Florida Log Case (Florida vs. United States, 282 U. S. 194), said in part:

> "In construing the statute this Court has held that the general provision of section 13 (4) prohibiting 'unjust discrimination against interstate

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7. In failing and refusing to find that there was no substantial evidence in the record to support the findings declared by the Supreme Court of the United States to be essential pre-requisites to the making of a valid order of the character here attempted to be made by the Interstate Commerce Commission with respect to Florida intrastate rates on logs.

8. In holding that the findings of fact upon which the Interstate Commerce Commission relied to justify its said orders prescribing intrastate rates were warranted by the evidence and were made to clearly appear by the evidence.

9. In failing and refusing to hold that the Interstate Commerce Commission made no finding of the amount of revenue which had been derived in the past by the Atlantic Coast Line Railroad Company from the particular traffic in question under the existing intrastate rate (the Cummer scale).

10. In failing and refusing to hold that the evidence warranted no finding by the Interstate Commerce Commission of the amount of revenue which had been derived in the past by the Atlantic Coast Line Railroad Company from the particular traffic in question under the existing intrastate rate (the Cummer scale).

commerce' and authorizing the Commission to establish intrastate rates to prevent such discrimination, is to be read in connection with Section 15a, both of which were added by Transportation Act, 1920 (secs. 416, 422, 41 Stat. at L 484, 488). There is what this Court has called a 'dove-tailed relation' between the two provisions. The authority granted by section 13 (4) is thus to be considered in the light of the affirmative duty of the commission to fix rates and to take other important steps to maintain an adequate national railway system.

"As intrastate rates and the income from them must play a most important part in maintaining such a system, the effective operation of the Act requires that intrastate traffic should pay 'a fair proportionate share' of the cost of main-

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11. In finding that there was no substantial increase in the log traffic after the Cummer scale of rates was restored following the decision of the Supreme Court upon the former order of the Interstate Commerce Commission.

12. In holding that the refusal of the Interstate Commerce Commission to require the Atlantic Coast Line Railroad Company to produce information as to the number of cars of logs moving within the State of Florida during each of the years 1926, 1927 and 1928, and as to the revenue derived therefrom, constitutes no cause to upset the order of the Interstate Commerce Commission herein involved.

13. In failing and refusing to hold that the interstate Commerce Commission made no finding of the amount of revenue which can be reasonably expected to be derived from the traffic in question under the increased intrastate rate which the Interstate Commerce Commission had ordered established.

14. In failing and refusing to hold that the evidence warranted no finding by the Interstate Commerce Commission of the amount of revenue which can be reasonably expected to be derived from the traffic in question under the increased intrastate rate which the Interstate Commerce Commission had ordered established.

15. In finding that the future log traffic under the intrastate rate on the Atlantic Coast Line Railroad in Florida will likely amount to at least 7431 cars per year.

tenance. And if there is interference with the accomplishment of the purpose of the Congress because of a disparity of intrastate rates as compared with interstate rates, the Commission is authorized to end the disparity by directly removing it." (Wisconsin Passenger Fares Case, 257 U. S. 563; and, New York case ,257 U. S. 591).

"The question in the present cases, then is not one of authority, but of its appropriate exercise. The propriety of the exertion of the authority must be tested by its relation to the purpose of the grant and with suitable regard to the principle that whenever the federal power is exerted within what would otherwise be the domain of state power, the justification of the exercise of the federal power, must clearly appear. Illinois Central Railroad Company v. State Public Utilities Commission, 245 U. S. 493 * * * supra."

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16. In holding that if the log traffic done in Florida on the Cummer Scale is at an out-of-pocket loss, the less of it done the better.

17. In failing and refusing to hold that the Interstate Commerce Commission made no finding that the application of the existing intrastate rate (Cummer Scale) resulted in an impairment of the income of the carrier which caused an undue burden upon the carrier's interstate revenues and obstructed the maintenance of an adequate national transportation system.

18. In failing and refusing to hold that the evidence warranted no finding by the Interstate Commerce Commission that the application of the existing intrastate rate (Cummer Scale) resulted in an impairment of the income of the carrier which caused an undue burden upon the carrier's interstate revenues and obstructed the maintenance of an adequate national transportation sytem.

19. In failing and refusing to hold that the Interstate Commerce Commission made no finding that an undue burden upo the carrier's interstate revenues and obstruction to the maintenance of an adequate national transportation service existed which was of such character and consequence that it was the affirmative duty of the Interstate Commerce Commission as an important step in maintaining

The ultimate "purpose of the Congress" was expressed in Section 15a of the Act and was to maintain an adequate national railway system (Wisconsin Passenger Fares case, supra), and to that end Section 15a made it the affirmative duty of the Interstate Commerce Commission in the exercise of its power to prescribe just and reasonable rates to,

> "initiate, modify, establish or adjust such rates so that such carriers as a *whole* (or as a *whole* in each of such *rate groups* or territories as the Commission may from time to time designate) will under honest efficient management * * * earn an *aggregate* annual net railway operating income equal, or as nearly as may be, equal to a fair return upon the *aggregate* value of the railway property of such carriers held for and used in the service of transportation * * * " (Italics ours.)

Section 15a also provided for the recapture of excess earnings from the strong roads and the creation of a general railway revolving fund from which loans and advances might be made to the weak roads. The affirmative duty with respect to fixing rates imposed by Section 15a.

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an adequate national railway system to remove such burden and obstruction.

20. In failing and refusing to hold that the evidence warranted no finding by the Interstate Commerce Commission that an undue burden upon the carrier's interstate revenues and obstruction to the maintenance of an adequate national trasportation service existed which was of such character and consequence that it was the affirmative duty of the Interstate Commerce Commission as an important step in maintaining an adequate national railway system to remove such burden and obstruction.

21. In failing and refusing to hold that the Interstate Commerce Commission made no finding that the alteration of the intrastate rates would produce, or was likely to produce an additional and greater amount of income, and made no finding, that such additional

related to all carriers as a *whole*, or to all in each rate group as a **whole**, and was to **aggregate** income as distinguished from the income of a particular carrier and the recapture clause was the "heart of the plan."

Dayton-Goose Creek R. Co. vs. United States, 263 U. S. 456, text 485.

Shortly after the Transportation Act of 1920 became the law, the Interstate Commerce Commission, with all the rail carriers of the United States before it, determined that in the performance of its duty under Section 15a, the railroads of the nation ought to be divided into four "rate groups" or territories: the Eastern, the Southern, the Western, the Mountain Pacific. The Southern rate group or territory comprised the territory east of the Mississippi River and south of a line drawn approximately westwardly through Richmond, Virginia, and along the Ohio River. It

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and greater amount of income was necessary to prevent an existing undue burden upon the carrier's interstate revenues and necessary to maintain an adequate national transportation service.

22. In failing and refusing to hold that the evidence warranted no finding by the Interstate Commerce Commission that the alteration of the intrastate rates would produce, or was likely to produce an additional and greater amount of income, and that the evidence warranted no finding that such additional and greater amount of income was necessary to prevent an existing undue burden upon the carrier's interstate revenues and necessary to maintain an adequate national transportation service.

23. In failing and refusing to hold that the Interstate Commerce Commission made no finding of the quantity or extent of any burden upon the interstate revenues of the carrier caused by the application of the existing Florida intrastate rate (Cummer Scale).

24. In failing and refusing to hold that the evidence warranted no finding by the Interstate Commerce Commission of the quantity or extent of any burden upon the interstate revenues of the carrier caused by the application of the existing Florida intrastate rate (Cummer Scale).

25. In failing and refusing to hold that in making said orders the Interstate Commerce Commission considered and gave effect to rate comparisons, system average costs and other matters relating to

comprised what theretofore had been and still is Southern Freight Classification Territory. 58 I. C. C. 220. Increases in interstate freight rates were as follows:

Eastern Group	40%
Southern Group	25%
Western Group	35%
Mountain Pacific Group	25%

Horizontal increases in passenger fares were also allowed to all groups, 58 I. C. C. 220.

No power or duty to deal with intrastate rates was conferred or imposed by Section 15a. Wisconsin Passenger Fares case, supra. The power of the Federal Commission to deal with intrastate rates arises under Section 13 (4) of the Act, and only then when the disparity between the state and interstate rates is so great and the State rate is so low as to cast a substantial burden upon general interstate commerce and thus interfere with the **"purpose of the Congress"** set forth in Section 15a, to maintain a **national transportation system.**

Wiscohsin case, supra; New York case, supra;
Florida Log case, supra.

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costs of transportation which were incompetent and insufficient to furnish the basis for the conclusions reached therefrom and incompetent and insufficient to furnish the basis for any such reports and order.

26. In finding that "In 1928 and 1932 comparisons of these rates (Cummer Scale) with other rates on logs and on similar traffic in the same and neighboring territories showed them to average less than half of most other comparable interstate and intrastate rates, and to be much the lowest of any of them."

27. In finding that on the question of the cost of the service figures were considered which showed the average cost of hauling logs over the Atlantic Coast Line Railroad system.

28. In holding that Appendix E of the report of the Interstate Commerce Commission is the conclusion of that Commission "as to

It is only when it "clearly appears" that the interstate traffic is bearing substantially more and the intrastate traffic substantially less than its fair proportionate share of maintaining the national transportation system that the Federal power arises or can be exercised under Section 13 (4) as an incident to the performance by the Commission of its duties under Section 15a.

New York case, supra; Florida Log case, supra.

The Interstate Commerce Commission in its Second Report of January 9, 1933, has found that the new rates established on the other carriers in interstate and intrastate commerce are on substantially the same level as the Cum-

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the cost of hauling logs in Florida for the distance shown to be the average under the Cummer Scale, based on the evidence which had been produced to it as tending to show such cost."

29. In finding that there was "an out-of-pocket loss to the carrier in the log traffic under these rates (Cummer Scale)."

30. In holding that if it appeared that a loss was produced by the State Rates which would in the future be substantial and that the carrier was not in position to absorb it without detriment to its service and support as an interstate carrier, a sufficient case had been made to find an unjust discrimination against interstate commerce and to require its correction.

31. In failing and refusing to hold that the Interstate Commerce Commission by indirection seeks to determine the reasonableness per se of the Florida intrastate rate (the Cummer Scale), a thing which the Supreme Court of the United States has delared lies with the State authority and not with the Interstate Commerce Commission.

32. In failing and refusing to hold that said Interstate Commerce Commission has attempted to prescribe intrastate rates in Florida applicable to territory for which no interstate rates have been prescribed and in which no general invesigation of rate levels whether on interstate or on intrastate traffic has been made, and that in so doing the Interstate Commerce Commission has exceeded its authority.

33. In failing and refusing to hold that the intrastate rates prescribed in said proceeding before the Interstate Commerce Commission are broader in their scope than the interstate rates prescribed in said proceeding, and that said orders of said Commission prescribing said intrastate rates are consequently unlawful.

34. In holding that the proceeding before the Interstate Com-

mer Scale. As a matter of fact, they are substantially lower than the Cummer Scale in the highbracket weights. That report attempts to make some point of the fact that some of the new rates are transit rates. But that is beside the point. For Section 15a of the Interstate Commerce Act as amended is concerned with "the aggregate" income of **all** the carriers **"in the rate group."** So if any carrier in the Southern group receives the outbound traffic "the purpose of the Congress" is satisfied. And the Commission's last report (Jan. 9, 1933) affirmatively shows that the log traffic at the new rates was attractive to the railroads which have established it, if such railroads received the outbound lumber movement (Report 190 I. C. C. p. 592). Furthermore, as we have shown elsewhere herein, the appellants offered to prove the Cummer Scale, in practical operation and ef-

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merce Commission was one in which a burden by the State rates on the revenues of the carrier was made an issue so that the Commission could properly so find and on that ground prescribe an intrastate rate.

35. In failing and refusing to hold that the question of whether or not the jurisdictional facts exist which warrant the Interstate Commerce Commission in invading the domain of the State of Florida is a judicial question which the Court was bound to determine for itself in this cause, and in failing and refusing to determine the existence or non-existence of such jurisdictional facts idependently of any determination thereof by the Interstate Commerce Commission.

36. In failing and refusing to find that the complainants were entitled to a trial de novo by the Court upon the jurisdictional facts which would warrant the Interstate Commerce Commission in invading the domain of the State of Florida by said reports and orders of said Commission, and in failing and refusing to grant such trial upon such facts.

37. In holding that when the question of the existence of the facts with respect to intrastate rates upon the existence of which the power of the Interstate Commerce Commission to act depends, has been tried before that Commission its conclusion affirming the existence of those facts is sufficient to put the burden upon those who deny it.

38. In holding with respect to the power to deal with intrastate rates "that under the enlarged and positive powers with which the Interstate Commerce Commission is vested its findings of fact within

fect, was a transit scale, in that all or substantially all of the product of the logs moved out over the Atlantic Coast Line's tracks, and every time the carrier objected and the objection was sustained by the Examiner.

There has been no change in the boundaries of the Southern group since its was designated by the Commission pursuant to Section 15a. We have demonstrated that during the past few months the Commission has given its acquiescence and tacit approval to the Newly Reduced Rates which are as low as, or lower than, the Cummer Scale in Interstate Commerce between nearly all of the states in the Southern group. We have shown that in most of those states most of the railroads have established in intrastate

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the scope of its powers will not be rejected by the Courts if supported by evidence."

39. In holding that in dealing with intrastate rates a plain case to the contrary of the conclusions reached by the Interstate Commerce Commission is necessary to warrant Court interference.

40. In failing and refusing to find that the report and order of the Interstate Commerce Commission of July 5, 1932, as amended, and the report and order of the Interstate Commerce Commission of January 9, 1933, constitute an unlawful exercise of power by said Commission and are without warrant or authority of law.

41. In failing and refusing to find that the reports and orders of the Interstate Commerce Commission herein involved constitute an unlawful invasion of the sovereign rights of the State of Florida reserved to it under the Constitution of the United States and of the citizens of the State of Florida and are without any warrant or authority of or under the Constitution of the United States.

42. In failing and refusing to find that said Interstate Commerce Commission was and is without jurisdiction to enter said reports and orders herein involved.

43. In holding that the particular findings of the Interstate Commerce Commission are sufficient to support the general finding of unjust discrimination by the state rate against Interstate Commerce by undue burden on the Interstate carrier's revenues, and to justify an order removing the discrimination by establishing the new rate prescribed.

44. In sustaining and upholding the orders of the Interstate Commerce Commission made July 5, 1932, and the order of the Interstate Commerce Commission confirming the same made January 9, 1933.

commerce (as well as interstate commerce) those new rates during that same period. The record shows that the Commission was permitting this to be done at the very time when it was attempting to increase the Florida intrastate rate to more than double what has become and is becoming the general level of interstate and intrastate rates in the Southern and southwestern rate groups. The record shows that more railroads throughout this and adjoining groups each month are establishing the newly reduced rates in interstate commerce and in intrastate commerce. Under these circumstances it will not do to assert that the "justification" for the exercise of Federal power to invade the domain of the State has been made to "clearly appear" or to appear at all. In nearly all instances these newly reduced rates have been experimentally established for a limited period of future time to meet motor truck competition. The fact that they have been established for what might be a limited time and to meet motor truck competition can make no difference. They were and are in force and effect.

POINT II

The Interstate Commerce Commission Has Failed to Make the Basic or Essential Findings Necessary to Support a State-wide Order Prescribing Intrastate Rates. There Is No Substantial Evidence Before the Commission to Support Such Findings.

(Applicable to Assignments of Error Nos. 1 to 10 incl., 13, 14, 15, 17 to 24 incl.)

This Court in the Florida Log Case (Florida vs. United States, 282 U. S. 194, 215) said in part:

> "The Commission made no findings as to the revenue which had been derived by the carrier from the traffic in question, or which could reasonably be expected under the increased rates, or that the alteration of the intrastate rates would produce, or was likely to produce, additional income necessary to prevent an undue burden upon the carrier's interstate revenues and to maintain an adequate transportation service.
>
> "The question is not merely one of the absence of elaboration or of a suitably complete statement of the grounds of the Commission's determination, to the importance of which this court has recently adverted (Beaumont, S. L. & W. R. Co. v. United States, decided November 24, 1930, 282 U. S. 74, ante, 221, 51 S. Ct. 1), but of the lack of the basic or essential findings required to support the Commission's order."

Our view is that the order of the Interstate Commerce Commission and the record of its proceedings are deficient both as to basic and essential findings and as to evidence upon which the same could be made. Under this heading the point is made as to ultimate findings and the evidence necessary to support them. Under subsequent headings we point out the deficiencies with respect to certain particular findings and the want of evidence to support them.

POINT III.

There Was No Finding and No Evidence of the Amount of Revenue Which Had Been Derived in the Past from this Particular Traffic in Question Under the Cummer Scale of Rates.

(Applicable to assignments of errors Nos. 6, 7, 9, 10, 29.)

The report of the Interstate Commerce Commission does not purport to find the amount of revenue derived in Florida from the Cummer Scale of rates and there is no evidence from which any such finding could be made. This data could have been produced. Demand was made by the State of Florida at the commencement of the hearing in the re-opened case as continued under order of April 6, 1931, but the Atlantic Coast Line Railroad Company declined to produce such data. The State then petitioned the Interstate Commerce Commission to require the production of such data. This the Interstate Commerce Commission declined to do. The Commission in its first report in the re-opened proceedings (dated July 5th, 1932) (186 I. C. C. text 188) declares,

> "While the record shows that defendant's Florida log traffic declined considerably after the increase of rates on February 8, 1929, the record further shows that there was no substantial increase in the movement after the Cummer Scale was restored on April 10, 1931."

There is no evidence of record to support the state-

ment that there was no substantial increase in the movement after the Cummer Scale was restored on April 10, 1931. At no time did the carrier offer evidence to show the amount of revenue derived or the amount of movement had under the Cummer Scale either before or after the entry of the unlawful order of the Interstate Commerce Commission dated August 2nd, 1928, or after that order was set aside.

POINT IV

There Was No Finding as to the Amount of Revenue Which Can Reasonably Be Expected to be Derived by the Carrier from the Traffic in Question "Under the Increased Rates."

(Applicable to Assignments of Error Nos. 12, 13, 14, 15).

The finding with respect to future revenue from the proposed increased rates is utterly insufficient. Its finding with respect to revenue to be expected from the traffic in question under the increased rate is based entirely upon what "it seems probable" may be expected "under normal economic conditions."

The report of the Commission dated July 5th, 1932, sets forth the fact that during the two years in which the high rate was ineffect the total movement of logs in Florida was 18,602 cars. It then deducts 3,740 cars which moved in certain trainload movements which have ceased and which the Commission there asserts will not be re-

sumed. It then makes the following observations (p. 188 of the report):

> "**Under normal economic conditions it seems probable** that the annual volume of the Florida log movement under rates the same as those previously prescribed will not be less than the average of this two-year period minus the number of cars included in the discontinued trainload movements. This average is 7,431 cars. That the movement will not be less than this **under normal conditions** is confirmed by the fact during the five months immediately preceding the last hearing in this case, February to June, 1931, when conditions were abnormal, there were shipped over defendant's lines in Florida a total of 2,765 cars of logs. This movement was at the rate of 6,636 cars a year. **We believe** that the movement of logs intrastate in Florida over defendant's lines will not be **materially curtailed** under the rates which we here prescribe, which are the same or substantially the same as the rates generally in effect and under which logs freely move throughout the South." (Bold type ours.)

The report then figures the amount of revenue collected on the cars which moved in this two year period and the amount of revenue which would have been collected on the same cars under the Cummer Scale and proceeds at p. 189:

> "Accordingly, on the basis of an average of 7,431 cars a year **under normal economic conditions** which basis **we believe** conservative, the gross revenues under the rates prescribed by the previous order herein would be more than $100,000 a year greater than under the Cummer Scale now in effect." (Bold type ours.)

There is no substantial evidence in the record to support the estimate of the number of cars which may move under normal conditions. But putting that on one side, we point out that the Commission here speaks without conviction and without certainty and does not purport to make "findings" in any sense of the word. As we have pointed out, in the **Illinois Central Case, 245 U. S. 493,** at page 510, this Court said that an order of the Commission should not be given precedence over a State rate otherwise valid, "unless, and except so far as it conforms to a **high standard of certainty.**" (Bold type ours.) These doubtful and ambiguous conjectures are not to be considered as conforming to a "high standard of certainty."

Every one of these indefinite expressions is applicable only "under normal economic conditions." The Commission is prescribing a rate for present application and not a rate to become effective upon the return of Normal Economic Conditions. We have had no "normal economic conditions" in Florida for many years, and one of the great contributing factors to our having no "normal economic conditions" has been the former order in this proceeding of the Commission. Certainly the report does not even purport to predict when "normal economic conditions" will prevail. The

quotation we have above set forth recognized that conditions were abnormal in the period from February to June, 1931: Does the Commission find that conditions are any less abnormal today? It is prescribing a rate for present application which it does no more than attempt to justify under "normal economic conditions".

No longer ago than January 4, 1932, this Court considered conclusions based on normal economic conditions for application in the present day. That was in the case of **Atchison, T. & S. F. Ry. Co. vs. United States, 284 U. S. 248.** There the Commission had made a general investigation of grain rates in Western territory. The record was closed in September, 1928 and the matter submitted on July 1, 1929 to the Commission for its decision. The Commission made an order on July 1, 1930, effective October 1, 1930, which effective date was subsequently postponed. A petition for rehearing by the carriers was denied in November, 1930 and they filed a further petition for rehearing in February, 1931 setting up the changes in economic conditions and in their own condition and in the traffic which had occurred in all this intervening time. This second petition for rehearing was denied and this Court, speaking through Mr. Chief Justice Hughes, declared the denial of that petition was "a denial of right" and that the Order of the Commission therefore could not be sustained. In the course of the opinion the Court said:

> "There can be no question as to the change in conditions upon which the new hearing was asked. Of that change we may take judicial notice. It is

the outstanding contemporary fact, dominating thought and action throughout the country.

* * * * * * * *

"It is plain that a record which was closed in September, 1928—relating to rates on a major description of the traffic of the carriers in a vast territory cannot be regarded as representative of the conditions existing in 1931. That record pertains to a different economic era and furnishes no adequate criterion of present requirements."

* * * * * * * *

"It is said that 'in performing its legislative function of prescribing reasonable rates, the Commission necessarily projects into the future the results of a decision based on the conditions disclosed in the record' and that its determination 'cannot reflect accurately fluctuating conditions.' These suggestions would be appropriate in relation to ordinary applications for rehearing, but are without force when overruling economic forces have made the record before the Commission irresponsive to present conditions. **This is not the usual case of possible fluctuating conditions but of a changed economic level".** (Bold type ours.)

From the foregoing quotation it is readily apparent that this Court would not consider even a definite finding if based upon "normal economic conditions" appropriate or sufficient to support an order applicable for present abnormal conditions. The standards of 1928 will not do for 1931, said the Court, and we assert that it is even more true that the standards of 1929 will not do for 1932.

Nor was there any evidence upon which any finding could be made as to the amount of revenue which could reasonably be expected to be derived by the carrier from the log traffic under the increased rates. The Commission to confirm what the movement would be in normal times, recites in its report dated July 5th, 1932 (text 188) that 2,765 cars moved over the lines of the defendant carrier between February and June, 1931, when conditions were abnormal. During that particular period the Cummer Scale and the rate prescribed by the Interstate Commerce Commission were each in effect about one-half the time, and there is nothing to show how many cars of logs moved under the one or the other, or what the revenue was under the one or the other. At this same place in its report dated July 5th, 1932 (text 188) the Commission expressed the belief that the log movement in Florida would not be materially curtailed under the prescribed rate, which, said the Commission, "are the same or substantially the same as the rates generally in effect, and under which logs freely move, throughout the South". In that report of July 5th, 1932, the Commission overlooked what it recognized in its report of January 9th, 1933, that many if not most of the carriers throughout the South with whose rates the Commission had compared the Cummer Scale were then publishing or preparing to publish rates which in practical operation and effect were substantially upon the level of the Cummer Scale, in an attempt to attract the log traffic to their lines. Thus, the second report of the Commission on the further re-opened proceeding, filed January 9th, 1933, demonstrates that logs will not move freely in the South at a scale sub-

stantially in excess of the Cummer Scale, a thing testified to in the original proceedings, recognized by this Court in its opinion in the Florida Log Case (supra), and demonstrated by the record in the re-opened proceedings before the Commission to be the experience of all concerned during the two year period when the unlawful order, dated August 2nd, 1928, of the Interstate Commerce Commission was in force and effect.

It is difficult to understand how any such statement could be *made in the report of the* Interstate Commerce Commission, as that the log movement would not be materially curtailed under the prescribed rate. For the uncontradicted testimony is that as a direct result of the order, a thriving town of five thousand people (Eastport) was destroyed, the mill there dismantled and moved to the timber; and as a direct result of those proceedings the mills at Milldale and Ortega were dismantled and destroyed, and the revenue from the transportation of pine logs in trainload quantities alone reduced from more than $450,000.00 in 1926 and more than $350,000.00 for 1928 (the last year of the Cummer Scale) to less than $6,000.00 during the year 1930 (the second year of the high rate) for all movements of pine logs (carloads as well as trainloads). The extent to which the revenues on cypress logs and hardwood logs was reduced is not shown by the record. But the Wilson Cypress Company shipped approximately 8,000 cars of cypress logs in trainloads during the two year period of the high rate (or about half of all logs shipped during that period). And its president testified that this movement would cease if the Cummer Scale were effectually increased.

POINT V.

There Was No Sufficient Finding and No Evidence Upon Which the Commission Could Base a Sufficient Finding That the Alteration of the Intrastate Rate Would Produce or Would Be Likely to Produce Additional Income Necessary to Prevent an Undue Burden and to Maintain an Adequate (National) Transportation System.

(Applicable to Assignments of Error Nos. 1, 2, 3, 5 to 11 inclusive, 17 to 31 inclusive.)

As a preliminary to its estimate of what the revenue results would be from the prescribed intrastate scale "under normal economic conditions", the Commission declares in its conclusions and findings in its report of July 5th, 1932 (186 I. C. C. text 189):

> "The record shows the low earnings of the defendant; the low earnings on its log traffic as compared with its earnings on other low grade commodities; the much lower earnings on its Florida log traffic than on its interstate log traffic; and the much lower level of the Cummer Scale than on other scales interstate and intrastate throughout the South. These facts and the cost evidence clearly warrant the conclusion that the traffic moving under the Cummer Scale does not pay its fair proportionate share of operation and maintenance alone".

Brief comment upon this statement of the Commission may well here be made. The "facts" and "cost evidence" do not warrant any such conclusion, even if they were pertinent to that question. The low aggregate earnings of the defendant carrier in and of themselves are insufficient to warrant the raising of the level of a particular rate.

Dayton-Goose Creek Railroad Company vs. United States, (supra).

The comparison of the "earnings" on the log traffic of the carrier with the "earnings" on the other low grade commodities and the comparison of its "earnings" on its Florida log traffic with the "earnings" on its interstate log traffic does not pretend in any instance to be net earnings. They are largely, if not wholly, the result of computation, and bear no relation to cost of service. As this Court pointed out in the Florida Log case, supra, text 213, 214, such estimates will not justify the invasion of state domain by the Federal power.

When the report and order of the Interstate Commerce Commission of July 5th, 1932 was published, the level of the interstate and intrastate log rates throughout the South had so changed and was so changing (and with the permissive sanction at least of the Interstate Commerce Commission) that before the order became effective the general level in practical operation and effect was substantially that of, or lower than, the Cummer Scale. It was solely upon those "facts" and the "cost estimates" that the Commission reached the conclusion that "the traffic

moving under the Cummer Scale does not pay its fair proportionate share of operation and maintenance alone".

The so-called cost evidence to which the Commission makes reference is no more nor less than a series of computations based upon system averages. The costs so shown are not the cost of transporting logs. They are, in fact, no more nor less than the cost of transporting freight of all kinds, high priced as well as low priced, high revenues as well as low revenues, fruits and vegetables as well as logs. This is true of Exhibit E prepared by the Commission itself, as well as of the evidence produced by the carrier. The arbitrary adjustments attempted in those computations in no wise meet the inherent vice of system averages, and throw no substantial light upon the cost of transporting the particular traffic.

The system average method of determining the cost of transporting a particular commodity has been condemned by this Court in,

> Northern Pacific Ry. Company vs. Department of Public Works, 268 U. S. 39,

and has been condemned by the Interstate Commerce Commission itself in,

> California Growers & Shippers' Protective League v. Southern Pacific Railway Company, 129 I. C. C. 25, 52, and authorities cited.

In this very proceeding the Commission declared that this method could not be accepted as indicating the average

out-of-pocket cost of transporting logs in Florida (186 I. C. C. text 183). But because the Commission deems the costs are higher in Florida than elsewhere on the carrier's system, the Commission declares that system average costs which are not permissible to be used elsewhere for a like purpose, may be used in Florida to determine the cost of transporting logs in that State (186 I. C. C. text 184).

But all of this is beside the point. For the Commission nowhere has found what, if any, amount of additional income would be produced by the present alteration of the intrastate rate under existing economic conditions. As we pointed out under Point IV of this brief, its estimates as to the extent of the movement and the amount of gross revenue are confined solely to the movement which will occur and the revenue which will be derived per annum under "normal economic conditions". As we there pointed out, these estimates were frankly founded upon the express belief that the log movement in Florida would not be materially curtailed under the prescribed rate and that the rates prescribed are "the same or substantially the same as the rates generally in effect and under which logs move freely throughout the South".

We pointed out how obviously contrary to the record the first of those assumptions was and how the second had been shown by subsequent proceedings even more at variance with the facts than the first, due to then existent and subsequent alterations of the level of interstate and intrastate log rates elsewhere in the South, including those on the Frisco System and the Louisville & Nashville Railroad Company in interstate commerce in Florida. Nor was

there any finding with respect to the amount of any traffic burden imposed by the Cummer Scale under present economic conditions. From its estimate that under "normal economic conditions" the gross rates prescribed by its order would be more than $100,000 a year greater than the Cummer Scale, the Commission deduced that some **part** of that $100,000 would constitute a dead loss in net revenue under the Cummer Scale. Text 189. The Commission did not estimate what that part would be under "normal economic conditions." It did not estimate what, if any, sum it would be under existing "economic conditions." The Commission's report recognized the then existing economic conditions were not normal economic conditions. It did not prophecy when normal economic conditions would return. Yet, this is the ultimate finding upon which the Interstate Commerce Commission would base its invasion of State domain.

Even if this finding were applicable to existing economic conditions as distinguished from normal economic conditions, it would fall far short of the requirements of the Wisconsin Fares Case supra, the New York Case, supra, and the Florida Log Case, supra, with respect to the substantial disparity and substantial burden which must be made to **clearly appear** before the Interstate Commerce Commission is authorized to invade State domain.

POINT VI.

Even If It Were Possible to Find Any Unjust Discrimination Against Interstate Commerce in This Proceeding, There Is No Finding and No Evidence Upon Which the Commission Could Base a Finding That That Discrimination Was of Such Character and Consequence That It Was the Affirmative Duty of the Commission, as an Important Step in Maintaining an Adequate National Railway Transportation System, to Remove It.

(Applicable to Assignments of Error Nos. 17 to 26 inclusive, 30, 43, 44.)

We now examine the character of burden which the Commission says exists. At pages 188-189 the report of July 5, 1932, discusses the number of cars of logs that moved in Florida during the two years of the high rate and the revenue derived therefrom. It discards the cars that moved in the trainloads to Brooks-Scanlon Corporation and to Cummer Cypress Company for it recognizes that those movements are ended. It determines the remaining cars to be 14,862 and computes the revenue derived on those cars under the high scale formerly prescribed by it during these two years, and the revenue which would have been derived on the same cars under the Cummer Scale, and it concludes:

> "Accordingly, on the basis of an average of 7,431 cars a year under normal economic conditions, which basis we believe conservative, the

gross revenues under the rates prescribed by the previous order herein would be more than $100,000 a year greater than under the Cummer Scale, now in effect. The application of the Cummer Scale, therefore, places a substantial burden upon defendant's interstate revenues. If the revenues yielded by the Cummer Scale are not sufficient to cover the cost of the service, as the cost evidence indicates, it would follow that part of the above-stated amount would constitute a dead loss in net revenue."

The record shows some 18,602 cars of logs moved intrastate during the two years following the increase in rates under the unlawful order of the Interstate Commerce Commission. 186 I. C. C. text 188. As has been pointed out, the Commission found that 3,740 of these cars moved in trainload movements that had ceased and would not be resumed. Text 188. Approximately eight thousand of this number which the Interstate Commerce Commission divides between two years of "normal economic conditions" moved in trainloads from Hines to Palatka. There will be no more trainload movements to Palatka under the high rate, according to the uncontradicted testimony of the president of that company. This alone would more than reduce the Commission's figures by half. In other words, the critical national situation requiring invasion of State domain and prerogatives by Federal power and all this record and effort is said to be an annual sum which "under normal economic conditions" would amount to some indeterminate part of $100,000. What it would amount to in

the abnormal years 1933—or the many abnormal years which may confront us, is wholly unmentioned in the report.

This Court has pointed out the kind of burden which justifies the invasion of the domain of the State by the Interstate Commerce Commission to fix State rates. In considering this question it is necessary to review briefly the history of the creation of the power sought to be exercised and the discussions thereof by this Court.

The power to change State rates in order to remove a revenue burden on interstate commerce is not directly granted to the Interstate Commerce Commission by any section of the Interstate Commerce Act. On the contrary, Section 1 (2) provides specifically that the provisions of the Act shall not apply "to the transportation of passengers or property * * * wholly within one State * * * ".

Section 13 (4) specifically vests the Commission with authority to prescribe intrastate rates where necessary to remove "preference or prejudice as between persons or localities in intrastate commerce on the one hand, and interstate commerce or foreign commerce on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce."

Section 15 (a) provided that "In the exercise of its power to prescribe just and reasonable rates the Commission shall initiate, modify, establish or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will, under honest, efficient and economical management, and reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal, as

nearly as may be, to a fair return upon the aggregate volume of the railway property of such carriers held for and used in the service of transportation."

Prior to the enactment of these sections which were a part of the Transportation Act of 1920, this Court had held, in the **Shreveport Case, 234 U. S. 342,** that the Interstate Commerce Commission had power to remove discrimination against persons and localities in interstate commerce. The new act, therefore, simply incorporated in the statute the power as to discrimination against persons and localities which the Commission had already exercised and the Court upheld. **Board of Railroad Commrs. v. Great Northern R. C., 281 U. S. 412.**

Nowhere in the Act is the power expressly given to change intrastate rates in order to remove a revenue burden upon interstate commerce generally. But this Court, in **Wisconsin Railroad Commission v. C. B. & Q. R. Co., 257 U. S. 563,** held that in view of the purpose of the Act and the impossibility of accomplishing that purpose if State traffic did not contribute its fair proportion to the cost of the maintenance of the national transportation system, the dove-tail relation between Section 13 (4) and Section 15 (a) authorized the interpretation that the Commission was thereby vested with power to remove a revenue burden on interstate commerce, caused by State rates.

Thus the necessity to so interpret the Act as to make it workable caused this Court, as said by Circuit Judge Batts, in **Eastern Texas R. Co. et al v. Railroad Commission of Texas, et al., supra,** (referring to the Shreveport case) "to carry the rules of interpretation to the extreme limit" and, as also said by Judge Batts in the same opinion, "cer-

tainly, the authority will not go beyond the necessity".

In only three cases has this Court considered this power of the Commission and the circumstances under which its exercise will be sustained. The first two of these were the cases in which the rule was announced, **Wisconsin Railroad Commission v. C. B. & Q. R. Co., 257 U. S. 563 and New York v. United States, 257 U. S. 592.** The third case was this **Florida Log Case,** in which the Court set aside the previous order of the Commission in this proceeding. In the Wisconsin and New York cases, where the rule was first laid down, it was shown that the Interstate Commerce Commission, in the performance of its duties under Section 15a of the Act, had prescribed a general level of rates for interstate application of carriers in the group and that the state authorities of Wisconsin and New York had declined to permit the rates applicable to State traffic to be brought up to the level so prescribed.

It appeared in the Wisconsin case that the loss in actual revenue, by reason of the refusal to permit the increase in State rates, would be approximately $6,000,000 per annum, and in the New York case approximately $12,000,000 per annum. This was an important difference in real revenue.

In sustaining the order of the Commission in the **Wisconsin Case** the Court said:

> "It is said that our conclusion gives the Commission unified control of interstate and intrastate commerce. It is only unified to the extent of maintaining efficient regulation of interstate commerce under the paramount power of Congress.

> It does not involve general regulation of intrastate commerce. Action of the Interstate Commerce Commission in this regard should be directed to **substantial disparity which operates as a real discrimination against, and obstruction to, interstate commerce,** and must leave appropriate discretion to the state authorities to deal with intrastate rates as between themselves on the general level which the Interstate Commerce Commission has found to be fair to interstate commerce." (Emphasis ours.)

At other places in the opinion in the **Wisconsin Case** the Court stated that the Interstate Commerce Commission's authority to control intrastate rates arises only where such control is necessary to the "efficient regulation of interstate commerce" and only where "there is demonstrable injury and restraint upon interstate commerce which is real and substantial."

When the Court came to consider the previous order of the Commission in this case it found a different situation. The Interstate Commerce Commission had made no general investigation nor had it fixed a general level of rates. It had before it only the rates of the Atlantic Coast Line on logs from Florida to Georgia and within Florida. It fixed interstate rates only from a limited territory in Northern Florida into Georgia. It originally undertook to predicate its order upon an alleged finding of discrimination between persons and localities but sought to buttress this by a finding of unjust discrimination against interstate commerce generally. It was urged upon this Court that

if any burden existed against interstate commerce because of the effect upon revenues of the Florida rates, that such burden was not sufficient to be a real obstruction to interstate commerce and therefore did not come within the rule laid down by the Court when it first interpreted the Act so as to give the Commission the power to deal with State rates in order to remove a revenue burden on interstate commerce. The Court held that there were no findings made by the Commission sufficient to sustain its order. The Court expressly held that this defect was not procedural, but that there was a want of "basic or essential findings". The Court pointed out that the exertion of the Authority of the Commission to change State rates in order to remove a revenue burden on interstate commerce could only be sustained where such action was necessary to carry out the purpose of the Act. The Court said:

> "* * * the propriety of the exertion of the authority must be tested by its relation to the purpose of the grant and with suitable regard to the principal that whenever the Federal power is exerted within what would otherwise be the domain of state power, the justification of the exercise of the federal power must clearly appear."

It cannot be said that the removal of the burden, even assuming that any burden may exist, amounting to an indeterminate part of $100,000 per year "under normal economic" conditions is an "important" step in maintaining an adequate "national railway system" or that any such burden could constitute an "obstruction" to interstate com-

merce which is so "real and substantial" as to authorize the exercise of Federal power to supersede State power. Particularly is this true when it here appears that there is no longer any substantial disparity between the level of interstate rates and intrastate rates applicable generally in the Southern rate group, and the Cummer Scale of rates which is under attack. Even if the Commission possessed any statutory power in this connection the exercise of it under such circumstances would be arbitrary in the extreme.

POINT VII.

The Interstate Commerce Commission Has the Power to Prescribe Intrastate Rates Only When the "JURISDICTIONAL FACTS" Authorizing such Action Has Been Made to "CLEARLY APPEAR". The Existence of Such Jurisdictional Facts Is a Judicial Question Which Must Be Determined By the Judicial Branch of the Government Irrespective of Any Finding Which May Have Been Made By the Interstate Commerce Commission.

(Applicable to Assignments of Error 34 to 37 incl.)

In dealing with or fixing interstate rates the Interstate Commerce Commission is exercising a legislative and administrative function. Under such circumstances its findings can only be set aside when they are so wanting in support as in effect to constitute arbitrary action. A wholly different rule, however, is applicable to the Inter-

state Commerce Commission in dealing with intrastate rates. It has no power generally to deal with intrastate rates. And its power to interfere with them at all is conditioned upon the existence of discrimination against persons and localities in interstate commerce, or an unjust discrimination against interstate commerce itself. Unless those facts exist the Commission is without the power to act. Hence, those facts are jurisdictional facts. So, of course, the so-called substantial evidence rule does not apply. This Court has many times so held in effect. Thus, in the Florida Log Case, supra, this Court said:

> "* * * the propriety of the exertion of the authority must be tested by its relation to the purpose of the grant and with suitable regard to the principle that whenever the Federal power is exercised within what would otherwise be the domain of state power, the justification of the exercise of the Federal power must clearly appear".

In every instance where this Court has sustained the exercise of Federal power in derogation of state power in fixing state rates, the undoubted existence of a disparity and the substantial character of it has been pointed out. So, in the Shreveport case, supra, 234 U. S. 342, the Court said (346):

> "It is undisputed that the difference was substantial and injuriously affected the commerce of Shreveport".

In the Wisconsin case (supra) and in the New York Case (supra), the averred disparity was found to be $6,000,000 and $12,000,000 per annum, respectively, and the fact of the existence of the discrimination does not appear to have been questioned.

See also

Arkansas Railroad Commission vs. C. R. I. & P. R. R. Co., 274 U. S. 597;

Illinois Central Case, 245 U. S. 493;

Eastern Texas Railroad Co. vs. Railroad Commission of Texas, 242 Fed. 300, 307.

Indeed, this Court upon more than one occasion has held that it will not be bound by the findings of inferior Federal courts when state legislative or administrative Acts or orders are the subject of attack.

Knoxville vs. Knoxville Water Company, 212 U. S. 1.

So there can be no doubt that no finding of the Interstate Commerce Commission or of the District Court in this cause can or will preclude this Court from examining the record and determining for itself the basic facts upon which the jurisdiction of the Interstate Commerce Commission is dependent.

But the State of Florida and the Florida Railroad Commission at the very outset of this cause in the District Court demanded, and thenceforward insisted upon, a trial de novo before the District Court itself upon the existence of the basic facts upon which the Interstate Commerce

Commission assumed the jurisdiction to act in fixing the intrastate rates. But the trial court refused to grant a trial de novo. It held that when

> "* * * the very fact upon the existence of which the power to act depends has been contradictorily tried before the Commission itself, its conclusion fully expressed upon its record affirming the existence of the fact is certainly sufficient to put the burden upon those who deny it."

The State of Florida and the Florida Railroad Commission throughout the proceedings in the District Court did insist, and do now and will insist in this Court, upon their right to a trial de novo upon the basic and jurisdictional facts upon which the Interstate Commerce Commission assumed to have jurisdiction in fixing the intrastate rates. They rely upon

Crowell vs. Benson, 285 U. S. 22;

and the authorities therein cited in so doing.

The other appellants insist that the existence of the basic facts and the substantial character of them necessary to confer jurisdiction upon the Interstate Commerce Commission to enter the order which it did enter must be made to "clearly appear"; that the existence of no such facts have been made to "clearly appear"; that this Court will examine the record for itself and determine for itself whether there are findings which make it clearly appear and evidence supporting them which make it clearly appear

that such jurisdictional facts do exist. Florida Log Case, supra, Knoxville v. Knoxville Water Co., supra.

The appeal taken herein and the assignments of error filed herein are the joint and several assignments of the several appellants.

POINT VIII.

The Cost and Revenue Studies Founded Upon System Averages are insufficient to Supply the Essential Facts as to the Particular Traffic and Revenue and the effect of the Intrastate Rates Existing and Future Upon the Income of the Carrier.

(This is applicable to Assignments of Error Nos. 1, 2, 3, 5 to 11 incl., 14 to 31 incl.)

This feature has been discussed under Points IV and V of this Brief. The Appellants rely upon this point and the assignments of error applicable to it. No further discussion of it appears to be necessary at this time and place.

POINT IX.

The Rate Comparisons Furnish No Cause for the Invasion of State Domain By the Federal Power.

(This is applicable to Assignments of Error 1 to 5 inclusive, and 26.)

The opinion of the District Court and the Report dated July 5, 1932, of the Interstate Commerce Commission showed that both relied greatly upon the rate comparisons

which had theretofore been made by the Interstate Commerce Commission. We have already pointed out in the preceding portion of the brief the extent to which the Newly Reduced Rates had been established throughout the Southern and Southwestern Territory at the time the reports and orders of the Interstate Commerce Commission dated July 5, 1932, and January 9, 1933, became effective. The supplemental bills showed them to have been established in whole or in part upon 20 railroads in 13 Southern and Southwestern States in interstate and intrastate commerce. They had been established in interstate commerce on three railroads in Florida, namely, the Frisco System the Louisville & Nashville Railroad and the Georgia and Florida Railroad. They were found by the report of the Interstate Commerce Commission to be substantially on the same level as the Cummer Scale. There was attached to and made a part of each supplemental bill a map showing the extent to which these rates were effective at the time of the hearing of the second re-opened proceeding before the Commission. Suffice it to say that they are applicable upon all or part of most if not all of the lines whose rates were used by the Interstate Commerce Commission as standards of comparison in the Rate Comparisons referred to in its report of July 5, 1932, and by the District Court in its opinion.

We submit that the necessary inference with respect to the Newly Reduced Rates on those 20 railroads in those 13 states is that logs will not move freely in the South at rates substantially higher than the Cummer Scale—a thing which Florida shippers have been asserting throughout this proceeding.

POINT X.

There Were No Figures of Record Showing the Average Cost of Hauling Logs Over the Atlantic Coast Line System.

(This is applicable to Assignments of Errors 1 to 5 inclusive; 27 and 28).

The District Court in its opinion said:

> "On the question of the cost of the service, figures were considered which showed the average cost of hauling logs over the Coast Line System, exact figures for the particular traffic in Florida not being available."

We respectfully submit that there is no evidence upon which to base this statement.

The carrier by its so-called cost evidence and the Interstate Commerce Commission by its Appendix "E" to its Report of July 5, 1932, sought to convert system average costs for the transportation of all freight traffic into system average costs of log traffic by making certain arbitrary adjustments and expansions, but the results obtained bore no direct or proximate relation to the cost of handling the particular traffic in question, either upon the system or in Florida.

POINT XI.

The joint and several assignments of error are printed in the margin of this brief at pages 20 to 30 inclusive. Upon this appeal the appellants jointly and severally will rely and insist upon all of such assignments.

POINT XII.

No statement against the jurisdiction of this Court or motion to dismiss or affirm has been made by the principal appellees, United States of America or Interstate Commerce Commission.

SUMMARY

The Cummer Scale of rates, the lawful State rate, was voluntarily established by the carrier nearly twenty years ago. It was established after ten years operating experience on one branch line of its road. When it was established the record shows that the Florida Railroad Commission informed the carrier in effect that its doors were and would remain open to consider the level of the rate in the event that the carrier wished to change it. More than fifteen years went by and when this proceeding was first initiated by the Georgia Public Service Commission, the carrier defended the rate and in those proceedings expressly disclaimed any notion of altering it. After the first order of the Interstate Commerce Commission was entered the carrier intervened in defense of it. In 1929, when the first order of the Interstate Commerce Commission was

before this Court the carrier intervened in defense of that order. This was the first time in nearly thirty years operating experience under the Cummer Scale that any dissatisfaction of it was expressed by the railroad company. And that dissatisfaction has never yet been expressed in the only forum which has the jurisdiction to determine the "reasonableness of the rate per se", viz., the Florida Railroad Commission.

Twenty railroads operating between and in thirteen or more Southern and Southwestern States were permitted by the Interstate Commerce Commission to institute Newly Reduced Rates which are as low or lower than the Cummer Scale. Those Newly Reduced Rates were substituted for higher rates which were among the chief standards of comparison employed by the carrier and the Interstate Commerce Commission, and upon which great reliance was placed by the carrier in the evidence and by the Interstate Commerce Commission in its report and order of July 5, 1932.

The so-called cost studies prepared by the carrier but discarded by the Commission, and the cost study unlawfully prepared and relied upon by said Commission (Exhibit E to the Commission's report) were all based upon system averages and system averages have not only been repeatedly condemned by the Interstate Commerce Commission in its own reports and by this Court in its adjudicated cases, but were likewise condemned by the Interstate Commerce Commission in the very report under attack.

In addition to all this the Commission did not make the findings required by this Court in the Florida Log Case,

supra, and could make no such findings from the evidence in the record before it. Not only did it make no findings as to the amount of revenue which had been derived in the past from the traffic in question under the existing intrastate rate (the Cummer Scale), but it refused to require the carrier to produce evidence upon this subject, although repeatedly urged by the State and by the interveners herein to require the carrier so to do. It made no finding as to the amount of revenue which could reasonably be expected to be derived from the traffic in question under the increased intrastate rate which the Commission proposed to establish. The Commission made certain indefinite conjectures in this connection which were not findings and which were applicable solely to what revenue might be derived under normal economic conditions, while at the same time recognizing the present existence of abnormal economic conditions, and making no finding or guess when the present abnormal conditions would cease and normal conditions return. There was no evidence before the Commission upon which it could make this particular finding required by this Court either with respect to normal or abnormal times. The Commission failed to demonstrate by its findings that any burden which did exist was of such character and consequence that it was the affirmative duty of the Commission as an important step in the maintenance of an adequate national transportation service to remove the same, or, "that the alteration of the intrastate rates" would "produce or was likely to produce" an additional and greater amount of income and that such additional and greater amount of income was actually necessary to prevent "an undue burden upon the carrier's interstate rev-

enues" and necessary to maintain an adequate (national) trasportation service, nor was there any evidence before the Commission upon which those findings could be made.

The one thing that is demonstrated by the report of the Interstate Commerce Commission is that there will be no interstate commerce in logs at the interstate rate prescribed approximately four years ago, and in force and effect for two years. It has demonstrated the accuracy of the forecast made by the Florida shippers that the unlawful order of the Interstate Commerce Commission originally entered in this proceeding not only destroyed prosperous communities and millions of dollars in property, but likewise for the time being at least almost completely destroyed the traffic in pine logs, and when that unlawful order was set aside by the order of this Court, it was rapidly destroying the lesser traffic in cypress and hardwood logs. And to a like extent destroying the revenue derived from that traffic, as this Court said might happen.

The truth is that from the very beginning of this controversy, the Interstate Commerce Commission, the carrier and the District Court have assumed that the power and duty of the Interstate Commerce Commission to deal with this State rate was no less than its power and duty to deal with interstate rates in general, without regard to the power and duty of the State in that connection, and without regard to peculiar local conditions surrounding the establishment and operation and maintenance of the state rate.

CONCLUSION

We submit that appeal in this cause is a matter of right; that the statement of the appellee Atlantic Coast Line Railroad Company against the jurisdiction of this Court is without merit, and that the motion of the Atlantic Coast Line Railroad Company to dismiss the appellants' appeal or to affirm the decree of the court below ought to be denied.

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APPENDIX

STATUTES RELIED UPON

The Interstate Commerce Act, (41 Stat. L., 474):

Section 1:

"(1) That the provisions of this Act shall apply to common carriers engaged in—

(a) The transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment; or

(b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water; or

(c) The transmission of intelligence by wire or wireless;—

from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States through a foreign country to any other place in the United States, or from or to any place in the United States to or from a foreign country, but only in so far as such

transportation or transmission takes place within the United States.

(2) The provisions of this Act shall also apply to such transportation of passengers and property and transmission of intelligence, but only in so far as such transportation or transmission takes place within the United States, but shall not apply—

(a) To the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one State and not shipped to or from a foreign country from or to any place in the United States as aforesaid;

(b) To the transmission of intelligence by wire or wireless wholly within one State and not transmitted to or from a foreign country from or to any place in the United States, as aforesaid; or

(c) To the transportation of passengers or property by a carrier by water where such transportation would not be subject to the provisions of this Act except for the fact that such carrier absorbs, out of its port-to-port water rates or out of its proportional through rates, any switching, terminal, lighterage, car rental, trackage, handling, or other charges by a rail carrier for services within the switching, drayage, lighterage, or corporate limits of a port terminal or district.

"(5) All charges made for any service rendered or to be rendered in the transportation of * * * property * * * shall be just and reasonable, and every unjust and unreasonable charge for such

service or any part thereof is prohibited and declared to be unlawful."

Section 2:

"That if any common carrier subject to the provisions of this Act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property or the transmission of intelligence, subject to the provisions of this Act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation or transmission of a like kind of traffic or message under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful."

Section 3:

"(1) That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect

whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

Section 13:

"(1) That any person, firm, corporation, company, or association, or any mercantile, agricultural, or manufacturing society or other organization, or any body politic or municipal organization, or any common carrier, complaining of anything done or omitted to be done by any common carrier subject to the provisions of this Act, in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts; whereupon a statement of the complaint thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint, or to answer the same in writing, within a reasonable time, to be specified by the Commission. If such common carrier within the time specified shall make reparation for the injury alleged to have been done, the common carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier or carriers shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investi-

gating said complaint, it shall be the duty of the Commission to investigate the matter complained of in such manner and by such means as it shall deem proper.

(2) * * * The Interstate Commerce Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made, to or before said Commission by any provision of this Act, or concerning which any question may arise under any of the provisions of this Act, or relating to the enforcement of any of the provisions of this Act. And the said Commission shall have the same powers and authority to proceed with any inquiry instituted on its own motion as though it had been appealed to by complaint or petition under any of the provisions of this Act, including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had excepting orders of the payment of money.

(3) Whenever in any investigation under the provisions of this Act, or in any investigation instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any State, or initiated by the President during the period of Federal control, the Commission, before proceeding to hear

and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. The Commission may confer with the authorities of any State having regulatory jurisdiction over the class of persons and corporations subject to this Act with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such State bodies and of the Commission; and to that end is authorized and empowered, under rules to be prescribed by it, and which may be modified from time to time, to hold joint hearings with any such State regulating bodies on any matters wherein the Commission is empowered to act and where the rate-making authority of a State is or may be affected by the action taken by the Commission. The Commission is also authorized to avail itself of the cooperation, services, records, and facilities of such State authorities in the enforcement of any provision of this Act.

(4) Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or

charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding."

Section 15:

"(1) That whenever, after full hearing, upon a complaint made as provided in section 13 of this Act, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the Commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged or collected, by any common carrier or carriers subject to this Act for the transportation of * * * property * * * as defined in the first section of this Act, * * * is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this Act, the Commission is hereby authorized

and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged * * * and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect, any rate, fare or charge, for such transportation * * * other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be * * * ."

Section 15a:

"(2) In the exercise of its power to prescribe just and reasonable rates the Commission shall initiate, modify, establish or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will, under honest, efficient and economical management, and reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of

transportation. Provided, That the Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust and unreasonable, and to prescribe different rates for different sections of the country."

(3) The Commission shall from time to time determine and make public what percentage of such aggregate property value constitutes a fair return thereon, and such percentage shall be uniform for all rate groups or territories which may be designated by the Commission. In making such determination it shall give due consideration, among other things, to the transportation needs of the country and the necessity (under honest, efficient and economical management of existing transportation facilities) of enlarging such facilities in order to provide the people of the United States with adequate transportation: *Provided*, That during the two years beginning March 1, 1920, the Commission shall take as such fair return a sum equal to 5½ per centum of such aggregate value, but may, in its discretion, add thereto a sum not exceeding one-half of one per centum of such aggregate value to make provision in whole or in part for improvements, betterments or equipment, which, according to the accounting system prescribed by the Commission, are chargeable to capital account.

(4) For the purposes of this section, such aggregate value of the property of the carriers shall be determined by the Commission from time

to time and as often as may be necessary. The Commission may utilize the results of its investigation under section 19a of this Act, in so far as deemed by it available, and shall give due consideration to all the elements of value recognized by the law of the land for rate-making purposes, and shall give to the property investment account of the carriers only that consideration which under such law it is entitled to in establishing values for rate-making purposes. Whenever pursuant to section 19a of this Act the value of the railway property of any carrier held for and used in the service of transportation has been finally ascertained, the value so ascertained shall be deemed by the Commission to be the value thereof for the purpose of determining such aggregate value.

(5) Inasmuch as it is impossible (without regulation and control in the interest of the commerce of the United States considered as a whole) to establish uniform rates upon competitive traffic which will adequately sustain all the carriers which are engaged in such traffic and which are indispensable to the communities to which they render the service of transportation, without enabling some of such carriers to receive a net railway operating income substantially and unreasonably in excess of a fair return upon the value of their railway property held for and used in the service of transportation, it is hereby declared that any carrier which receives such an income so in excess of a fair return, shall hold such part

of the excess, as hereinafter prescribed, as trustee for, and shall pay it to, the United States.

(6) If, under the provisions of this section, any carrier, receives for any year a net railway operating income in excess of 6 per centum of the value of the railway property held for and used by it in the service of transportation, one-half of such excess shall be placed in a reserve fund established and maintained by such carrier, and the remaining one-half thereof shall, within the first four months following the close of the period for which such computation is made, be recoverable by and paid the Commission for the purpose of establishing and maintaining a general railroad contingent fund as hereinafter described. For the purposes of this paragraph the value of the railway property and the net railway operating income of a group of carriers, which the Commission find are under common control and management and are operated as a single system, shall be computed for the system as a whole, irrespective of the separate ownership and accounting returns of the various parts of such system. In the case of any carrier which has accepted the provisions of section 209 of this amendatory Act the provisions of this paragraph shall not be applicable to the income for any period prior to September 1, 1920. The value of such railway property shall be determined by the Commission in the manner provided in paragraph (4)."

The District Court Jurisdiction Act (C. 32, 38 Stat. L., 219):

"The Commerce Court, created and established by the Act entitled 'An Act to create a Commerce Court and to amend the Act entitled "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, as heretofore amended, and for other purposes,' approved June eighteenth, nineteen hundred and ten, is abolished from and after December thirty-first, nineteen hundred and thirteen, and the jurisdiction vested in said Commerce Court by said Act is transferred to and vested in the several district courts of the United States, and all Acts or parts of Acts in so far as they relate to the establishment of the Commerce Court are repealed. Nothing herein contained shall be deemed to affect the tenure of any of the judges now acting as circuit judges by appointment * * *.

The venue of any suit hereafter brought to enforce, suspend, or set aside, in whole or in part, any order of the Interstate Commerce Commission shall be in the judicial district wherein is the residence of the party or any of the parties upon whose petition the order was made, except that where the order does not relate to transportation, or is not made upon the petition of any party the venue shall be in the district where the matter complained of in the petition before the Commission arises, and except that where the order does

not relate either to transportation or to a matter so complained of before the Commission the matter covered by the order shall be deemed to arise in the district where one of the petitioners in court has either its principal office or its principal operating office. In case such transportation relates to a thorough shipment, the term 'destination' shall be construed as meaning final destination of such shipment.

The procedure in the district courts in respect to cases of which jurisdiction is conferred upon them by this Act shall be the same as that heretofore prevailing in the Commerce Court. The orders, writs, and processes of the district courts may in these cases run, be served, and be returnable anywhere in the United States; and the right of appeal from the district courts in such cases shall be the same as the right of appeal heretofore prevailing under existing law from the Commerce Court. No interlocutory injunction suspending or restraining the enforcement, operations, or execution of, or setting aside, in whole or in part, any order made or entered by the Interstate Commerce Commission shall be issued or granted by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, unless the application for the same shall be presented to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a circuit judge, and unless a majority of said three judges

shall concur in granting such application. When such application as aforesaid is presented to a judge, he shall immediately call to his assistance to hear and determine the application two other judges. Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the Interstate Commerce Commission, to the Attorney General of the United States, and to such other persons as may be defendants in the suit; *Provided*, That in cases where irreparable damage would othrewise ensue to the petitioner, a majority of said three judges, concurring, may, on hearing, after not less than three days' notice to the Interstate Commerce Commission and the Attorney General, allow a temporary stay or suspension, in whole or in part of the operation of the order of the Interstate Commerce Commission for not more than sixty days from the date of the order of said judges pending the application for the order or injunction, in which case the said order shall contain a specific finding, based upon evidence submitted to the judges making the order and identified by reference thereto, that such irreparable damage would result to the petitioner and specifying the nature of the damage. The said judges may, at the time of hearing such application, upon a like finding, continue the temporary stay or suspension in whole or in part until decision upon the application. The hearing upon such application for an interlocutory injunction shall be given

precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction, in such case if such appeal be taken within thirty days after the order, in respect to which complaint is made, is granted or refused; and upon the final hearing of any suit brought to suspend or set aside, in whole or in part, any order of said Commission the same requirement as to judges and the same procedure as to expedition and appeal shall apply. A final judgment or decree of the district court may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of such final judgment or decree, and such appeals may be taken in like manner as appeals are taken under existing law in equity cases. And in such case the notice required shall be served upon the defendants in the case and upon the attorney general of the state.

The Commerce Court Act C. 309, 36 Stat. L., 539):

"SEC. 1. That a court of the United States is hereby created which shall be known as the Commerce Court and shall have the jurisdiction

now possessed by circuit courts of the United States and the judges thereof over all cases of the following kinds:

First. All cases for the enforcement, otherwise than by adjudication and collection of a forfeiture or penalty or by infliction of criminal punishment, of any order of the Interstate Commerce Commission other than for the payment of money.

Second. Cases brought to enjoin, set aside, annul or suspend in whole or in part any order of the Interstate Commerce Commission.

Third. Such cases as by section three of the Act entitled 'An Act to further regulate commerce with foreign nations and among the States,' approved February nineteenth, nineteen hundred and three, are authorized to be maintained in a circuit court of the United States.

Fourth. All such mandamus proceedings as under the provisions of section twenty or section twenty-three of the Act entitled 'An Act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, as amended, are authorized to be maintained in a circuit court of the United States.

Nothing contained in this Act shall be construed as enlarging the jurisdiction now possessed by the circuit courts of the United States or the judges thereof, that is hereby transferred to and vested in the Commerce Court.

The jurisdiction of the Commerce Court over cases of the foregoing classes shall be exclusive; but this Act shall not affect the jurisdiction now possessed by any circuit or district court of the United States over cases or proceedings of a kind not within the above-enumerated classes."

"Sec. 211. All cases and proceedings in the Commerce Court which but for this chapter would be brought by or against the Interstate Commerce Commission, shall be brought by or against the United States, and the United States may intervene in any case or proceeding in the Commerce Court whenever, though it has not been made a party, public interests are involved."

"Sec. 212. The Attorney General shall have charge and control of the interests of the Government in all cases and proceedings in the Commerce Court, and in the Supreme Court of the United States upon appeal from the Commerce Court; if in his opinion the public interest requires it, he may retain and employ in the name of the United States, within the appropriations from time to time made by the Congress for such purposes, such special attorneys and counselors at law as he may think necessary to assist in the discharge of any of the duties incumbent upon him and his subordinate attorneys; and the Attorney General shall stipulate with such special attorneys and counsel the amount of their com-

pensation, which shall not be in excess of the sums appropriated therefor by Congress for such purposes, and shall have supervision of their ation: *Provided*, that the Interstate Commerce Commission and any party or parties in interest to the proceeding before the Commission, in which an order or requirement is made, may appear as parties thereto of their own motion and as of right, and be represented by their counsel, in any suit wherein is involved the validity of such order or requirement or any part thereof, and the interest of such party; and the court wherein is pending such suit may make all such rules and orders as to such appearances and representations, the number of counsel, and all matters of procedure, and otherwise, as to subserve the ends of justice and speed the determination of such suit: *Provided, further*, That communities, associations, corporations, firms, and individuals who are interested in the controversy or question before the Interstate Commerce Commission, or in any suit which may be brought by anyone under the terms of this chapter, or the Acts of which it is amendatory or which are amendatory of it, relating to action of the Interstate Commerce Commission, may intervene in said suit or proceedings at any time after the institution thereof, and the Attorney General shall not dispose of or discontinue said suit or proceeding over the objection of such party or intervenor aforesaid, but said intervenor or intervenors may prosecute,

defend, or continue said suit or proceeding unaffected by the action or non-action of the Attorney General of the United States therein.

"Sec. 213. Complainants before the Interstate Commerce Commission interested in a case shall have the right to appear and be made parties to the case and be represented before the courts by counsel and under such regulations as are now permitted in similar circumstances under the rules and practice of equity courts of the United States."

Act of February 13, 1925 (C. 229, 43 Stat. L. 936).

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sections 128, 129, 237, 238, 239, and 240 of the Judicial Code as now existing be, and they are severally, amended and re-enacted to read as follows:

* * * * *

"Sec. 238. A direct review by the Supreme Court of an interlocutory or final judgment or decree of a district court may be had where it is so provided in the following Acts or parts of Acts, and not otherwise:

* * * * *

(4) So much of 'An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year 1913, and for other purposes,' approved October 22, 1913, as relates to the

review of interlocutory and final judgments and decrees in suits to enforce, suspend, or set aside orders of the Interstate Commerce Commission other than for the payment of money."

Act of January 31, 1928 (C. 14, 45 Stat. L. 54).

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled,* That the writ of error in cases civil and criminal, is abolished. All relief which heretofore could be obtained by writ of error shall hereafter be obtainable by appeal.

"Sec. 2. That in all cases where an appeal may be taken as of right it shall be taken by serving upon the adverse party or his attorney of record, and by filing in the office of the clerk with whom the order appealed from is entered, a written notice to the effect that the appellant appeals from the judgment or order or from a specified part thereof. No petition of appeal or allowance of an appeal shall be required; *Provided, however,* That the review of judgments of State courts of last resort shall be petitioned for and allowed in the same form as now provided by law for writs of error to such courts."

Act of April 26, 1928 (C. 440, 45 Stat. L. 466).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2 of an Act entitled "An Act in

reference to writs of error," approved January 31, 1928, Public, Numbered 10, Seventieth Congress, be, and it is hereby, amended to read as follows:

"Sec. 2. The statutes regulating the right to a writ of error, defining the relief which may be had thereon, and prescribing the mode of exercising that right and of invoking such relief, including the provisions relating to costs, supersedeas, and mandate, shall be applicable to the appeal which the preceding section substitutes for a writ of error."

Act of October 22, 1913 (C. 32, 38 Stat. L. 220)—Judicial Code, Section 210.

"A final judgment or decree of the Commerce Court (district court) may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of said final judgment or decree. Such appeal may be taken in like manner as appeals from a district court of the United States to the Supreme Court, and the Commerce Court (district court) may direct the original record to be transmitted on appeal instead of a transcript thereof. The Supreme Court may affirm, reverse, or modify the final judgment or decree of the Commerce Court (district court) as the case may require. Appeal to the Supreme Court, however, shall in no case

supersede or stay the judgment or decree of the Commerce Court (district court) appealed from, unless the Supreme Court or a justice thereof shall so direct; and appellant shall give bond in such form and of such amount as the Supreme Court, or the justie of that court allowing the stay, may require. An appeal may also be taken to the Supreme Court of the United States from an interlocutory order or deree of the Commerce Court (district court) granting or continuing an injunction restraining the enforcement of an order of the Interstate Commerce Commission, provided such appeal be taken within thirty days from the entry of such order or decree. Appeals to the Supreme Court under this section shall have priority in hearing and determination over all other causes except criminal causes in that court." (36 Stat. L. 1150.)

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JAN 26 1934
CHARLES ELMORE CROPLI
CLERK

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1933

STATE OF FLORIDA, et al.,
APPELLANTS,

vs. No. 342

UNITED STATES OF AMERICA, et al.,
APPELLEES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF GEORGIA,
ATLANTA DIVISION

BRIEF OF APPELLANTS

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POINT I.

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In The
SUPREME COURT OF THE UNITED STATES

October Term, 1933

STATE OF FLORIDA, EUGENE S. MATTHEWS, MAMIE EATON-GREENE, and W. B. DOUGLASS, Etc., et al.,

Appellants,

vs. **No. 342**

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, GEORGIA PUBLIC SERVICE COMMISSION, and ATLANTIC COAST LINE RAILROAD,

Appellees.

Appeal From
the District Court of the United States
for the Northern District of Georgia,
Atlanta Division

BRIEF OF APPELLANTS

REFERENCE TO OFFICIAL REPORT OF THE OPINION DELIVERED IN THE DISTRICT COURT, AND THE REPORTS AND ORDERS OF THE INTERSTATE COMMERCE COMMISSION.

The opinion of the Court below was rendered and filed in the Clerk's office on February 24th, 1933, and is cited as "State of Florida, et al., vs. United States of America, et al.," reported in 4 F. Supp. 477. The reports and orders of the Interstate Commerce Commission are dated respectively July 5th, 1932, and cited, "Georgia Public Service Commission vs. Atlantic Coast Line Railroad Company", reported in 186 I. C. C. 157, and January 9th, 1933, cited, "Georgia Public Service Commission vs. Atlantic Coast Line Railroad Company", reported in 190 I. C. C. 588.

REFERENCE TO OFFICIAL REPORTS OF THE OPINIONS INVOLVING AN ORDER OF THE INTERSTATE COMMERCE COMMISSION ENTERED IN THE SAME PROCEEDING AND SET ASIDE PURSUANT TO THE DECREE OF THIS COURT.

Opinion of the Supreme Court of the United States, dated January 5, 1931, reported in 282 U. S. 194, cited as State of Florida et al vs. United States of America et al;

Opinion of the United States District Court for the Northern District of Georgia, dated January 17th, 1929, reported in 30 Fed. (2d) 116, and cited as "State of Florida, et al., vs. United States of America, et al";

Opinion of the same Court, dated March 22nd, 1929, re-

ported in 31 Fed. (2d) 580, and cited as "State of Florida, et al., vs. United States of America, et al";

Report of the Interstate Commerce Commission dated August 2nd, 1928, cited as "Georgia Public Service Commission vs. Atlantic Coast Line Railroad Company", and reported in 146 I. C. C. 717.

STATEMENT AS TO JURISDICTION

On April 19th, 1933, the appellants filed and served upon all opposing counsel their separate typewritten statement in compliance with Paragraph 1 of Rule 12 of the Revised Rules of Practice of this Court. Under date of May 1, 1933, the Atlantic Coast Line Railroad Company, one of the appellees, filed its typewritten statement against the jurisdiction of this Court, including a motion to dismiss the appeal or affirm the decision of the lower Court. Briefs upon the motion to dismiss or affirm were filed by the appellants and said appellee, and on October 9th, 1933, this Court noted probable jurisdiction in the case and ordered that further consideration of the motion to dismiss or affirm be postponed to the hearing of the case on the merits.

STATEMENT OF THE CASE

This is an appeal from a final decree of the United States District Court for the Northern District of Georgia, Atlanta Division (R. 620), dated February 24th, 1933, which sitting as a specially constituted three-judge Federal statutory court (38 Stat. at L. 219), denied the relief sought by the appellants (as complainants in equity below)

and refused to enjoin an order of the Interstate Commerce Commission contended by the appellants to be unlawful (R. 620).

The proceedings in the Court below originated in three separate bills and supplemental bills filed respectively by: State of Florida and Florida Railroad Commission against the United States of America and Interstate Commerce Commission (R. 1 and 338); Wilson Cypress Company and Wilson Lumber Company of Florida against the United States of America and Interstate Commerce Commission (R. 419 and 465); and F. S. Buffum Company, Incorporated against the United States of America and Interstate Commerce Commission (R. 527 and 551). The Atlantic Coast Line Railroad Company and the Georgia Public Service Commission intervened in each of the suits (R. 312-313, 443, 582, 415, 523 and 602).

At the final hearing the several constituent causes were consolidated into a single cause entitled, "State of Florida, et al., complainants, vs. United States of America, and Interstate Commerce Commission; Atlantic Coast Line Railroad Company, Intervener, Respondents" (R. 607). A single final decree was entered in the consolidated cause (R. 620). The complainants in the constituent and consolidated cause sought and were allowed appeals from the final decree (R. 1385 and 1394).

The final decree of the District Court in terms sustained the orders of the Interstate Commerce Commission dated July 5th, 1932, and January 9th, 1933, establishing intrastate rates on logs between points on the Atlantic Coast Line Railroad Company within and throughout the State of Florida without exception. The order of the Inter-

state Commerce Commission insofar as it purported to fix intrastate rates was assailed by the State of Florida and the complainants in the other constituent causes as being outside the scope of the issues in the proceeding in which the order was entered and without substantial evidence to support it, as being an arbitrary abuse of Federal power, and as extending beyond the statutory authority of the Interstate Commerce Commission and the limits of the Federal power under the Federal Constitution.

As has been hereinabove stated, a former order of the Interstate Commerce Commission dated August 2nd. 1928, in the same proceeding, which order prescribed interstate rates on logs from points in the Northern portion of Florida to points in Georgia on the Atlantic Coast Line Railroad and likewise undertook to establish intrastate rates on logs between points on that railroad within and throughout the State of Florida, was upheld by the District Court in two separate opinions (30 Fed. (2d) 116 and 31 Fed. (2d) 580) and set aside by this Court (282 U. S. 194) insofar as it undertook to establish intrastate rates. The interstate feature of the order, that is, the rates prescribed from points in the Northern portion of Florida to points in Georgia on the railroad has never been modified or attacked, since as we shall hereinafter show no logs ever moved under those rates from Florida to Georgia. After the intrastate feature of the order was set aside the Interstate Commerce Commission re-opened the proceeding and subsequently entered therein the orders with respect to intrastate Florida commerce which are here under attack.

The record in this proceeding upon which that former order of the Interstate Commerce Commission was entered

is a part of the record here and is contained in the printed transcript of the record in the case of State of Florida, et al. versus United States of America, et al., and companion cases, Numbers 16, 17 and 18 of the October Term, 1930, of this Court, the opinion in which is reported in 282 U. S., 194 et seq. That portion of the record is referred to herein as the former record (Former Record,). The proceedings which have taken place since this Court reversed the District Court and set aside the order of the Interstate Commerce Commission are set forth in the newly printed transcript of record, composed of two volumes, which is referred to as the record (R.). Certain exhibits before the Commission being voluminous or from their nature difficult to re-print are by stipulation (R. 1409) bound in a separate volume. Necessarily our statement deals with this proceeding since its inception.

(a) The Original Proceedings Before the Interstate Commerce Commission.

The proceedings before the Interstate Commerce Commission were adversary proceedings, instituted by a complaint in which the Georgia Public Service Commission was sole complainant, and the Atlantic Coast Line Railroad Company was sole defendant (Former Record, 193). The gravamen of the complaint was the alleged unreasonable level of the interstate rates on logs over six feet in length (except walnut, cherry and cedar) from points of origin in Florida, to destinations in Georgia, and the relationship between that rate on the one hand and the mileage scale of intrastate rates of the same character between points in

Florida up to 170 miles on the other hand. The announced purpose of the complaint was to extend the scale of Florida intrastate log rates, known as the Cummer scale, into interstate commerce from Florida to Georgia (Former Record, 417-418). The complainant asserted that the proceeding was not a revenue case (Former Record 417).

The Atlantic Coast Line appeared in defense of both the interstate rate and the intrastate rate, denying by its answer any violation on its part of the Interstate Commerce Act as amended, and demanding that "it be hence dismissed" (Former Record, 199-200). It disclaimed any contention that the Cummer scale of rates was not compensatory and stated as its position of record that it had not made and was not making any proposal to revise those intrastate rates (Former Record, 491, 495). The State of Florida was notified pursuant to the laws of Congress and while it filed no formal answer appeared in the proceedings in due course. Various interventions were allowed, conditioned that the scope of the proceedings be not broadened (Typical, Former Record, 209).

On August 2nd, 1928, the Interstate Commerce Commission filed its report and order (Former Record, 16-28). In its report it stated that while the complaint assailed the rates from all Florida points, the record showed that so far as the interstate rates were concerned relief was desired only with respect to the rates on logs "from that portion of Florida lying North of and including Jacksonville, Gainesville, Burnett's Lake and High Springs", described as North Florida, "to destinations in Georgia for distances not exceeding 170 miles". It prescribed interstate rates from points of origin in that small area of North Florida and not

elsewhere. (146 I. C. C. 717). No actual movement of logs from Florida to Georgia was shown. But notwithstanding that fact, the Interstate Commerce Commission found that such intrastate rates resulted and would result in undue preference and advantage of shippers of intrastate traffic within the State of Florida, in undue prejudice to shippers of interstate traffic from points in the State of Florida to points in the State of Georgia, and in unjust discrimination against interstate commerce. Accordingly, the Interstate Commerce Commission by its amended and clarified orders (Former Record, 26-28 and 91) fixed state-wide, and without exception throughout the State of Florida, intrastate rates for the transportation of logs over the lines of the defendant carrier which were the same as the rates fixed for the non-existent interstate commerce between points in North Florida and Georgia.

(b) The Former Proceedings in the District Court of the United States for the Northern District of Georgia, and in this Court.

Having no recourse to any other remedy The State of Florida thereupon filed its bill in the United States District Court for the Northern District of Georgia, Atlanta Division, that being the forum under the appropriate Federal statute in which it had to proceed, to enjoin the intrastate feature of the order of the Interstate Commerce Commission. Two similar bills were filed by the Florida lumber companies, who are among the appellants in the consolidated cause now at bar. The causes were combined for trial and heard by the United States District Court for the

Northern District of Georgia upon hearing and rehearing (30 Fed. 2d. 116; 31 Fed. 2d. 580).

Upon the rehearing the District Court upheld the intrastate order not "because of undue prejudice to shippers and localities, or because of undue discrimination against the *particular* interstate commerce" in the described logs, but solely upon the ground that the order was aimed at a discrimination "against *general* interstate commerce", caused by intrastate rates which were so low as to throw an undue burden upon the interstate revenues of the carrier. It thereupon entered decrees dismissing the bills of complaint and supplemental bills.

A direct appeal was taken from the District Court to this Court, and this Court in due course in its opinion and judgment rendered January 5th, 1931 (Florida vs. United States, 282 U. S. 194) reversed the decree of the District Court and ordered "that the portion of the order of the Commission which is now under review with respect to intrastate rates * * * must be set aside.". The ultimate ground of the reversal was for "the lack of basic or essential findings required to support the Commission's order". But as an incident to that ultimate finding, this Court examined the scope of the operation of the Federal and State powers and the character and sufficiency of the evidence upon which the Commission had attempted to act.

A few days after the coming down of the opinion and before the coming down of the mandate of this Court, the Atlantic Coast Line Railroad Company filed in this Court a motion asserting among other things that the trouble with the order of the Interstate Commerce Commission was procedural only and praying that this Court withhold its

mandate until such time as the Interstate Commerce Commission should have made further and additional orders in the proceedings upon the record before the Interstate Commerce Commission. But this Court denied that motion and transmitted its mandate to the District Court. And that mandate in due course was made effective by the order of the District Court and the order of the Interstate Commerce Commission, insofar as it sought to prescribe intrastate rates, was enjoined, annulled and set aside.

(c) The Further Hearings Had Before the Interstate Commerce Commission Under Its Order of April 6, 1931.

At or about the time that the United States District Court for the Northern District of Georgia made, to-wit, on March 7th, 1931, the order that it should have made in the first instance, the complainant, the Georgia Public Service Commission, and the defendant, Atlantic Coast Line Railroad Company, filed simultaneous motions before the Interstate Commerce Commission (R. 1078-1087) which patently were intended to be the one complementary to the other.

The motion of the Georgia Commission (R. 1084-1087) requested that the Federal Commission reopen the proceedings and make the determinations required by the situation and prescribe just, reasonable, non-discriminatory and non-prejudicial interstate rates from points in Florida to destinations in Georgia and that those rates be no higher than the Florida intrastate rates in effect at the same time. The motion of the Atlantic Coast Line Railroad Company

(R. 1078-1083) requested that the Federal Commission reopen the proceedings and make such further findings, reports and orders as it might deem to be requisite or necessary and that it prescribe such intrastate rates in Florida for the transportation of logs for distances up to and beyond 170 miles as might be lawful.

It is thus to be observed that the gravamen and primary purpose of the motion of the Georgia Public Service Commission (like the gravamen of its original complaint) was to invoke the direct Federal power to prescribe reasonable rates for the (non-existent) log traffic in interstate commerce from points in Florida to destinations in Georgia, a thing which the Interstate Commerce Commission had already done in this proceeding with respect to North Florida points by the portion of the order of August 2, 1928, to which no party has ever taken exception. The gravamen and primary purpose of the motion of the Atlantic Coast Line Railroad Company was to invoke direct Federal power to prescribe such intrastate rates "as may be lawful", that is to say, to fix the reasonableness per se of the intrastate rates.

Neither the motion of the Georgia Commission nor the complementary motion of the carrier asserted in issuable form, or indeed asserted at all, that the level of the Florida intrastate rates was so low as to constitute a revenue burden either upon interstate commerce or upon the general revenues of the carrier.

The State of Florida and the Florida Railroad Commission filed a reply (R. 1094-1098) to these motions in which they averred: that in the original proceedings the primary issue was the level of the interstate rate and that the intra-

state rate was involved only incidentally in its relation to the interstate rate; that the interstate rates prescribed by the Commission were still in effect and that the Georgia Commission had secured all the relief desired in the proceedings; that the result of the former order of the Commission had been to destroy valuable property and wipe out prosperous communities and likewise to diminish the revenues of the carrier from the transportation of logs; that the Cummer Scale had been voluntarily put into effect by the carrier and had become the lawful state rate in Florida and that no application had been made to the State authorities to change it; that this Court had declared that the authority to determine the reasonableness per se of that rate lay with the State authorities and not with the Interstate Commerce Commission; that the Florida Railroad Commission was ready and willing at any proper time upon the application of anyone to consider and determine in accordance with Florida law the level of the intrastate rate; and that although there had been a parity between the interstate and intrastate rates during the two years in which the former order of the Interstate Commerce Commission had been effective no interstate traffic had developed and none would develop. The reply therefore asserted that the motions to reopen the proceedings should be denied.

On April 6, 1931, the Interstate Commerce Commission made an order re-opening the proceeding for "further hearing" (R. 1098). The purpose of such "further hearing" was not stated. When the Georgia Public Service Commission proposed to introduce evidence these complainants, directing attention to the state of the record as recited above, asked that the Georgia Public Service Commission, as com-

plainant in the proceeding there, be required to state whether it had abandoned its position that this was not a revenue case and that there was no reason for the increase of any rates (R. 622). The presiding Examiner ruled that it was not necessary for the Georgia Commission to answer this inquiry, to which ruling an exception was taken (R. 624 and 638-639).

At the beginning of the re-opened proceedings the State of Florida, through the Chairman of the Florida Railroad Commission, asserted that the authority to determine the reasonableness of the State rates lay with the Florida Railroad Commission; that these rates had been voluntarily initiated more than fifteen years theretofore and when established had become the lawful state rates; that the laws of Florida prohibited any change or increase of those rates without the consent and approval of the Florida Railroad Commission and after due notice to the interested parties and a hearing; that no complaint had ever been made to the Florida Railroad Commission about the level of that rate although its door all that time had been open to anyone dissatisfied with that rate; that the result of the proceedings before the Interstate Commerce Commission had been to injure and destroy intrastate commerce within the State of Florida, and to injure and destroy individuals and whole communities in Florida without benefitting anyone in Georgia or in Florida; and that the Florida Railroad Commission considered that the Interstate Commerce Commission was without the power to invade the domain of the State in this matter, but if it had such power it should not exercise it until the Railroad Company had applied to the State of Florida for such relief as it might deem itself en-

titled to have (R. 622-623). To this position the State of Florida throughout these proceedings has steadfastly adhered, and it now and here reasserts that position and insists upon it.

The Georgia Public Service Commission offered no evidence except rate comparisons. Upon the conclusion of its evidence the following motion was made (R. 649):

> "Come now intervening shipper defendants herein, and in the light of the Examiner's ruling declaring that the undue burden issue is involved in this case by the proceedings of the complainant, respectfully move dismissal of that part of the complaint of the Georgia Public Service Commission, which as thus construed, would allege that the Cummer Scale of the Florida intrastate log rates unduly burdens interstate commerce."

That motion was transmitted to and denied by the Commission. *Georgia Pub. Serv. Comm. v. Atlantic Coast L.R. Co.*, 186 *I. C. C.* 157, 160.

The Examiner, over the objection of these complainants, allowed the Atlantic Coast Line Railroad Company to undertake to prove affirmatively against itself the allegations of the complaint which it had denied in its answer and which it had thereto[illegible]re expressly disclaimed in stating its position of record in the proceeding (R. 648-650).

The insufficiency of the evidence to support the order under attack will be the subject of comment in another portion of this brief. We content ourselves here in pointing out that in the proceedings re-opened by the Commission's

order of April 6, 1931, the evidence consisted of rate comparisons and cost studies. Most of the rate comparisons were duplications of those filed in the original proceedings. The cost studies consisted of a series of system, or division averages applicable alike to all traffic and were insufficient to demonstrate the cost of the transportation of the particular traffic in question, to-wit, logs. The evidence showed that the dire result prophesied by the Florida interveners that "any material increase in the Florida intrastate rate would either cause them to move their plants to the timber or abandon operations" in the main had been realized, Of the train load shippers, all save one had discontinued transporting logs by the carrier, and millions of dollars of property in plants and communities had been wiped out.

The evidence showed that the traffic in pine logs had all but been destroyed, and that the traffic in cypress and hardwood logs was rapidly running the same course. The presiding Examiner in his proposed report (R. 1209-1232) recommended two rates, the one being the rate originally prescribed by the order of the Interstate Commerce Commission which was condemned by this Court. That rate was to be applicable between all points on the defendant carrier's lines in Florida, except between Hines and Palatka. The rate recommended for the Hines to Palatka movement (the movement of the sole then remaining train load shipper) was 1 cent per 100 pounds lower than the applicable rate under the scale prescribed by the former order of the Interstate Commerce Commission for that movement. Exceptions were filed to the Examiner's report. On July 5th, 1932, the Commission issued its report and order (R. 27-

79) which is the subject of attack here. The report and order confirmed the interstate rate originally fixed from North Florida points of origin to Georgia destinations by the order of August 2nd, 1928. No attempt was made in the new report or order to fix interstate rates elsewhere than in that limited area. That report and order found as a fact that no movement from Florida to Georgia had been shown during the two years when the interstate rate and the intrastate rate had been upon the same level. So in its new order the Commission made no finding with respect to persons and localities. But it found the so-called Cummer Scale caused an unjust discrimination against interstate commerce from a revenue standpoint and prescribed for application in intrastate commerce between all points on the lines of the defendant carrier in Florida the same rate which had been prescribed by the order which was set aside by this Court.

Bills in equity were filed to enjoin the order of the Interstate Commerce Commission, the one bill filed by the State of Florida, the other by Wilson Cypress Company and Wilson Lumber Company of Florida. Hearing was had upon them on September 14th, 1932, and the Court entered a stay of the order of the Commission for not exceeding sixty days (R. 333 and 460).

(d) The Second Re-Opened Proceedings Before the Interstate Commerce Commission.

Meanwhile, in October, 1932, shortly after the filing of the constituent bills in this cause, the appellants the State of Florida and the Wilson Cypress Company and Wilson

Lumber Company of Florida filed before the Interstate Commerce Commission their motions and petitions (R. 1293-1301 and 1280-1285) to set aside the order of the Interstate Commerce Commission dated July 5th, 1932, and to re-open the proceedings upon the ground (among others) that at or about the time that the Interstate Commerce Commission was preparing and promulgating its order dated July 5th, 1932, greatly increasing the level of the Florida intrastate rate, the Interstate Commerce Commission was permitting the other trunk line carriers in the Southern and Southwestern rate groups (whose rates had been employed as a standard of comparison for the superseded Cummer Scale) to establish and maintain in interstate commerce (as well as in intrastate commerce) per car rates for the transportation of logs which in practical operation and effect were as low as or lower than the Cummer Scale.

On October 21st, 1932, the Interstate Commerce Commission entered its order (R. 1315-1316) suspending the operation of its order of July 5th, 1932, and the proceedings before it were re-opened the second time "for the sole purpose of receiving evidence respecting any change in the rates on logs since the close of the last hearing herein (that is, taking of the last testimony on July 21st, 1931), the circumstances connected with and the conditions which occasioned such changes, and whether such circumstances and conditions or any of them, are present with respect to the Florida intrastate log rates of the defendant". Further hearing was had.

Meanwhile additional railroads had published tariffs establishing the new rates. The record shows that these

Newly Reduced Rates have been published by not less than twenty-three railroads in fourteen Southern and Southwestern States. Such railroads and a general statement of the extent to which the Newly Reduced Rates are applicable over them are as follows:

In the Southern Rate Group

Railroad	Application
Louisville & Nashville Railroad,	Between all stations south of Ohio River.
Nashville, Chattanooga & St. Louis Railway,	Between all stations.
Gulf, Mobile & Northern Railroad,	Between all stations.
Georgia & Florida Railroad,	Between all stations.
Illinois Central Railroad,	To eleven stations in Mississippi, Tennessee and Louisiana.
Yazoo & Mississippi Valley Railroad,	To twenty-two stations in Louisiana, Mississippi and Tennessee east of the Mississippi River.
St. Louis-San Francisco Railway,	Between all stations in Alabama, Florida and Mississippi and to Memphis, Tennessee.
Mobile & Ohio Railroad,	To eight stations in Alabama, Mississippi, Tennessee and Kentucky.
Southern Railway,	To ten stations in Alabama, Mississippi, South Carolina and Tennessee.

Seaboard Air Line Railway,	To one station in Alabama and two stations in Virginia.
Savannah & Atlanta Railway,	To three stations in Georgia.
Central of Georgia Railway,	To two stations in Georgia and two stations in Alabama.
Atlantic Coast Line Railroad,	To one station in Alabama and two stations in South Carolina.
Columbus & Greenville Railroad,	To four stations in Mississippi.
Gulf & Ship Island Railroad,	To two stations in Mississippi.
Mississippi Central Railroad,	To two stations in Mississippi.
Tennessee, Alabama & Georgia Railway,	To two stations in Alabama and Tennessee.
Western Railway of Alabama,	To two stations in Alabama.
Norfolk & Southern Railroad,	To one station in Virginia.
New Orleans & Northeastern Rail road,	To one station in Mississippi.
St. Louis Southwestern Railway,	To one station in Tennessee.
Chicago, Rock Island & Pacific Railway,	To one station in Tennessee.

In the Southwestern Rate Group

Railroad	Application
Chicago, Rock Island & Pacific Railway,	Between all stations in Arkansas and Louisiana.
Missouri Pacific Railway,	Between substantially all stations in Louisiana, Missouri, Arkansas, Oklahoma and Texas.
St. Louis-San Francisco Railway,	Between all stations in Arkansas and Missouri and from one station in Oklahoma.
St. Louis Southwestern Railway,	Between all stations in Arkansas, Louisiana and Missouri.
Yazoo & Mississippi Valley Railroad,	Between substantially all stations in Louisiana west of the Mississippi River.

A more detailed statement of these rates and their application and the references to their location in the record is hereinafter set forth.

The record shows that these Newly Reduced Rates were applicable both in interstate and intrastate commerce on substantially the same level over all or part of all of the railroads specified above within and between Florida, Alabama, Mississippi, Louisiana, Tennessee, Georgia, North Carolina, South Carolina, Virginia, Kentucky, Missouri, Arkansas, Oklahoma and Texas. They are applicable in Florida in intrastate and interstate commerce on the Louisville & Nashville Railroad, the St. Louis-San Francisco Railway, the Georgia & Florida Railroad and the Central of Georgia Railway. As is pointed out above, on some of the

railroads the Newly Reduced Rates were made applicable to particular stations which are lumber manufacturing points. On many others, including the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway (Atlantic Coast Line affiliates) they were applicable between all, or substantially all stations, interstate as well as intrastate.

There is no doubt that in Louisiana, Mississippi, Alabama, Tennessee, parts of Georgia and Western Florida, the general level of interstate and intrastate rates are on the basis of the Newly Reduced Rates. It will not do to say that the Newly Reduced Rates apply only in the Western portion of Southern territory. The maps (R. 388 and 490) attached to the Supplemental Bills show approximately the location of the lines over which they are applicable. For instance, it will be observed that they have largely superseded the so-called "Alabama Scale" in Alabama, (the scale prescribed by the Interstate Commerce Commission for intrastate commerce in Florida was frequently called the Alabama Scale"). They are in effect in parts of Florida, Georgia, and in Eastern Tennessee as well. We think it fair to say that the Newly Reduced Rates or their substantial equivalent now constitute the general level of intrastate and interstate log rates in the greater part of Southern territory in which the lumber manufacturing industry is still a substantial industry.

Some of these were shown to be transit rates, but many of them were shown to be local or proportional rates. The appellants offered to prove that in practical operation and effect the Florida intrastate scale (the Cummer Scale) was tantamount to a transit rate, in that substantially all

or the greater part of the product manufactured from the logs moved over the lines of the defendant carrier (R. 960 and 991). They offered to prove this by testimony given by the Freight Traffic Manager of the Atlantic Coast Line Railroad in another proceeding (R. 1066-1067). But this testimony was excluded (R. 960, 992 and 1067).

Furthermore, the record discloses that the appellants Wilson Cypress Company and Cummer Cypress Company and every other trainload shipper of logs were required by the terms of a written contract (Former Record, 329, 337 and 261) with the appellee Atlanti Coast Line Railroad Company (supported by a bond) to ship over the Atlantic Coast Line Railroad and the lines of its connecting carriers, the outbound product manufactured from the inbound logs, providing the rates of competing carriers are not lower. The trainload movement constituted substantially more than the carload movement (Former Record, 476-477 and 797, and R. 661).

On January 9th, 1933, the Interstate Commerce Commission handed down its second report on further hearing (190, I. C. C. 588). **It found as a fact that the Newly Reduced Rates per car of logs regardless of weight are "on substantially the same level as the Cummer Scale"** (text 589). Yet notwithstanding all this, the Interstate Commerce Commission fixed the Florida intrastate rate at a level which in practical operation and effect is more than twice that of the new general level which had been established between and throughout most of the States constituting the Southern and Southwestern rate groups and was rapidly being further extended within them.

(e) The Proceedings in the District Court in the Case at Bar.

Promptly after the filing of the second report of the Interstate Commerce Commission of January 9th, 1933, the appellants respectively tendered their supplemental bills (R. 338, 465 and 551) setting up the new and additional facts with respect to the second report and order of the Interstate Commerce Commission on the further hearing, and additional grounds for relief consequent upon it. The supplemental bills were allowed as supplemental pleadings (R. 390), answers filed, and the causes were consolidated (R. 389-390) and heard by a Court of three judges on the bills and supplemental pleadings, answers and evidence, and a single decree was rendered thereon on February 24th, 1933. By that decree (R. 620) the orders of the Interstate Commerce Commission in the re-opened proceedings dated July 5, 1932, and the order of the Interstate Commerce Commission in the second re-opened proceeding dated January 9th, 1933, were sustained and the prayers of the bills of complaint to enjoin such orders were refused.

Direct appeal was taken to this Court under section 210 of the Judicial Code (38 Stat. at L. 220). Petition for appeal was duly filed and appeal allowed by the District Court.

SPECIFICATION OF ASSIGNED ERRORS INTENDED TO BE URGED

The appellants in due course filed in the District Court their joint and several assignments of errors (R. 1386-

1393), all of which are intended to be urged. They are that the District Court erred as follows:

1. In denying the relief prayed in the bills of complaint and supplemental bills of complaint herein.

2. In failing and refusing to suspend, annul and permanently enjoin the orders of the Interstate Commerce Commission herein involved.

3. In holding that an unjust discrimination against interstate commerce had been made to clearly appear.

4. In failing to find that no substantial disparity exists between the Florida Intrastate rates on logs and the general level of rates on logs in interstate commerce in the southern carrier rate group.

5. In failing and refusing to hold that the report and order of the Interstate Commerce Commission of July 5, 1932, as amended, and the report and order of said Commission of January 9, 1933, were unreasonable and arbitrary.

6. In failing and refusing to find that the Interstate Commerce Commission had not made the findings declared by the Supreme Court of the United States to be essential pre-requisites to the making of a valid order of the character here attempted to be made by the Interstate Commerce Commission with respect to Florida intrastate rates on logs.

7. In failing and refusing to find that there was no substantial evidence in the record to support the findings declared by the Supreme Court of the United States to be essential pre-requisites to the making of a valid order of the character here attempted to be made by the Interstate Commerce Commission with respect to Florida intrastate rates on logs.

8. In holding that the findings of fact upon which the Interstate Commerce Commission relied to justify its said orders prescribing intrastate rates were warranted by the evidence and were made to clearly appear by the evidence.

9. In failing and refusing to hold that the Interstate Commerce Commission made no finding of the amount of revenue which had been derived in the past by the Atlantic Coast Line Railroad Company from the particular traffic in question under the existing intrastate rate (the Cummer Scale).

10. In failing and refusing to hold that the evidence warranted no finding by the Interstate Commerce Commission of the amount of revenue which had been derived in the past by the Atlantic Coast Line Railroad Company from the particular traffic in question under the existing intrastate rate (the Cummer Scale).

11. In finding that there was no substantial increase in the log traffic after the Cummer Scale of rates was restored following the decision of the Supreme Court upon the former order of the Interstate Commerce Commission.

12. In holding that the refusal of the Interstate Commerce Commission to require the Atlantic Coast Line Railroad Company to produce information as to the number of cars of logs moving within the State of Florida during each of the years 1926, 1927, and 1928, and as to the revenue derived therefrom, constitutes no cause to upset the order of the Interstate Commerce Commission herein involved.

13. In failing and refusing to hold that the Interstate Commerce Commission made no finding of the amount of revenue which can be reasonably expected to be derived from the traffic in question under the increased intrastate rate which the Interstate Commerce Commission had ordered established.

14. In failing and refusing to hold that the evidence warranted no finding by the Interstate Commerce Commission of the amount of revenue which can be reasonably expected to be derived from the traffic in question under the increased intrastate rate which the Interstate Commerce Commission had ordered established.

15. In finding that the future log traffic under the intrastate rate on the Atlantic Coast Line Railroad in Florida will likely amount to at least 7431 cars per year.

16. In holding that if the log traffic done in Florida on the Cummer Scale is at an out-of-pocket loss, the less of it done the better.

17. In failing and refusing to hold that the Interstate Commerce Commission made no finding that the application of the existing intrastate rate (Cummer Scale) resulted in an impairment of the income of the carrier which caused an undue burden upon the carrier's interstate revenues and obstructed the maintenance of an adequate national transportation system.

18. In failing and refusing to hold that the evidence warranted no finding by the Interstate Commerce Commission that the application of the existing intrastate rate (Cummer Scale) resulted in an impairment of the income of the carrier which caused an undue burden upon the carrier's interstate revenues and obstructed the maintenance of an adequate national transportation system.

19. In failing and refusing to hold that the Interstate Commerce Commission made no finding that an undue burden upon the carrier's interstate revenues and obstruction to the maintenance of an adequate national transportation service existed which was of such character and consequence that it was the affirmative duty of the Interstate Commerce Commission as an important step in maintaining an adequate national railway system to remove such burden and obstruction.

20. In failing and refusing to hold that the evidence warranted no finding by the Interstate Commerce Commission that an undue burden upon the carrier's interstate revenues and obstruction to the maintenance of an adequate national transportation service existed which was of such character and consequence that it was the affirmative duty of the Interstate Commerce Commission as an important

step in maintaining an adequate national railway system to remove such burden and obstruction.

21. In failing and refusing to hold that the Interstate Commerce Commission made no finding that the alteration of the intrastate rates would produce, or was likely to produce an additional and greater amount of income, and made no finding, that such additional and greater amount of income was necessary to prevent an existing undue burden upon the carrier's interstate revenues and necessary to maintain an adequate national transportation service.

22. In failing and refusing to hold that the evidence warranted no finding by the Interstate Commerce Commission that the alteration of the intrastate rates would produce, or was likely to produce an additional and greater amount of income, and that the evidence warranted no finding that such additional and greater amount of income was necessary to prevent an existing undue burden upon the carrier's interstate revenues and necessary to maintain an adequate national transportation service.

23. In failing and refusing to hold that the Interstate Commerce Commission made no finding of the quantity or extent of any burden upon the interstate revenues of the carrier caused by the application of the existing Florida intrastate rate (Cummer Scale).

24. In failing and refusing to hold that the evidence warranted no finding by the Interstate Commerce Commission of the quantity or extent of any burden upon the interstate revenues of the carrier caused by the application of the existing Florida intrastate rate (Cummer Scale).

25. In failing and refusing to hold that in making said orders the Interstate Commerce Commission considered and gave effect to rate comparisons, system average costs and other matters relating to costs of transportation which were incompetent and insufficient to furnish the basis for the conclusions reached therefrom and incom-

petent and insufficient to furnish the basis for any such reports and order.

26. In finding that "in 1928 and 1932 comparisons of these rates (Cummer Scale) with other rates on logs and on similar traffic in the same and neighboring territories showed them to average less than half of most other comparable interstate and intrastate rates, and to be much the lowest of any of them."

27. In finding that on the question of the cost of the service figures were considered which showed the average cost of hauling logs over the Atlantic Coast Line Railroad system.

28. In holding that Appendix E of the report of the Interstate Commerce Commission is the conclusion of that Commission "as to the cost of hauling logs in Florida for the distance shown to be the average under the Cummer Scale, based on the evidence which had been produced to it as tending to show such cost."

29. In finding that there was "an out-of-pocket loss to the carrier in the log traffic under these rates (Cummer Scale)."

30. In holding that if it appeared that a loss was produced by the States Rates which would in the future be substantial and that the carrier was not in position to absorb it without detriment to its service and support as an interstate carrier, a sufficient case had been made to find an unjust discrimination against interstate commerce and to require its correction.

31. In failing and refusing to hold that the Interstate Commerce Commission by indirection seeks to determine the reasonableness per se of the Florida intrastate rate (the Cummer Scale), a thing which the Supreme Court of the United States has declared lies with the State authority and not with the Interstate Commerce Commission.

32. In failing and refusing to hold that said Interstate Commerce Commission had attempted to prescribe in-

trastate rates in Florida applicable to territory for which no interstate rates have been prescribed and in which no general investigation of rate levels whether on interstate or on intrastate traffic has been made, and that in so doing the Interstate Commerce Commission has exceeded its authority.

33. In failing and refusing to hold that the intrastate rates prescribed in said proceeding before the Interstate Commerce Commission are broader in their scope than the interstate rates prescribed in said proceeding, and that said orders of said Commission prescribing said intrastate rates are consequently unlawful.

34. In holding that the proceeding before the Interstate Commerce Commission was one in which a burden by the State rates on the revenues of the carrier was made an issue so that the Commission could properly so find and on that ground prescribe an intrastate rate.

35. In failing and refusing to hold that the question of whether or not the jurisdictional facts exist which warrant the Interstate Commerce Commission in invading the domain of the State of Florida is a judicial question which the Court was bound to determine for itself in this cause, and in failing and refusing to determine the existence or non-existence of such jurisdictional facts independently of any determination thereof by the Interstate Commerce Commission.

36. In failing and refusing to find that the complainants were entitled to a trial de novo by the Court upon the jurisdictional facts which would warrant the Interstate Commerce Commission in invading the domain of the State of Florida by said reports and orders of said Commission, and in failing and refusing to grant such trial upon such facts.

37. In holding that when the question of the existence of the facts with respect to intrastate rates upon the existence of which the power of the Interstate Commerce

Commission to act depends, has been tried before that Commission its conclusion affirming the existence of those facts is sufficient to put the burden upon those who deny it.

38. In holding with respect to the power to deal with intrastate rates "that under the enlarged and positive powers with which the Interstate Commerce Commission is vested its findings of fact within the scope of its powers will not be rejected by the Courts if supported by evidence."

39. In holding that in dealing with intrastate rates a plain case to the contrary of the conclusions reached by the Interstate Commerce Commission is necessary to warrant Court interference.

40. In failing and refusing to find that the report and order of the Interstate Commerce Commission of July 5, 1932, as amended, and the report and order of the Interstate Commerce Commission of January 9, 1933, constitute an unlawful exercise of power by said Commission and are without warrant or authority of law.

41. In failing and refusing to find that the reports and orders of the Interstate Commerce Commission herein involved constitute an unlawful invasion of the sovereign rights of the State of Florida reserved to it under the Constitution of the United States and of the citizens of the State of Florida and are without any warrant or authority of or under the Constitution of the United States.

42. In failing and refusing to find that said Interstate Commerce Commission was and is without jurisdiction to enter said reports and orders herein involved.

43. In holding that the particular findings of the Interstate Commerce Commission are sufficient to support the general finding of unjust discrimination by the state rates against Interstate Commerce by undue burden on the Interstate carrier's revenues, and to justify an order removing the discrimination by establishing the new rate prescribed.

44. In sustaining and upholding the orders of the Interstate Commerce Commission made July 5, 1932, and the order of the Interstate Commerce Commission confirming the same made January 9, 1933.

ARGUMENT

Summary

The questions raised by this appeal are of far-reaching importance. They involve the scope of the exercise of the National and State sovereignty. With due deference, we here express the view that the Interstate Commerce Commission and the trial Court in their decisions have applied to the law and the facts principles which are at variance with the Acts of Congress and with the decisions of this Court.

Briefly stated we have here an order relating to intrastate rates on a single commodity, viz., logs, on a single railroad in Florida, which is statewide in its application without the corresponding interstate rates having ever been established (excepting the interstate rates prescribed for the non-existent log traffic from points in a small portion of that State which portion constitutes the northern fringe or border of that State). The order was entered by the Interstate Commerce Commission at the same time when that Commission had permitted and was then permitting the general level of log rates, interstate as well as intrastate, to become fixed at the level of the Florida intrastate rates superseded by the order. The order was entered

upon the basis of comparisons with log rates which had been and were then being superseded by rates on the same general level as the Florida intrastate log rates affected by the order, and upon the basis of cost evidence which demonstrated only that the Florida intrastate log rates did not produce earnings as great per ton per mile as was the average cost, direct and indirect, including all taxes and profit or return on investment at the rate of 5¾%, of transporting a ton of the **average** of **all** freight a distance of one mile on the entire system of the railroad involved.

The order was entered after a thorough and conclusive demonstration from actual experience during two years of trial (while the former unlawful order was in process of appeal and reversal) that the rates prescribed by the order, being approximately double the Florida intrastate rates theretofore existing, would and will (and largely did) destroy the traffic. The order was made without the making of the findings which this Court has said must be made to support the order. In fact the Commission refused to require the evidence to be produced (although insisted upon by these appellants) to show "the revenue which had been derived by the carrier from the traffic in question." And such findings as were made by the Commission, if indeed they could be called findings at all, relate to the existence of "normal economic conditions" which the Commission did not find to then exist and which this Court has declared it judicially knows did not and do not exist. The domain and rightful province of State authority cannot and ought not to be thus invaded.

Our argument will be set forth under the following headings:

POINT I. On January 9, 1933, and on July 5, 1932, the times at which the Interstate Commerce Commission entered its second and first Reports on the further hearing, there was no substantial disparity between the Cummer Scale of Florida Intrastate Log Rates and the General Level of Interstate Log Rates in the Southern Rate Group, as the Interstate Commerce Commission had permitted and was then permitting such general level to be fixed. During the several months preceding the filing of the Commission's Second Report on Further Hearing the Commission had permitted and was then permitting the General Level of Interstate and Intrastate Log Rates in the predominant part of Southern Territory to be fixed on a substantial parity with that of the Cummer Scale. Hence the Commission was without the power to interfere with the Intrastate Rates in Florida; In attempting to do so its action was arbitrary and unreasonable.

POINT II. The Interstate Commerce Commission has failed to make the basic or essential findings necessary to support a state-wide order prescribing intrastate rates. There is no substantial evidence before the commission to support such findings.

POINT III. There was no finding and no evidence of the amount of revenue which had been derived in the past from this particular traffic in question under the Cummer Scale of rates.

POINT IV. There was no finding as to the amount of revenue which can reasonably be expected to be derived by the carrier from the traffic in question, "Under the Increased Rates".

POINT V. There was no sufficient finding and no evidence upon which the Commission could base a sufficient finding that the alteration of the intrastate rate would produce or would be likely to produce additional income necessary to prevent an undue burden and to maintain an adequate (National) transportation system.

POINT VI. Even if it were possible to find any unjust discrimination against interstate commerce in this proceeding, there is no finding and no evidence upon which the Commission could base a finding that that discrimination was of such character and consequence that it was the affirmative duty of the Commission, as an important step in maintaining an adequate national railway transportation system, to remove it.

POINT VII. The cost and revenue studies founded upon system averages are insufficient to supply the essential facts as to the particular traffic and revenue and the effect of the intrastate rates existing and future upon the income of the carrier.

POINT VIII. The District Court erroneously assumed that the Interstate Commerce Commission had found the average cost of hauling logs over the Atlantic Coast Line Railroad System, whereas the Commission made no such finding and there was no evidence of record upon which such finding could be based.

POINT IX. The rate comparisons furnish no cause for the invasion of State Domain by the Federal Power.

POINT X. The intrastate rates prescribed by the Commission for application in Florida were minimum rates, and not otherwise. The interstate rates prescribed by the Commission for the transportation of logs from points in North Florida to destinations in Georgia were maximum rates, and not otherwise. At no time or place, other than in this proceeding in Florida, has the Commission attempted to prescribe other than maximum rates on logs. The fixing of minimum rates on logs over the Atlantic Coast Line in Florida was arbitrary.

POINT XI. The order of the Interstate Commerce Commission, being state-wide in its scope was beyond the scope of the issue on which the controversy was tried, and the proceeding was not appropriate nor was the hearing sufficient.

POINT XII. The Interstate Commerce Commission has the power to prescribe intrastate rates only when the "jurisdictional facts" authorizing such action have been made to "clearly appear". The existence of such jurisdictional facts is a judicial question which must be determined by the judicial branch of the Government in a proper judicial proceeding, irrespective of any finding which may have been made by the Interstate Commerce Commission.

STATUTES RELIED UPON

The relevant portions of the statutes relied upon are printed in the Appendix of this brief.

POINT I.

On January 9, 1933, and on July 5, 1932, the times at which the Interstate Commerce Commission entered its second and first Reports on the further hearing, there was no substantial disparity between the Cummer Scale of Florida Intrastate Log Rates and the General Level of Interstate Log Rates in the Southern Rate Group, as the Interstate Commerce Commission had permitted and was then permitting such general level to be fixed. During the several months preceding the filing of the Commission's Second Report on Further Hearing the Commission had permitted and was then permitting the General Level of Interstate and Intrastate Log Rates in the predominant part of Southern Territory to be fixed on a substantial parity with that of the Cummer Scale. Hence the Commission was without the power to interfere with the Intrastate Rates in Florida. In attempting to do so its action was arbitrary and unreasonable.

(Applicable to assignments of Error Nos. 1 to 5, both inclusive, and 32 and 33.)

(a) *The Interstate Commerce Commission Could Not and Did Not Make Any Finding of Discrimination Against Persons and Localities.*

The Interstate Commerce Commission has never considered or fixed interstate rates on logs to or from points in Florida except from border points in North Florida to Georgia points. Upon the former appeal, this Court said (Florida v. United States, 282 U. S. 194, text 208):

> "The limitation of the Commission's finding as to interstate rates, and the order prescribing them, to transportation from points in the Northern part of Florida to points in Georgia, defined the interstate commerce which was deemed to be concerned. All of this commerce was potential, no actual movement from Florida to Georgia having been shown. It would be an extreme and unwarranted assumption that to protect this interstate commerce from unjust discrimination as between persons or localities, it was necessary to alter the existing rates for the transportation of logs between all points whatever within Florida."

In its report of July 5, 1932, the Interstate Commerce Commission said (186 I. C. C. 157, text, 189-190):

> "The evidence introduced at the original hearing did not show any actual movement of logs from Florida to Georgia. The then existing in-

trastate rates were more than twice as high as the Cummer scale. The evidence was conflicting as to whether there were logs available in northern Florida that could be economically purchased and transported over defendant's lines to Georgia, but was not convincing that logs could not or would not so move if the interstate and intrastate rates were on the same level. As a result of the former order entered herein the rates from northern Florida to Georgia were reduced and the rates within Florida were increased and both were on the same level from February 8, 1929, to about April 10, 1931. Notwithstanding this parity of rates, it appears from the evidence introduced at the further hearing that there was no movement of logs from Florida to Georgia during that period, except possibly an occasional carload. Whether an interstate movement from Georgia to Florida will develop after the interstate and intrastate rates are again put on a parity and the rate situation finally settled, it is impossible to say at the present time. Inasmuch as we find that the Cummer scale rates cause unjust discrimination against interstate commerce from a revenue standpoint and our order herein removes that discrimination by increasing those rates on defendant's lines throughout the State of Florida to the level of the interstate rates previously prescribed and now in effect, no finding in reference to undue prejudice against persons and localities in interstate commerce is necessary and we make no finding in that regard."

Actually in all these years that this proceeding has been pending and during which there has been so much turmoil with respect to interstate commerce and its protection the record shows that there was no movement of logs in interstate commerce from Florida to Georgia. In the face of the above-quoted language of this Court the Commission could not conclude otherwise than that, "no finding in reference to undue prejudice against persons and localities in interstate commerce is necessary and we make no finding in that regard." So the Interstate Commerce Commission has not sought to justify its invasion of state domain on the ground of discrimination against persons or localities. It founds its invasion solely upon the revenue features of the Interstate Commerce Act as amended by the Transportation Act of 1920 (Section 13 (4) and Section 15a).

(*b*) *The Nature of the Power Here sought to be Exercised by the Commission.*

The power to change State rates in order to remove a revenue burden on interstate commerce is not directly granted to the Interstate Commerce Commission by any section of the Interstate Commerce Act. On the contrary, Section 1 (2) provides specifically that the provisions of the Act shall not apply "to the transportation of passengers or property * * * wholly within one State * * * ".

Section 13 (4) specifically vests the Commission with authority to prescribe intrastate rates where necessary to remove "preference or prejudice as between persons or

localities in intrastate commerce on the one hand, and interstate commerce or foreign commerce on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce."

> Section 15 (a) provided that "In the exercise of its power to prescribe just and reasonable rates the Commission shall initiate, modify, establish or adjust such rates so that carriers as a *whole* (or as a *whole* in each of such *rate groups* or territories as the Commission may from time to time designate) will, under honest, efficient and economical management, and reasonable expenditures for maintenance of way, structures and equipment, earn an *aggregate* annual net railway operating income equal, as nearly as may be, to a fair return upon the *aggregate* value of the railway property of such carriers held for and used in the service of transportation." (Italics ours).

Prior to the enactment of these sections which were a part of the Transportation Act of 1920, this Court had held, in the *Shreveport Case*, 234 *U. S.* 342, that the Interstate Commerce Commission had power to remove undue prejudice against persons and localities in interstate commerce. The new act, therefore, simply incorporated in the statute the power as to undue prejudice against persons and localities which the Commission had already exercised and the Court upheld. *Board of Railroad Commrs. v. Great Northern R. C.*, 281 *U. S.* 412.

Nowhere in the Act is the power expressly given to

change intrastate rates in order to remove a revenue burden upon interstate commerce generally. But this Court, in *Railroad Commission of Wisconsin v. C. B. & Q. R. Co.*, 257 *U. S.* 563, held that in view of the purpose of the Act and the impossibility of accomplishing that purpose if State traffic did not contribute its fair proportion to the cost of the maintenance of the national transportation system, the "dove-tail" relation between Section 13 (4) and Section 15a authorized the interpretation that the Commission was thereby vested with power to remove a revenue burden on interstate commerce, caused by State rates.

Thus the necessity to so interpret the Act as to make it workable caused this Court, as said by Circuit Judge Batts, in *Eastern Texas R. Co. et al v. Railroad Commission of Texas, et al.*, 242 *Fed.* 300 (referring to the Shreveport case) "to carry the rules of interpretation to the extreme limit" and, as also said by Judge Batts in the same opinion, "certainly, the authority will not go beyond the necessity."

In considering the revenue powers of the Interstate Commerce Commission in this connection, the Supreme Court in the Florida Log Case (*Florida vs. United States, supra, text* 211), said in part:

> "In construing the statute this Court has held that the general provision of section 13 (4) prohibiting 'unjust discrimination against interstate commerce' and authorizing the Commission to establish intrastate rates to prevent such discrimination, is to be read in connection with Section 15a, both of which were added by Transportation Act, 1920 (secs. 416, 422, 41 Stat. at L. 484, 488).

There is what this Court has called a 'dove-tailed relation between the two provisions. The authority granted by section 13 (4) is thus to be considered in the light of the affirmative duty of the commission to fix rates and to take other important steps to maintain an adequate national railway system.

"As intrastate rates and the income from them must play a most important part in maintaining such a system, the effective operation of the Act requires that intrastate traffic should pay 'a fair proportionate share' of the cost of maintenance. And if there is interference with the accomplishment of the purpose of the Congress because of a disparity of intrastate rates as compared with interstate rates, the Commission is authorized to end the disparity by directly removing it." (Wisconsin Passenger Fares Case, 257 U. U. 563; and New York case, 257 U. S. 591).

"The question in the present cases, then is not one of authority, but of its appropriate exercise. The propriety of the exertion of the authority must be tested by its relation to the purpose of the grant and with suitable regard to the principle that whenever the federal power is exerted within what would otherwise be the domain of state power, the justification of the exercise of the federal power must clearly appear. Illinois Central Railroad Company v. State Public Utilities Commission, 245 U. S. 493 * * * supra."

The ultimate "purpose of the Congress" was expressed in Section 15a of the Act and was to maintain an adequate national railway system (Wisconsin Railroad Commission v. C. B. & Q. R. Co. Supra).

Section 15a provided for the recapture of excess earnings from the strong roads and the creation of a general railway revolving fund from which loans and advances might be made to the weak roads. The affirmative duty with respect to fixing rates imposed by Section 15a, related to all carriers as a *whole*, or to all in each rate group as a *whole*, and to *aggregate* income as distinguished from the income of a particular carrier and the recapture clause was the "heart of the plan."

> Dayton-Goose Creek R. Co. v. United States, 263 U. S. 456, text 485.

Shortly after the Transportation Act of 1920 became the law, the Interstate Commerce Commission, with all the rail carriers of the United States before it, determined that in the performance of its duty under Section 15a, the railroads of the nation ought to be divided into four "rate groups" or territories: the Eastern, the Southern, the Western, the Mountain Pacific. The Southern rate group or territory comprised the territory east of the Mississippi River and south of a line drawn approximately westwardly through Richmond, Virginia, and along the Ohio River. It comprised what theretofore had been and still is Southern Freight Classification Territory. 58 I. C. C. 220.

Horizontal increases in freight and passenger fares were allowed at the time of the division into groups in all the groups, 58 I. C. C. 220.

No power or duty to deal with intrastate rates was conferred or imposed by Section 15a. Wisconsin Passenger Fares case, supra. The power of the Federal Commission to deal with intrastate rates arises under Section 13 (4) of the Act, and only then when the disparity between the state and interstate rates is so great and the State rate is so low as to cast a substantial burden upon general interstate commerce and thus interfere with the *"purpose of the Congress"* set forth in Section 15a to maintain a *national transportation system.*

> Wisconsin case, supra; New York v. United States, 257 U. S. 591; Florida log case, supra.

It is only when it "clearly appears" that the interstate traffic is bearing substantially more and the intrastate traffic substantially less than its fair proportionate share of maintaining the national transportation system that the Federal power arises or can be exercised under Section 13 (4) as an incident to the performance by the Commission of its duties under Section 15a.

> New York case, supra; Florida Log case, supra.

(c) *The Log Rates in the Southern Rate Group.*

We propose to examine briefly the status of log rates in the Southern Group. First it must be pointed out that no

general level of interstate rates on logs, either in the group or even any State comprising it, has ever been fixed by the Interstate Commerce Commission. No general investigation upon the subject has ever been had. The most that can be said is that the scale here prescribed for statewide intrastate application in Florida had been "either prescribed or approved" by that Commission in four proceedings involving interstate rates from particular points of origin to particular points of destination (186 I. C. C. 157, text 162).

In its report of July 5, 1932, (186 I. C. C. 157) the Commission compared the Cummer Scale (the Florida intrastate scale of rates) with the scales of interstate log rates of the Seaboard Air Line, the Southern Railway, the Louisville & Nashville, the Illinois Central, and the Mobile & Ohio, as other railroads, and showed that those rates on those other railroads were substantially the same as the rates here prescribed by the order, saying (text 188) that the rates prescribed "are the same or substantially the same as the rates generally in effect and under which logs freely move throughout the South".

It was subsequently demonstrated to the Commission that at or about the time of the making of the order and at or about the time of the making of the order of January 9, 1933, these very same other railroads, among many others, had voluntarily established rates (and the Commission had permitted such rates to become effective) which superseded the rates with which the Cummer scale was compared and which were found by the Commission in its report of January 9th, 1933 (190 I. C. C. 588, text 589)

to be "on substantially the same level as the Cummer Scale".

A great many of these Newly Reduced Rates were shown in the further re-opened proceedings (See R. 1322-1323 for list of tariffs and Exhibit 140 before I. C. C., in separate bound volume, for the tariffs themselves). Notwithstanding this showing the Commission made its report and order of January 9, 1933, affirming its order of July 5, 1932. Thereupon these appellants filed with the Commission their petitions for further consideration and re-hearing (R. 378, 481 and 558) setting forth many additional tariffs publishing these Newly Reduced Rates which tariffs had been published and/or discovered since the last hearing before the Commission. Those petitions were denied February 13, 1933 (R. 1377). A few additional tariffs published and/or discovered since the filing of these petitions were set forth in the supplemental bills and by affidavit with such tariffs attached (R. 571-576U) in connection with the supplemental bills of complaint.

For the purpose of fully informing the Court and dispelling any attempt to minimize the importance or widespread application of these Newly Reduced Rates which may be received from an examination of the report of January 9, 1933, we have tabulated those tariffs, their effective dates and application, as follows:

TABULATION OF TARIFFS PUBLISHING NEWLY REDUCED RATES, THEIR DATE OF ISSUANCE AND APPLICATION.

IN THE SOUTHERN RATE GROUP

Railroad	Tariff No.	Issued	Application
L. & N. R. R.	I. C. C. No. 16022 Supp. 19	Jan. 27, 1933*	Between all stations, except on Ala. intrastate traffic and except on traffic from, to or between Ill., Ind., Mo., and/or Ohio.
N. C. & St. L. Ry	I. C. C. No. 3284-A	Aug. 26, 1932	Between all stations.
G. M. & N. R. R.	I. C. C. No. 1137	Mar. 31, 1932	Between all stations.
Ga. & Fla. R. R.	I. C. C. No. 558	May 6, 1931*	Between all stations.

* Effective date.

Railroad	Tariff No.	Issued	Application
Ill. Cent. R. R.	I. C. C. No. 7786 Supp. 3	May 3, 1932	To Corinth, Fernwood, Grenada, Jackson, McComb, Pickens, and Water Valley, Miss., and to Dyersburg and Jackson, Tenn., and to Ponchatoula, La., from I. C. R. R. stations.
Ill Cent. R. R. and Y. & M. V. R. R.	I. C. C. No. 7748 Supp. 5	Dec. 16, 1932	To Tallulah, La., from Ill. Cent. R. R. and Y. M. V. R. R. stations in Miss.
Y. & M. V. R. R.	I. C. C. No. 7848 Supp. 4	Jan. 7, 1933	To Memphis, Tenn., from Y. & M. V. R. R. stations in Miss.
Y. & M. V. R. R.	I. C. C. No. 7313 Supp. 24	Sept. 17, 1932	To Memphis, Tenn., from Minter City, Miss.

Railroad	Tariff No.	Issued	Application
Y. & M. V. R. R.	I. C. C. No. 7810	June 16, 1932	To Charleston, Clarksdale, Gloster, Greenville, Greenwood, Grenada, Hickory, Holcomb, Jackson, Kings, Lambert, Meridian, Natchez, Phillipp, Stevenson, Trotters Point, Vicksburg, and Yazoo City, Miss., from all Y. & M. V. R. R. stations east of the Mississippi River.
Y. & M. V. R. R.	I. C. C. No. 7810 Supp. 5	Oct. 12, 1932	Adds Denham Springs, La., and Tchula, Miss., to list last above.

Railroad	Tariff No.	Issued	Application
St. L.-S. F. Ry.	I. C. C. No. 9195 Supp. 28	Aug. 11, 1932	To Memphis, Tenn.; from St. L.-S. F. Ry. stations in Tenn., and Miss.
St L.-S. F. Ry.	I. C. C. No. 9019 Supp. 17	Aug. 11, 1932	Between all stations in Ala., Fla. and Miss., except not applicable on Miss. intrastate traffic.
M. & O. R. R.	I. C. C. No. B-860	Aug. 23, 1932	To Columbus, Corinth, and Meridian, Miss., and Humboldt and Jackson, Tenn., and Mobile and Whistler, Ala., and Wycliffe, Ky., from M. & O. R. R. stations.

Railroad	Tariff No.	Issued	Application
Sou. Ry.	I. C. C. No. A-10425 Supp. 5	Sept. 23, 1932	To Chattanooga, Tenn., from Sou. Ry. stations in Ala., Ga., and Tenn., and from A. G. S. R. R. stations in Ala. and Tenn., and from C. N. O. & T. P. Ry. stations in Tenn.
Sou. Ry.	I. C. C. No. A-10472	Aug. 12, 1932	To Corinth, Miss., from Sou Ry. stations in Ala., Miss., and Tenn.
Sou. Ry	I. C. C. No. A-10448 Supp. 2	Aug. 12, 1932	To Memphis, Tenn., from Sou. Ry. stations in Miss. and Tenn.

Railroad	Tariff No.	Issued	Application
Sou. Ry. (1)	I. C. C. No. A-10467	July 11, 1932	To Charleston, S. C., from Sou. Ry. stations in S. C. and Ga.
Sou. Ry.	I. C C. No. A-10425 Supp. 7	Dec. 31, 1932*	To Dayton, Tenn., and Fayette, Ala., from Sou. Ry. stations,, and to Knoxville, Tenn., from C. N. O. & T. P. Ry. stations.
Sou. Ry.	I. C. C. No. A-10425 Supp. 6		To Mobile and Selma, Ala., from Sou. Ry. stations; and to York, Ala., from Sou. Ry. and A. G. S. Ry. stations.

(1) Applicable to conduits, cross arms, crossties, fence posts, lumber, paving blocks, piling, poles and timber.

Railroad	Tariff No.	Issued	Application
S. A. L. Ry.	I. C. C. No. A-7638	Sept. 9, 1932	To Montgomery, Ala., from S. A. L. Ry. stations in Ala. and Ga.
S. A. L. Ry.	I. C. C. No. A-7528 Supp. 8	Aug. 10, 1932*	To Boykins, Va., from S. A. L. Ry. stations in Va. and N. C.
S. A. L. Ry.	I. C. C. No. A-7528 Supp. 9	Dec. 11, 1932*	To Norfolk, Va., from Fitz Siding, N. C.
Sav. & Atl. Ry.	I. C. C. No. 115	July 14, 1930*	To Warrenton, Sardis and Newington, Ga., from S. & A. Ry. stations.
Cent. of Ga. Ry.	I. C. C. No. 2851	Aug. 26, 1932*	To Augusta and Waynesboro, Ga. from Cent. of Ga. Ry. stations.

Railroad	Tariff No.	Issued	Application
Cent. of Ga. Ry.	I. C. C. No. 2848	Aug. 11, 1932	To Montgomery, Ala., from Cent. of Ga. Ry. stations in Ala. and Ga.
Cent of Ga. Ry.	I. C. C. No. 2867	Jan. 23, 1933*	To Dothan, Ala., from Cent. of Ga. Ry. stations in Ala., Fla. and Ga.
A. C. L. R. R. (2)	I. C. C. No. 2745	Dec. 10, 1932*	To Montgomery, Ala., from A. C. L. R. R. stations.
A. C. L. R. R. (2)	I. C. C. No. 2745 Supp. 1	Dec. 10, 1932*	To Charleston, S. C., from A. C. L. R. R. stations in S. C.
A. C. L. R. R.	G. F. O. No. 256	Dec. 5, 1932	To West Marion, S. C. from A. C. L. R. R. stations.

(2) Applicable to cross arms, cross ties, lumber, piling, poles and timber not otherwise specified.

Railroad	Tariff No.	Issued	Application
C. & G. Ry.	I. C. C. No. 36 Supp. 6	June 6, 1932	To Columbus, Greenville, Greenwood and West Point, Miss.; from all C. & G. Ry. stations to distance of 100 miles.
C. & G. Ry.	I. C. C. No. 36 Supp. 8	Aug. 5, 1932	To above listed stations from all C. & G. Ry. stations to 170 miles.
G. & S. I. R. R.	I. C. C. No. 7789	Apr. 15, 1932	To Jackson and Laurel, Miss., from G. & S. I. R. R. stations.
Miss. Cent. R. R.	No. 780-E	Aug. 10, 1928	To Bude and Hattiesburg, Miss., from Miss. Cent. R. R. stations.

Railroad	Tariff No.	Issued	Application
T. A. & G. Ry.	I. C. C. No. A-659 Supp. 115		To Chattanooga, Tenn. and Gadsden, Ala., from T. A. & G. Ry. stations.
W. Ry. of Ala.	I. C. C. No. A-129	Sept. 9, 1932	To Montgomery and Selma, Ala., from W. Ry. of Ala. stations.
N. & S. R. R. (3)	I. C. C. No. A-760	May 15, 1931*	To Norfolk, Va., from N. & S. R. R. stations.
N. O. & N. E. R. R.	I. C. C. No. 3101	June 24, 1932	To Laurel, Miss., from N. O. & N. E. stations.
St. L. S. W. Ry.	I. C. C. No. 4676	July 22, 1932	To Memphis, Tenn.
C. R. I. & P. Ry.	I. C. C. No. C-12130 Supp. 9 and 10	Sept. 28, 1932	To Memphis, Tenn.

(3) Applicable to lumber, piles and other forest products.

IN THE SOUTHWESTERN RATE GROUP

Railroad	Tariff No.	Issued	Application
C. R. I. P. Ry.	I. C. C. No. C-12130 Supp. 9 and 10	Sept. 28, 1932	Between all stations in Ark and La.
Mo. Pac. R. R.	I. C. C. No. A-7348 Supp. 12	Mar. 2, 1932	Between all Mo. Pac. R. R. stations in La., except Gouldsboro, Gretna, Harvey, Marrero, New Orleans, Westwego and Westwego Elevators.
Mo. Pac. R. R.	I. C. C. No. A-7349 Supp. 15	Aug. 1, 1932	Between all Mo. Pac. R. R. stations in Missouri in interstate traffic.

Railroad	Tariff No.	Issued	Application
Mo. Pac. R. R.	I. C. C. No. A-8163	July 5, 1932	Between all Mo. Pac. R. R. stations in Arkansas.
Mo. Pac. R. R.	I. C. C. No. 8018 Supp. 6	July 18, 1932	Between all Mo. Pac. R. R. stations in Ark., Louisiana (with few exceptions), Mo. (with few exceptions), Oklahoma and Texas in interstate traffic.
St. L.-S. F. Ry.	I. C. C. No. 9640	July 22, 1932	Between all St. L.-S. F. Ry. stations in Missouri.
St. L.-S. F. Ry.	I. C. C. No. 9638	July 22, 1932	To Cape Girardeau, Mo., from stations in Arkansas and Missouri.

Railroad	Tariff No.	Issued	Application
St. L.-S. F. Ry.	I. C. C. No. 9346 Supp. 17	July 19, 1932	Between all stations in Ark., and on interstate traffic between all stations in Ark. and Mo.
St. L.-S. F. Ry,	I. C. C. No. 9642	Jan. 31, 1933	To Fayette Jct., Fayetteville and Ft. Smith, Ark., from stations in Ark. and Mo., and from Cedars, Okla.
St. L. S. W. Ry.	I. C. C. No. 4676 Supp. 3	July 22, 1932	Between all stations in Ark., La. and Mo.
Y. & M. V. R. R.	I. C. C. No. 7811	June 17, 1932	Between Y. & M. V. R. R. stations West of Mississippi River in Louisiana.

(Record References: R. 378-383, R. 343-345, R. 357 and 413, R. 576A-576U, and Ex. 140 before I. C. C. which is in separate bound volume of record).

The maps (R. 388 and 490) attached to the supplemental bills of complaint of the State of Florida and of the Wilson Cypress Company and Wilson Lumber Company, as Exhibit "D" of those bills respectively, show graphically the widespread application of these Newly Reduced Rates, both in Southern and Southwestern territory. They are applicable, in intrastate and interstate commerce, in Florida upon four railroads. They are applicable on twenty-two railroads, in intrastate and interstate commerce, in the Southern Rate Group and in every State in that Rate Group except West Virginia. They are applicable on five railroads, in intrastate and interstate commerce, in five States in the Southwestern Rate Group. They are applicable over substantially all of the lines of the Louisville & Nashville Railway, which is controlled through stock ownership by the Atlantic Coast Line Railroad, and over the entire lines of the Nashville, Chattanooga & St. Louis Railway, which in turn is controlled through stock ownership by the Louisville & Nashville Railway.

The Cummer Scale is a mileage scale of rates expressed in lump sum terms per car of the minimum weight of 50,000 pounds with excess weight charged for in proportion. The charge per hundred pounds under that scale can therefore be readily determined.

The rates of the Southern Railway to Charleston, S. C., the rates of the Seaboard Air Line to Boykins and Norfolk, Va., the rates of the Central of Georgia Railway to Augusta and Waynesboro, Ga., the rates of the Atlantic Coast Line to Montgomery, Ala., and Charleston, S. C., and West Marion, S. C., the rates of the Norfolk & Southern Railroad to Norfolk, Va., the rates of the Savannah & Atlanta Railway

to Warrenton, Sardis and Newington, Ga., and the rates of the Georgia & Florida Railroad applicable over its entire lines, are expressed in cents per hundred pounds or in cents per car of a certain minimum weight with excess in proportion and thus are demonstrated by a simple comparison to be upon substantially the level of the Cummer Scale. The rates published by all the other tariffs above referred to are published as a mileage scale on the basis of a lump sum return per car regardless of weight. Most of the rates so published are upon the following basis, viz:

Distance	Rate Per Car Regardless of Weight.
25 miles and less	$12.00
50 miles and over 25 miles	15.00
75 miles and over 50 miles	17.50
100 miles and over 75 miles	20.00

The table below compares the charges for hauls up to 100 miles, per car of the weight mentioned, for the transportation of logs: upon the Cummer Scale intrastate in Florida (Column 2); upon the Newly Reduced Rates (Column 3); and upon the scale prescribed by the Interstate Commerce Commission intrastate in Florida herein (Column 4):

(1) Hauls in Miles	(2) Cummer Scale	(3) Newly Reduced Rates	(4) Scale Fixed by I. C. C.
Computed on Carload of 80,000 pounds			
25 miles	$13.68	$12.00	$28.00
50 miles	16.80	15.00	36.00
75 miles	18.40	17.50	44.00
100 miles	20.80	20.00	48.00

Computed on Carload of 90,000 pounds			
25 miles	15.40	12.00	31.50
50 miles	18.90	15.00	40.50
75 miles	20.70	17.50	49.50
100 miles	23.40	20.00	54.00
Computed on Carload of 100,000 Pounds			
25 miles	17.12	12.00	35.00
50 miles	21.00	15.00	45.00
75 miles	23.00	17.50	55.00
100 miles	26.00	20.00	60.00
Computed on Carload of 110,000 Pounds			
25 miles	18.81	12.00	38.50
50 miles	23.10	15.00	49.50
75 miles	25.30	17.50	60.50
100 miles	28.60	20.00	66.00
Computed on Carload of 120,000 Pounds			
25 miles	20.52	12.00	42.00
50 miles	25.20	15.00	54.00
75 miles	27.60	17.50	66.00
100 miles	31.20	20.00	72.00

It will thus be observed that on a car of 80,000 pounds the Cummer Scale at the distance mentioned is slightly higher than the Newly Reduced Rates and that the Newly Reduced Rates are less than half of the rates prescribed by the Interstate Commerce Commission. On a car of 120,000 pounds the Cummer scale is from 156% to 174% of the Newly Reduced Rates and the rates which the Interstate Commerce Commission has prescribed for application in Florida are from 350% to 377% of the Newly Reduced Rates.

With reference to the weights of cars under the Newly Reduced Rates we quote the following from the report of January 9, 1933, of the Interstate Commerce Commission (190 I. C. C. 588, text 593):

> "The parties are in agreement that the tendency of rates per car regardless of weight is to increase the loading of the cars. The Florida interveners show that since the establishment of these per car rates the mill at Chattanooga, referred to above, will accept only cars that have a loading capacity of about 125,000 pounds and that its average loading ranges from 105,000 to 110,000 pounds; and that mills at Montgomery and Memphis have received cars loading over 90,000 pounds and a mill at Laurel has received cars loading as high as 122,000 pounds."

The supplemental bill of complaint modestly asserts that loading of logs in the Southeastern States, including Florida, upon lump sum per car weights regardless of weight would substantially exceed 70,000 pounds per car and would average from 75,000 to 85,000 pounds per car or more (R. 355). The evidence before the Interstate Commerce Commission sustains this and there can be no dispute upon this subject (See also R. 1325-1347, being list of shipments of cars containing over 70,000 pounds each of logs to Wilson Cypress Company, Wilson Lumber Company and Putnam Lumber Company during two year period of the higher rate although there was then no inducement to load over 40,000 pounds to the car).

The Interstate Commerce Commission is thus well justified in finding that these Newly Reduced Rates are "on substantially the same level as the Cummer Scale".

If, as the Interstate Commerce Commission stated on July 5, 1932, without any evidence to that effect in the record, logs were "freely" moving "throughout the South" upon rates the same or substantially the same as those prescribed by its order here involved, it is difficult to understand why nearly all of the major railroads in the South should at or about that very time, voluntarily and with the permission of that Commission, reduce their rates to the level of the Cummer Scale. The rates so reduced were the very ones with which the Cummer Scale was compared. Obviously logs were not freely moving at the high rate, and we shall hereinafter demonstrate by the havoc and destruction wrought upon employment and investments in the once-great lumber industry in Florida by two years enforcement of that high rate there—the enormous losses which were taken rather than to pay the high rate—that logs never have and never will move under the rate here prescribed.

(d) *The Attempt of the Interstate Commerce Commission to Differentiate Between the Newly Reduced Rates in the Southern Rate Group and the Rates Properly Applicable in Florida.*

The Interstate Commerce Commission in its report of January 9, 1933, attempts to make some point of the fact that some of these Newly Reduced Rates are

transit rates, saying (text 592) that "while these rates standing alone would not be attractive to these carriers from a revenue standpoint, they are attractive when coupled with the rates for the outbound movement of the manufactured product."

In attempting to make this distinction between the Newly Reduced Rates and the Cummer scale, the Interstate Commerce Commission has ignored the fact that it refused to receive the evidence to show that no such distinction could be drawn. The record before the Interstate Commerce Commission shows (R. 960) that the Florida lumber companies who were interveners in this proceeding offered to prove that in practical operation and effect the Cummer scale as applied in Florida was tantamount to a transit scale in that the Atlantic Coast Line Railroad got the outbound movement of lumber under the Cummer scale. The Atlantic Coast Line Railroad objected to this testimony. The Examiner of the Interstate Commerce Commission sustained that objection and refused to receive that evidence (R. 960). The offer was later repeated for the same purpose and again refused (R. 991-992). And again when the traffic manager of the Atlantic Coast Line Railroad was on the witness stand in the re-opened proceeding the interveners on cross-examination offered to prove the same thing by him and to prove that he had testified to that effect in another proceeding, and again that testimony was refused (R. 1066-1067).

Yet having refused to receive this testimony showing that the Atlantic Coast Line received the outbound movement of manufactured products under the applica-

tion of the Cummer scale the Interstate Commerce Commission nevertheless tries to distinguish between the Cummer scale and these Newly Reduced Rates by asserting that these Newly Reduced Rates for the most part require the outbound shipment of manufactured products to be made over the lines of the carrier which moves the logs to the mill and asserting that these Newly Reduced Rates are attractive when coupled with the rates for the outbound movement of the manufactured product. The action of the Interstate Commerce Commission in refusing this proof and then reaching this conclusion is not only inconsistent but seems to us arbitrary and unreasonable.

But this is beside the point. Disregarding the fact that many of the Newly Reduced Rates contain no provision as to the outbound product, we call attention to the fact that Section 15a of the Interstate Commerce Act as amended is concerned with "the aggregate" income of all the carriers "*in the rate group*". If any carrier in the Southern group receives the outbound traffic "the purpose of the Congress" is satisfied. So if the distinction could be made by reason of the arbitrary refusal of the Commission to refuse the evidence, it is a distinction without a difference.

Again the Commission refers to the fact that many of the Newly Reduced Rates were published in order to meet truck competition, and asserts that there is but little competition between the Atlantic Coast Line Railroad and trucks for the movement of logs in Florida for distances over 25 miles and (text 598) says,

> " * * * in the judgment of defendant's responsible traffic official, it is not of sufficient importance to warrant the establishment or maintenance of subnormal rates in an effort to regain it."

Without examining the record which shows that Florida has as good highways as the other Southern States and we think shows as much truck competition in Florida as elsewhere, we remind the Court that the order of the Interstate Commerce Commission in this proceeding is asserted to have been based upon the revenue needs for the maintenance of an adequate transportation system and that there is no difference in the results so far as those revenue needs and the maintenance of that system is concerned whether a low rate is in effect for the purpose of meeting truck competition or for some other purpose. The low log rates were and are generally in effect and their result in this respect is the same regardless of the *motive* of their origin.

The report of January 9, 1933, of the Interstate Commerce Commission asserts that the transportation conditions are not substantially similar throughout Southern territory, and asserts that this was pointed out in the report of July 5, 1932, and likewise refers to the fact that in certain other proceedings arbitraries, or higher charges, have been permitted for the transportation of certain commodities in the Florida peninsula, which arbitraries were in two particular instances as much as approximately forty per cent. higher than the remainder of Southern territory. This proceeding is the

first time that Commission has ever suggested an arbitrary ranging from one hundred per cent. to more than three hundred and fifty per cent.

The only difference which that report points out between transportation conditions in Florida and elsewhere where these Newly Reduced Rates are in effect, is the fact that the Interstate Commerce Commission in other proceedings has in a few instances permitted higher rates in the Florida peninsula. The instances referred to relate to interstate rates and not intrastate rates which are here involved. In pointing to the proceedings in which such higher rates have been permitted in the Florida peninsula, the Interstate Commerce Commission has picked out the two proceedings in which it has gone to the furtherest extreme in that respect. In other proceedings no such arbitraries have been permitted or prescribed. (See for instance, Fertilizer Case, 113 I. C. C. 389).

The fact that the Interstate Commerce Commission has in some proceedings permitted no arbitraries for the interstate transportation to and from the Florida peninsula and in others has permitted as much as forty per cent. is indicative that in dealing with the particular rates therein involved that Commission has considered the transportation conditions surrounding the particular traffic involved. But no such treatment has been accorded to the log traffic in this report. The only testimony upon the subject is that of Mr. True, secretary of the Southern Cypress Manufacturers Association, who has had thirty years' experience in traffic work in connection with the transportation of lumber and who made

a special investigation upon this subject in many of the localities in the Southern territory where the Newly Reduced Rates are applicable. He said (R. 945):

> "The conditions under which logs are loaded onto railroad cars and transported into the mills at Jacksonville, Memphis, Montgomery, Laurel, and Chattanooga, are practically identical with the exception that the transportation conditions around Chattanooga are less favorable, due to the topography of the country and the fact that the logs originate mostly on dead-end branch lines, whereas most of the logs over the Coast Line into Jacksonville originate on the main line in level country where the operating conditions are quite favorable."

He had already testified (R. 944) that the log movement into Chattanooga was for the most part over dead or branch-end lines, in highly mountainous sections where there were either heavy grades or sharp curves or both. He also testified (R. 945) that the topographical conditions in the territory along the Mississippi River in Arkansas and Mississippi are generally less favorable than over the Atlantic Coast Line Railroad into Jacksonville, and that there was little difference between the situation at Jacksonville and that at Montgomery, with the exception that the logs into Montgomery originated on dead or branch lines for the most part. He also testified that there was no difference in the physical operation of terminals (R. 945).

Mr. F. S. Buffum, president of the appellant F. S. Buffum Company, Inc., who operates a lumber mill in Jacksonville, and who has been in the lumber business for thirty-five years, also visited the territory within which the Newly Reduced Rates are applicable shortly before the hearing in the re-opened proceedings. He testified (R. 965) that the method of loading and unloading cars is practically identical throughout the South and Southwest, except that under these Newly Reduced Rates the weight of the average loading has been materially increased. He likewise testified as to the topography of the country in which the Newly Reduced Rates were then applicable (R. 965-967), and showed it to be less favorable than conditions surrounding the transportation of logs in Florida.

This testimony was not contradicted by anyone, nor did anyone else testify with respect to the transportation conditions in the territory where the Newly Reduced Rates are applicable.

The report of the Interstate Commerce Commission of January 9, 1933, refers to the previous report of July 5, 1932, in which it says that it has found that transportation conditions in Florida are not as favorable as elsewhere. In that report it found that transportation conditions in Florida were less favorable than they *were on the lines of the Atlantic Coast Line Railroad outside* of Florida, and this conclusion was based upon two things: first, that the density of traffic—not the density of log traffic, but the density of all traffic—was less in Florida than elsewhere on the lines of that carrier; and second, that the average cost of handling freight—not logs, but all freight traffic—was greater in Florida than elsewhere on the lines of that

railroad. The reason why the average costs are higher in Florida is that it is a terminal State, that is, there is no interstate traffic passing through the State as all interstate traffic in Florida is either loaded or unloaded there. That loading or unloading is an additional expense which is incurred in the State and thereby increases the average cost there (See for example, R. 905, testimony of defendant's witness).

However, it must here be recalled that we are here dealing with intrastate traffic which begins and ends within the State, and this would be true of any intrastate traffic in Florida or in any other State. Hence, the fact that Florida is a terminal State has no bearing here.

With respect to the density of the traffic—as applied not to the whole traffic, but to the log traffic itself—the report of July 5, 1932, shows (186 I. C. C. 157, at page 166) that in 1928 (the year before the former order of the Commission became effective), more than one-half of all the log traffic the Atlantic Coast Line Railroad had was in Florida, although not more than forty per cent. of the system mileage was in Florida (186 I. C. C., p. 164), and the actual density of the log traffic was therefore greater in Florida than elsewhere on the system.

Furthermore, the record does not disclose the density of traffic on the railroads which have established the Newly Reduced Rates at all. It is not known whether the density of traffic on those railroads is any greater or as great as the density of traffic on the Atlantic Coast Line Railroad in Florida, if density of traffic is material to the subject here involved.

We have asserted in the supplemental bills that trans-

portation conditions for the transportation of logs are as favorable or more favorable in Florida than they are elsewhere in Southern territory where these Newly Reduced Rates are in effect. The record before the Interstate Commerce Commission sustains that assertion without contradiction.

(e) *There was no "Substantial Disparity" Between Interstate and Intrastate Rates Upon Which the Commission Could Act.*

There has been no change in the boundaries of the Southern rate group since it was designated by the Commission pursuant to Section 15a. We have demonstrated that at or about the very time the Commission made its reports and orders here involved it was giving its acquiescence and tacit approval to the Newly Reduced Rates which are as low as, or lower than, the Cummer Scale in Interstate Commerce between nearly all of the states in the Southern group. The standards by which the Commission unfavorably measured the Cummer Scale were swept away. We have shown that in most of those states most of the railroads have established in intrastate commerce (as well as interstate commerce) those new rates during that same period. The record shows that the Commission was permitting this to be done at the very time when it was attempting to increase the Florida intrastate rate to more than double what has become and is becoming the general level of interstate and intrastate rates in the Southern and Southwestern rate groups. The record shows that more railroads throughout this and adjoining

groups each month were establishing the newly reduced rates in interstate commerce and in intrastate commerce. We again assert that the general level of log rates in the Southern group has become that of the Cummer Scale or its equivalent, or lower.

This is a case involving intrastate rates on a single commodity on a single railroad within and throughout a single State where the Commission has never made any findings or orders with respect to the corresponding interstate rates, either from all of the State or for all of the railroads within any portion of the State or for the railroads as a body in the rate group, and where the general level of the rates on the commodity in the rate group, as voluntarily established by the railroads and permitted by the Commission, is substantially the same as the intrastate rate which the Commission seeks to supersede by its order. Not even on the Atlantic Coast Line Railroad has the Commission ever fixed interstate rates on the commodity except from the small portion of Northern Florida where no logs ever moved in interstate commerce.

We know of no case where an order of the Interstate Commerce Commission with respect to intrastate rates has been sustained upon any theory except that the order was raising the level of the intrastate rates to the general level of the interstate rates which were found to be discriminated against. Here there is merely an inquiry into the reasonableness of a particular intrastate rate, a declaration of its unreasonableness, and a determination therefrom that it discriminates against interstate commerce as such.

This Court has clearly pointed out the character of discrimination against interstate commerce which justifies the invasion of the domain of the State by the Interstate Commerce Commission to fix State rates.

In four cases this Court has directly considered this power of the Commission and the circumstances under which its exercise will be sustained. The first two of these were the cases in which the rule was announced, *Wisconsin Railroad Commission v. C. B. & Q. R. Co., supra*, and *New York v. United States, supra*. The third case was this *Florida Log Case*, in which the Court set aside the previous order of the Commission in this proceeding. The fourth case was *United States v. State of Louisiana*, ... U. S. ..... (not yet reported) (decided November 6, 1933). In the Wisconsin and New York cases, where the rule was first laid down, and in the more recent Louisiana case, it was shown that the Interstate Commerce Commission, in the performance of its duties under Section 15a of the Act, had prescribed a general level of rates for interstate application of carriers in the *rate group* and that the state authorities of Wisconsin, New York and Louisiana had declined to permit the rates applicable to State traffic to be brought up to the level so prescribed.

In sustaining the order of the Commission in the *Wisconsin Case* the Court said, *257 U. S., text 590*:

> "It is said that our conclusion gives the Commission unified control of interstate and intrastate commerce. It is only unified to the extent of maintaining efficient regulation of interstate commerce under the paramount power of Congress. It does not involve general regulation of

> intrastate commerce. Action of the Interstate Commerce Commission in this regard should be directed to *substantial disparity which operates as a real discrimination against, and obstruction to, interstate commerce*, and must leave appropriate discretion to the state authorities to deal with intrastate rates as between themselves on the general level which the Interstate Commerce Commission has found to be fair to interstate commerce." (Italics supplied)

At other places in the opinion in the *Wisconsin Case* the Court stated that the Interstate Commerce Commission's authority to control intrastate rates arises only where such control is necessary to the "efficient regulation of interstate commerce", and only where "there is demonstrable injury and restraint upon interstate commerce which is real and substantial".

When the Court came to consider the previous order of the Commission in this Florida Log case it found a different situation. The Interstate Commerce Commission had made no general investigation nor had it fixed a general level of rates. It acted only upon the rates of the Atlantic Coast Line on logs from north Florida to Georgia and within Florida. It fixed interstate rates only from a limited territory in Northern Florida into Georgia. It originally undertook to predicate its order upon an alleged finding of discrimination between persons and localities but sought to buttress this by a finding of unjust discrimination against interstate commerce generally. It was there urged upon this Court that if any burden

existed against interstate commerce because of the effect upon revenues of the Florida rates, that such burden was not sufficient to be a real obstruction to interstate commerce and therefore did not come within the rule laid down by the Court when it first interpreted the Act so as to give the Commission the power to deal with State rates in order to remove a revenue burden on interstate commerce. The Court held that there were no findings made by the Commission sufficient to sustain its order. The Court expressly held that this defect was not procedural, but that there was a want of "basic or essential findings". The Court pointed out that the exertion of the Authority of the Commission to change State rates in order to remove a revenue burden on interstate commerce could only be sustained where such action was necessary to carry out the purpose of the Act. The Court said, *282 U. S., text 211*:

> " * * * The propriety of the exertion of the authority must be tested by its relation to the purpose of the grant and with suitable regard to the principal that whenever the federal power is exerted within what would otherwise be the domain of state power, the justification of the exercise of the federal power must clearly appear."

The difference between such a proceeding as the one at bar and one raising intrastate rates generally to the level generally prescribed for interstate commerce was carefully pointed out by this Court in the recent case of

United States et al., v. State of Louisiana, et al., supra. There it appeared that in the *Fifteen Per Cent Case (178 I. C. C. 539; 179 I. C. C. 215)* the Interstate Commerce Commission in a general investigation of freight rates on all commodities throughout the nation had authorized certain surcharges in interstate rates on certain commodities. The Public Service Commission of Louisiana refused to permit the surcharges on intrastate rates in that State, and upon petition and investigation the Interstate Commerce Commission ordered them put into effect in intrastate commerce. The order was attacked as not being based upon sufficient findings. This Court said:

> "This Court has consistently held that this section (Section 13 (4)) is to be construed in the light of section 15a (2) and as supplementing it, so that the forbidden discrimination against interstate commerce by intrastate rates includes those cases in which disparity of the latter rates operates to thwart the broad purpose of section 15a to maintain an efficient transportation system by enabling the carriers to earn a fair return. * * *
>
> "As pointed out in the reports of the Commission in this case and others (see Increased Rates, 1920, 58 I. C. C. 220; New York Passenger Fares, 59 I. C. C. 290), section 15a, by its terms, commands the Commission, in providing the required revenue by increasing rates, to deal with the carriers of the Nation as a whole or in broad classes, and as this Court recognized

in the New England Divisions Case, supra, 197, 198, this requirement would be nullified and the administrative arm of the Commission paralyzed, if instead of adjudicating upon the rates in a large territory on evidence deemed typical of the whole rate structure, it were obliged to consider the reasonableness of each individual rate before carrying into effect the necessary increased schedule."

Further differentiating between the order involved in this surcharge case and the order which the Court had dealt with in the former appeal in this proceeding, the Court said:

"A question different from that before us was presented in Florida v. United States, supra. There the discrimination was essentially one of undue prejudice against shippers, confined by the evidence to rates prevailing in northern Florida. It involved only one railroad and one commodity. It was not the general revenue proceeding authorized by Section 15a. The Court was careful to point out that the Commission had undertaken to establish a state-wide level of intrastate rates without any findings with respect to the corresponding interstate traffic which would tend to support the conclusion that a state-wide alteration of intrastate rates was necessary to protect the interstate commerce involved."

Undoubtedly the "dove-tail" relationship between sections 13(4) and 15a of the Transportation Act under which the Commission has its power to act requires in terms that the revenue needs of the carriers which it is to consider in making rates are the revenue needs of the carriers "as a whole (or as a whole in each of such rate groups as the Commission may from time to time designate)". How can the Commission raise intrastate rates on one railroad in one State to double the level of interstate and intrastate rates under which the traffic moves generally on the railroads in the rate group and be thereby furthering its purpose of maintaining an "adequate national transportation system?" Even if the Commission were authorized to merely find an intrastate rate unreasonable and therefore order it raised, thus assuming "unified control of interstate and intrastate commerce", can it under this authority determine that one railroad is not securing sufficient revenue on a particular intrastate rate and raise it in the interest of the carrier's revenues while at the same time it permits other railroads in the same rate group controlled by stock ownership by the first carrier to maintain the lower rate in interstate and intrastate commerce over their whole lines. The same argument is applicable to all members of the rate group. The Commission entirely ignored the "purpose" of Section 15a which relates to carrier revenues from the group and national standpoint.

Where is the "substantial disparity" between the interstate rates in the group and the intrastate rate operated

upon by the order which it is the purpose of the Commission to circumvent? The Commission was without the power to make the order, and even if it had the power the exercise of it under such circumstances would be arbitrary in the extreme.

POINT II

The Interstate Commerce Commission Has Failed to Make the Basic or Essential Findings Necessary to Support a Statewide Order Prescribing Intrastate Rates. There is No Substantial Evidence Before the Commission to Support Such Findings.

(Applicable to Assignments of Error Nos. 1 to 10 incl., 13, 14, 15, 17 to 24 incl.)

This Court in the *Florida Log Case (Florida vs. United States, 282 U. S. 194, text 215)*, in striking down the former order of the Interstate Commerce Commission in this proceeding, said in part:

> "The Commission made no findings as to the revenue which had been derived by the carrier from the traffic in question, or which could reasonably be expected under the increased rates, or that the alteration of the intrastate rates would produce, or was likely to produce, additional income necessary to prevent an undue burden upon the carrier's interstate revenues and

to maintain an adequate transportation service.

"The question is not merely one of the absence of elaboration or of a suitably complete statement of the grounds of the Commission's determination, to the importance of which this court has recently adverted (Beaumont, S. L. & W. R. Co. v. United States, decided November 24, 1930, 282 U. S. 74, ante, 221, 51 S. Ct. 1), but of the lack of the basic or essential findings required to support the Commission's order * * * ".

The Examiners in their proposed report, being apparently unable to make these findings, and thereby tacitly admitting that the evidence would not support such findings, after quoting the above language from the opinion of this Court, averred (R. 1229-1230):

"A study of the entire opinion, and particularly of the two paragraphs quoted above, shows that the Supreme Court's statement as to the absence of certain findings in the report was made as a suggestion of what might have been appropriate findings to support the conclusion. These suggested findings were merely illustrative; there is nothing in the opinion that would warrant the conclusion that such findings, and no other, were essential preliminary findings of fact."

We took it that when this Court in this very pro-

ceeding plainly stated the findings which were lacking and condemned the order for lack of "the basic or essential findings", it was laying down the fundamental requirements of a valid order in this proceeding and not "suggesting" or "illustrating". The report of the Commission, while making no such assertion, proceeds upon the theory that a valid order can be made in this proceeding without those findings, because it does not make those findings and there was no evidence before it upon which those findings could be made.

We say that under the settled law of this case—the doctrine laid down by this Court upon the appeal in the former case—before the Interstate Commerce Commission can make a valid order affecting intrastate rates in a proceeding of the sort which we have hereinabove shown this to be, there must be findings based upon evidence:

(a) Of the amount of revenue which had been derived in the past by the carrier from the particular traffic in question under the existing intrastate rate; and

(b) Of the amount of revenue which can reasonably be expected to be derived from the traffic in question under the increased intrastate rate which the Federal Commission proposes to establish; and

(c) That the application of the existing intrastate rate results in an impairment of the income of the carrier, which causes an undue burden upon the carrier's interstate

revenues and obstructs the maintenance of an adequate national transportation service; and

(d) That the undue burden and the obstruction so caused is of such character and consequence that it is the affirmative duty of the Federal Commission, as an important step in maintaining an adequate national railway system, to remove that burden and obstruction.

And by those requisite findings referred to in subparagraphs (a) to (d) above, and by the evidence upon which they respectively are based, the justification of the exercise of the Federal power in invading the domain of the State must be made to clearly appear.

The review of the evidence upon which we shall hereinafter embark is extensive and may seem unduly detailed. It is a complete resume of the voluminous record and intended so to be. For we remind the Court, as was said in the case of *Knoxville v. Knoxville Water Co., 212 U. S. 1, text 8*, when the legislative authority of the State in the exercise of its rate-making powers is drawn in question upon constitutional grounds,

> "The constitutional invalidity should be manifest, and where that invalidity rests upon disputed questions of fact, the invalidating facts must be proved to the satisfaction of the Court."

In cases of this character, as we shall hereinafter

point out, the Court will examine the evidence for itself, if the order is otherwise supported, and will for itself ascertain that the evidence is clearly sufficient before sustaining the order.

The order of the Interstate Commerce Commission here involved and the record of its proceedings are deficient both as to the basic and essential findings and as to evidence upon which the same could be made. Under this heading the point is made as to ultimate findings and the evidence necessary to support them. Under subsequent headings we point out the deficiencies with respect to the particular findings and the want of evidence to support them.

POINT III.

There Was No Finding and No Evidence of the Amount of Revenue Which Had Been Derived In the Past from this Particular Traffic in Question Under the Cummer Scale of Rates.

(Applicable to assignments of errors Nos. 6, 7, 9, 10, 29.)

The report of the Interstate Commerce Commission does not even purport to find the amount of revenue which was derived in Florida at any time under the Cummer Scale of rates and there is no evidence upon which any such finding could be made.

At the first hearing after the proceedings were reopened the Atlantic Coast Line Railroad filed Exhibit No.

80 in which the carrier purported to show, for the years 1926 to 1930 inclusive, all logs of all tariff descriptions handled on the entire system and in the State of Florida, as measured by the number of cars and number of tons and likewise purported to show the total revenue for the whole system derived from logs of all tariff descriptions. *That statement did not show anywhere or at any time the amount of revenue derived from the transportation of logs in Florida*, the carrier's witness expressing the view that the revenue derived from handling logs was not available for the State of Florida (R. 688). That statement shows that the tons of logs handled by the carrier in Florida in 1926 (the year this proceeding began) amounted to 1,214,361 and the tons so handled in 1930 (the second year of the high rate) amounted to 272,150 (R. 1134 C), but the revenue derived is nowhere disclosed, although the carrier admitted of record (R. 717) that the revenue derived from this traffic in 1926 under the Cummer Scale was greater than the revenue under the high rate in 1930. The appellants pointed out that under the Cummer Scale the movements were in large part long hauls which ran up the general revenue from the logs in Florida far out of proportion to the number of actual cars hauled (R. 718). Counsel for the carrier likewise admitted of record that the amount of revenue which had been derived from the traffic in question during the years preceding the entry of the former order of this Federal Commission could be produced, but refused to produce it upon the theory that it would be troublesome to compile (R. 718-719) and expressed the view that "this question of revenue" was not relevant

to this proceeding (R. 718). And this notwithstanding the plain declaration of the Supreme Court of the United States in this case upon the subject.

The State of Florida asserted (R. 1096) in its Reply to the motion to re-open the proceeding, that the amount of revenue which had been derived annually by the carrier for many years next preceding the institution of this proceeding from its intrastate log traffic in Florida was far in excess of the annual revenue derived from such traffic upon and after the application of the unlawful rate prescribed by the Federal Commission. The State therefore in advance of the hearing in the re-opened proceeding demanded of the carrier that the carrier disclose the amount of that revenue for the record. This the carrier refused to do. The State of Florida then demanded of the Federal Commission that it require that such data be produced. But the Federal Commission refused so to do (R. 80-98). At the first hearing in the re-opened proceeding this demand was again made and insisted upon (R. 715-719), and was referred by the Examiner to the Federal Commission for its ruling upon that demand (R. 719), and in due course the Commission again refused to require its production (R. 1153).

(a) *The Evidence Showing the Number of Cars of Logs Which Moved on the lines of the Carrier in Florida From February 1931 to June 1931 Showed Nothing with Respect to Revenue and Was Wholly Insufficient to Show the Revenue Derived Under the Cummer Scale.*

The Commission in its report in the re-opened proceedings (dated July 5th, 1932, 186 I. C. C. text 188) declares,

> "While the record shows that defendant's Florida log traffic declined considerably after the increase of rates on February 8, 1929, the record further shows that there was no substantial increase in the movement after the Cummer Scale was restored on April 10, 1931."

Since there was nothing else in the record relating to the movement after the Cummer scale was restored, that declaration probably refers to an exhibit filed by the carrier (R. 1180-1181, Exhibit 128), showing the number of cars and the points of origin and destination for the period commencing February 1, 1931, and ending June 30th, 1931, *but showing nothing at all about revenue*. The District Court fell into the same error, saying (4 F. Supp. text 479):

> "Although the traffic fell off greatly during this period (1929 and 1930), it is found to be more due to the universal depression in business and to

the moving of mills to the timber than to the raise in rates, because there was no substantial increase after the Cummer Rates were restored following the decision of the Supreme Court above referred to."

It is manifest that this Exhibit No. 128 is of no value to show even the number of cars which has been transported under the Cummer Scale since its restoration, because the Cummer Scale was recited to have been restored on April 10, 1931. This Exhibit referred to at p. 188 of the report as showing that 2765 cars of logs moved from February to June, 1931, and that therefore "the movement will not be less than this under normal conditions", does not purport to show what part of those cars moved prior to the restoration of the Cummer Scale and what part moved after the Cummer Scale was restored. Further it does not show anything about the revenue that was produced. When the report, at p. 188, says that "there was no substantial increase after the Cummer Scale was restored on April 10, 1931", it makes that statement without one scintilla of evidence to support it.

And indeed, it was shown that the restoration of the Cummer Scale did not take place until on or about April 10th, 1931, and that on or about that date the carrier wrote to various of the log shippers and consignees, informing them that the carrier would transport logs (of the tariff descriptions in question) "presently collecting therefor on the basis" of the Cummer Scale. But in that same letter the carrier advised such shippers

and consignees that "if the scale of rates just referred to is not the applicable rate or rates now in effect, the Atlantic Coast Line Railroad Company will later make demand for revenue based on the applicable rates" (R. 866; R. 1174). So that the restoration of the Cummer Scale under the mandate of this Court was accompanied by the threat to the shippers that additional charges might later be demanded.

(b) *The Evidence in the Second Re-opened Proceeding Respecting the Log Movement, After the Cummer Scale Was Restored, Did Not Show the Trainload Movement of Logs, or the Revenue Received From Any Log Movement.*

In the further re-opened proceeding, that is, several months after the report of July 5, 1932 had been made, the carrier introduced evidence as to the number of carloads of logs (except trainloads) it had moved in Florida in the several months of these years 1930, and 1931, and the first eight months of 1932 (R. 1360-1370). This likewise showed the distances which those logs moved in the period from February, 1931 through August, 1932. Observe however that it expressly omits the movement of logs in trainloads which the carrier could just as easily have shown and the omission of which gives rise to the presumption that the showing of the trainload movements would have been unfavorable to the carrier. Observe likewise that *this* evidence carefully refrains from giving any information

whatever as to revenue. *It gives no information even as to the quantity of the logs which moved in trainloads after the Cummer Scale was restored and it gives no information as to the revenue from any logs which moved after the Cummer Scale was restored.*

It will be observed that the distances travelled by the logs which moved in less than trainloads during the second year of the high rate (February 1, 1930, to January 31, 1931) is set forth in the record (R. 1167-1173), and a computation will show that they travelled an average distance of less than 45 miles, whereas a similar computation will show that the logs which moved in less than trainloads in the first eight months of 1932 travelled an average distance of more than 100 miles. This may have something to do with the failure of the railroad to show anything about the revenue on these logs which moved after the Cummer Scale was restored.

The Interstate Commerce Commission in its report of January 9, 1933 points out (R. 373) that "the main depression in the lumber industry in Florida began about the latter part of 1930". The record shows (R. 1371) that the number of cars of lumber, shingles and lath transported by the carrier from points of origin in Florida during the first eight months of 1930 (before the depression according to the finding) was 12,864, whereas during the first eight months of 1932 (in the depression) it was 4,982 cars, a decline of 61%. Compare this with the portion of the log movement which is shown. In the first eight months of 1930 under the high rate the cars of logs (exclusive of trainloads) moved by the carrier in Florida was 2,146 (R. 1370), in the first eight months of 1932 under the Cummer Scale

it was 1,500 cars, a decline of 30%. Between the two periods the quantity of the lumber traffic in Florida declined more than twice as fast as the quantity of that portion of the log traffic which the record discloses. If the record disclosed the trainload movements of logs under the restored Cummer Scale or if it disclosed revenue at all under the restored Cummer Scale, the comparisons would be more enlightening.

But even this is sufficient to demonstrate that the conclusion of the Commission (R. 375) "that the re-established substantially lower Cummer scale has had no effect on the volume of rail movement" is wholly without foundation in the record. It is not surprising to us that the traffic manager of the carrier when he produced these figures showing the number of cars transported—but not revenue and not trainload movements—since the restoration of the Cummer Scale, stated (R. 1050-1051):

> "I may state that considering the general depression that exists throughout the whole country, and in Florida as well, the small percentage of the falling off in the Florida log traffic was a matter of considerable surprise."

Likewise the Court must remember that throughout this period when the Cummer Scale was restored it was the subject of contention before the Commission. No shipper could rely upon its being maintained for any considerable length of time and make arrangements for handling his logs accordingly or make investments in plant or facilities upon the strength of it until and unless the matter was settled and the threat of the high rate here prescribed re-

moved. Also there was the constant threat, which we have above set forth, on the part of the railroad, that it would undertake to collect the difference between the Cummer Scale and the high rate on all shipments made. Howeyer the important part here made is that never, either before the Cummer Scale was superseded or after it was restored, has the revenue received under it been disclosed—not even for as much as a single day.

(c) *The Evidence Which Was Before the Commission as to the Revenue Under the Cummer Scale Never Showed More Than the Amounts Received from Certain Shippers:*

The only figures as to revenue from the log traffic in Florida which the Commission had before it in making its reports was the revenue derived during the period from February 9, 1929, to January 31, 1931, (all during the period of the high rate and derived under that high rate) and the testimony of a few shippers as to the amounts which they had paid for the transportation of logs under the Cummer Scale. Of course those shippers could not and did not purport to testify as to the total revenue received by the carrier from all of its log business in Florida. However it was shown that one shipper alone paid the carrier $683,744.29 for hauling its logs in Florida in 1927 and 1928 under the Cummer Scale (R. 766), whereas the total revenue of the carrier from all of its log business in Florida in the two years of the high rate (Feb. 9, 1929, to Jan. 31, 1931) was $571,-

508.94 under the high rate (R. 1101). That shipper moved his plant to the woods when the high rate went into effect as he had testified in the former proceeding that he would if the rate were increased (R. 767) and in so doing incurred a loss of $3,244,000 (R. 765). He would not have moved except for the increase in the rates (R. 777).

Thus, we say that the evidence upon which to base the first essential finding prescribed by this Court (viz., the amount of revenue which has been derived in the past by the carrier from the traffic in question) is not only wholly absent from the record in this proceedings, but also that the carrier refused to produce it when demand was made upon it so to do. *And the Interstate Commerce Commission in its report does not even purport to find the amount of revenue that was produced at any time under the Cummer Scale.* Upon this account, if for no other reason, the order of the Interstate Commerce Commission, under the law laid down in this particular case by this Court, is invalid and unlawful.

POINT IV.

There Was No Finding As To The Amount Of Revenue Which Can Reasonably Be Expected To Be Derived By the Carrier From The Traffic In Question, "Under The Increased Rates".

(Applicable to Assignments of Error Nos. 12, 13, 14, 15).

The report of the Commission, dated July 5th, 1932,

sets forth the fact that during the two years in which the high rate was in effect the total movement of logs in Florida was 18,602 cars. It then deducts 3,740 cars which moved in certain trainload movements which have ceased and which the Commission there asserts will not be resumed. It then makes the following observations (p. 188 of the report):

> "*Under normal economic conditions it seems probable* that the annual volume of the Florida log movement under rates the same as those previously prescribed will not be less than the average of this two-year period minus the number of cars included in the discontinued trainload movements. This average is 7,431 cars. That the movement will not be less than this *under normal conditions* is confirmed by the fact during the five months immediately preceding the last hearing in this case, February to June, 1931, when conditions were abnormal, there were shipped over defendant's lines in Florida a total of 2,765 cars of logs. This movement was at the rate of 6,636 cars a year. *We believe* that the movement of logs intrastate in Florida over defendant's lines will not *be materially curtailed* under the rates which we here prescribe, which are the same or substantially the same as the rates generally in effect and under which logs freely move throughoutout the South." (Italics supplied.)

The report then figures the amount of revenue col-

lected on the cars which moved in this two year period and the amount of revenue which would have been collected on the same cars under the Cummer Scale and proceeds at p. 189:

> "Accordingly, on the basis of an average of 7,431 cars a year *under normal economic conditions* which basis *we believe* conservative, the gross revenues under the rates prescribed by the previous order herein would be more than $100,000 a year greater than under the Cummer Scale now in effect." (Italics supplied.)

(a) *The "Finding" With Respect to Future Revenue Was An Indefinite Expression of Belief Contingent Wholly Upon the Existence of "Normal Economic Conditions."*

The finding with respect to future revenue from the proposed increased rates is utterly insufficient. It will be noted that the finding with respect to the revenue to be expected from the traffic in question under the increased rate is based wholly upon what "it seems probable" may be expected "under normal economic conditions".

There is no substantial evidence in the record to support the estimate of the number of cars which may move under normal conditions. But putting that on one side, we point out that the Commission here speaks without conviction and without certainty, and does not purport to

make "findings" in any sense of the word. In the *Illinois Central Case, 245 U. S. 493*, at page 510, this Court said that an order of the Commission should not be given precedence over a State rate otherwise valid, "unless, and except so far as, it conforms to a *high standard of certainty*." (Italics supplied.) These doubtful and ambiguous conjectures cannot be considered as conforming to a "high standard of certainty."

Observe likewise that every one of these indefinite expressions of belief is applicable only "under normal economic conditions". The Commission in its reports of July 5, 1932, and January 9, 1933, is prescribing a rate for present application and not a rate to become effective upon the return of Normal Economic Conditions. We have had no "normal economic conditions" in Florida for many years, and one of the contributing factors to our having no "normal economic conditions" has been the former order in this proceeding of the Commission. Certainly the report does not even purport to predict when "normal economic conditions" will prevail, nor does it make the effectiveness of its orders contingent upon the return of those normal economic conditions. The quotation we have above set forth recognized that conditions were abnormal in the period from February to June, 1931. Does the Commission find that conditions on July 5, 1932, and January 9, 1933, when it was promulgating its order, are any less abnormal? It is prescribing a rate for present application which it does no more than attempt to justify under "normal economic conditions."

No longer ago than January 4, 1932, this Court considered conclusions based on normal economic conditions

for application in the present day. That was in the case of *Atchison, T. & S. F. Ry. Co. vs. United States, 284 U. S. 248.* There the Commission had made a general investigation of grain rates in Western territory. The record was closed in September, 1928 and the matter submitted on July 1, 1929 to the Commission for its decision. The Commission made an order on July 1, 1930, effective October 1, 1930, which effective date was subsequently postponed. A petition for rehearing by the carriers was denied in November, 1930 and they filed a further petition for rehearing in February, 1931 setting up the changes in economic conditions and in their own condition and in the traffic which had occurred in all this intervening time. This second petition for rehearing was denied and this Court, speaking through Mr. Chief Justice Hughes, declared the denial of that petition was "a denial of right" and that the Order of the Commission therefore could not be sustained. In the course of the opinion the Court said; text 260:

> "There can be no question as to the change in conditions upon which the new hearing was asked. Of that change we may take judicial notice. It is the outstanding contemporary fact, dominating thought and action throughout the country.
>
> * * * *
>
> "It is plain that a record which was closed in September, 1928—relating to rates on a major description of the traffic of the carriers in a vast territory—.....—cannot be regarded as

representative of the conditions existing in 1931. That record pertains to a different economic era and furnishes no adequate criterion of present requirements. * * * It is said that 'in performing its legislative function of prescribing reasonable rates, the Commission necessarily projects into the future the results of a decision based on the conditions disclosed in the record' and that its determination 'cannot reflect accurately fluctuating conditions.' These suggestions would be appropriate in relation to ordinary applications for rehearing, but are without force when overruling economic forces have made the record before the Commission irresponsive to present conditions. *This is not the usual case of possible fluctuating conditions but of a changed economic level.*" (Italics supplied.)

From the foregoing quotation it is readily apparent that this Court would not consider even a definite finding if based upon "normal economic conditions" appropriate to abnormal conditions, even if there were evidence upon which such a finding could be made, which we deny. The standards of 1928 will not do for 1931, said the Court, and we assert that it is even more true that the standards of 1929 will not do for 1932 and 1933.

(b) *There Was No Evidence Upon Which a Finding Could Be Made as to the Revenues To Be Expected Under the Increased Rate, Except a Finding That Such Revenues Would Be Trifling and Inconsequential.*

Nor was there any evidence upon which any finding could be made as to the amount of revenue which could reasonably be expected to be derived by the carrier from the log traffic under the increased rates. The Commission to confirm what the movement would be in normal times, recites in its report dated July 5, 1932 (text 188) that 2,765 cars moved over the lines of the defendant carrier between February and June, 1931, when conditions were abnormal. We have pointed out that during that particular period the Cummer Scale and the rate prescribed by the Interstate Commerce Commission were each in effect about one-half the time, and there is nothing to show how many cars of logs moved under the one or the other, or what the revenue was under the one or the other.

At this same place in its report dated July 5, 1932 (text 188) the Commission expressed the belief that the log movement in Florida would not be materially curtailed under the prescribed rate, which, said the Commission, "are the same or substantially the same as the rates generally in effect, and under which logs freely move, throughout the South". In that report of July 5, 1932, the Commission overlooked what it recognized in

its report of January 9, 1933, that many if not most of the carriers throughout the South with whose rates the Commission had compared the Cummer Scale were then publishing or preparing to publish rates which in practical operation and effect were substantially upon the level of the Cummer Scale, in an attempt to attract the log traffic to their lines. Thus, the second report of the Commission on the further re-opened proceeding, filed January 9, 1933, demonstrates that logs will not move freely in the South at a scale substantially in excess of the Cummer Scale, a thing testified to in the original proceedings, recognized by this Court in its opinion in the Florida Log Case, (supra), and demonstrated by the record in the re-opened proceedings before the Commission to be the experience of all concerned during the two year period when the unlawful order, dated August 2nd, 1928, of the Interstate Commerce Commission was in force and effect.

It is difficult to understand how any such statement could be made in the report of the Interstate Commerce Commission, as that the log movement would not be materially curtailed under the prescribed rate.

(1) *The Evidence With Respect to the Large Shippers Who Testified in the Former Proceedings, and the Effect Upon Them and Their Shipments of the Orders of the Commission.*

We propose to examine the record as briefly as we

can upon the subject. We have shown that there was no evidence of the amount of revenue produced under the Cummer Scale. The record, does show, however, that there were large, regular trainload movements of logs in Florida prior to the entry of the former order of the Commission and that there was a substantial movement in less than trainloads (Former Record, 513). There is no evidence as to what this movement in less than trainloads amounted to, but we do have some information on the amount of the revenue from certain trainload movements. The presidents of four large lumber companies testified here (Arthur G. Cummer, R. 726; M. L. Fleishel, R. 744; J. S. Foley, R. 765; and C. R. MacPherson, R. 778). Those companies were: Cummer Cypress Company, Putnam Lumber Company, Brooks-Scanlon Corporation and Wilson Cypress Company. They showed that these companies had over a period of many years prior to the former order of the Commission moved large quantities of logs in trainloads in Florida. We shall not burden this brief with a recitation of all the statistics of that trainload movement. It is sufficient here to say that in 1926, the year in which this proceeding was started those four companies paid the following amounts of freight on these log trains:

Cummer Cypress Company	$ 46,506.15	(R. 731)
Putnam Lumber Company	200,014.50	(R. 747)
Brooks-Scanlon Corporation	334,048.47	(R. 766)
Wilson Cypress Company	71,742.75	(R. 779)
Total	$652,311.87	

We have no idea how much other business there was, but in 1926 the railroad actually collected $652,311.87 in Florida from just four companies on trainload movements alone. This Court pointed out in its opinion, *282 U. S., text 214*, that witnesses for the Florida interveners had testified "that any material increase in the Florida intrastate rates would either cause them to move their plants to the timber or abandon operations", and the Court remarked "that in either event the carrier would lose considerable traffic". Those Florida interveners were those same witnesses who testified here, and we can see how their prophecies materialized. Let us see what became of this business.

The Cummer Cypress Company had its lumber mills at Lacoochee. It owned a tract of timber, about 75 million feet, on the lines of the railroad and some 30 miles from the mill. It hauled some logs under the new rate but could not afford to cut the timber clean under that rate. It therefore built its own logging road to a point on the Seaboard Air Line Railroad, a distance of about 14 or 15 miles and effected trackage arrangements with the Seaboard for the remainder of the haul. The cost to the Cummer Cypress Company for the transportation of its logs over its own tram road and over the Seaboard Air Line trackage right is less than the cost would have been under the Cummer Scale. (Cummer, R. 730-732, 743). The Cummer Cypress Company had intended to cut and log and transport all of that timber in trainloads over the Atlantic Coast Line Railroad had it not been for this increase in rates (Cummer, (R. 732). So the railroad lost this traffic because of the Commission's order.

The Putnam Lumber Company had mills at Milldale and Ortega, both suburbs of Jacksonville, Florida. The mill at Milldale was owned by Cummer Lumber Company and operated by Putnam under a lease which ran for successive terms of two years each. Prior to and during 1926 the Putnam interests and the Cummer interests had negotiations under way for the sale of these mills and the timber of the Putnam Lumber Company. The bulk of the timber was located below Perry, Florida, although there was a considerable stand in the vicinity of Volusia County, Florida. These negotiations had been practically completed and the contracts had been prepared, approved and were ready for execution. The purchase price was approximately $12,000,000.00. Meanwhile this proceeding before the Interstate Commerce Commission was started. The purchaser became apprehensive with respect to the log rates and refused to complete the transaction for the *sole* reason that no satisfactory assurance could be had from the defendant Atlantic Coast Line Railroad Company as to log rates for the future and the whole rate question was in the air (R. 746). If the deal had been completed the Denkmann Lumber Company, (the proposed purchaser), intended to transport those logs over the Atlantic Coast Line Railroad Company to the mills at Jacksonville and continue the operations of the Putnam Lumber Company there. The Putnam Lumber Company therefore refused to renew its lease and moved to the woods, building a new mill there. (Cummer, R. 727-728, 732-733, 734-736; Fleishel, R. 745-746).

The result of all this was that the mill at Milldale was junked with a consequent loss to the Cummer Lumber Company of over a million dollars, a great number of men were thrown out of employment and the thriving little community of Milldale was totally wrecked (R. 728-729). The mill at Ortega was dismantled with a consequent loss to the Putnam Lumber Company of over two hundred thousand dollars (R. 747). There were approximately seven hundred men employed in these mills (Former Record, 360). So this traffic has gone likewise.

The Brooks-Scanlon Corporation had its mill at Eastport, a suburb of Jacksonville. It owned about a billion feet of timber in the neighborhood of Perry, Florida. The increased rates prescribed by the former order of the Commission closed that mill down and caused it to be moved to the woods. It stopped shipping logs almost immediately after the new rate became effective. In making the move it suffered a loss of $3,200,000. The dismantling of the mill entirely destroyed the town of Eastport, a town of 5,000 inhabitants. Only about 40% of the men employed there moved with the company to its new location in the timber. (Foley, R. 765-769, 775, 776-778).

While the aggregate annual payrolls of these industries is not set forth in the record, it can be readily estimated to have been of very considerable proportions. No other industries have taken their place, and credible witnesses expressed doubt if the City of Jacksonville would ever be able to build up new industries sufficient to off-set the payrolls and other expenditures made in

that city by those lumber companies (Cummer, R. 729).

Observe what the report (186 I. C. C. 157) has to say about this at pages 169-170. It refers to the fact that these mills in Jacksonville were located about 166 miles from the timber and that there was testimony that it was uneconomical for mills to be located so far from the timber. At the high rate here prescribed it was not only uneconomical—it was impossible. After discussing the movement of the location of the mills and the log movement to Putnam Lumber Company, it says:

> "This movement would have been discontinued even though the Cummer scale had remained in force, since the company had decided to move its mills to the timber prior to the rate increase."

Not one word is said about the undisputed testimony of credible witnesses, showing that if it were not for this proceeding and the former order of the Commission both the Brooks-Scanlon Corporation and a successor of the Putnam Lumber Company would be operating in Jacksonville today. Mr. Foley, the President of Brooks-Scanlon Corporation, testified directly that the move of the location of that company was not occasioned by anything except the order of the Interstate Commerce Commission and had that order not been made and become effective the mill would be operating at Eastport today (R. 777). There was not the slightest contradiction of that testimony, but apparently the Commission overlooked or disregarded it.

We now come to the Wilson Cypress Company which

has stayed in this fight and is before this Court in this litigation. Its mill is at Palatka, Florida, on the St. Johns River. It owns about three hundred million feet of timber on that river which it can move to its mill by water. At the time of the last hearing in this proceeding (July, 1931) it had about fifty million feet in the territory south of Perry which was then being cut and transported because it was owned under a short term lease. It wanted to keep its mill at Palatka so that it could there later cut its river timber. (MacPherson, R. 779-782).

Let us see what the report has to say about this company. At page 174 the report says:

> "Although this intervener, as well as others, testified at the original hearing that it would be impossible to continue the movement of logs over defendant's lines if the Cummer scale were increased, it actually has done so. It appears that under normal conditions it will continue to ship these logs over defendant's line until the timber adjacent to the Perry branch is cut out. Under the normal rate of cutting it appears this would occur in about one and one-half to two years after the time of the further hearing."

Observe that the conclusion is that it will ship logs "under normal conditions". Likewise the cutting would under the normal rate of cutting end, at all events, by July 1933. But the Commission wholly discarded the uncontradicted testimony of Mr. MacPherson, the presi-

dent of the company. He testified that the company continued to haul logs relying upon obtaining justice in the Courts in the former litigation and obtaining restitution of all amounts over the Cummer Scale which it might pay (R. 782). It had some timber that was held under short term leases at that time in West Florida and it had to be cut (R. 780). The company was able to make trackage arrangements with the Southern Railroad and Seaboard Air Line that would have cost about half way in between the Cummer Scale and the higher rates prescribed by the Commission (R. 781). This arrangement was not made because part of the track was not in condition for heavy locomotives (R. 781). These track conditions have been remedied (R. 781). If high rates were prescribed again Mr. MacPherson said he would litigate it again, or make the trackage arrangement or put a small mill in the timber, or sell the timber to some of the mills located near it. (R. 782-783). The President of the Company testified that it would not again ship logs at any rate substantially higher than the Cummer Scale (R. 783). This was in nowise contradicted, but the Commission apparently disregarded it, just as that Commission had disregarded similar testimony in the former proceeding, and concluded that this company would submit to the high rate again, just as in the former proceeding it concluded that the other companies would submit to the high rate.

(2) *The Log Traffic in Florida During the Two Years of the Effectiveness of the Former Order of the Commission.*

We showed that four companies on trainload movements alone paid $652,311.87 for the transportation of logs in Florida in 1926. Let us see what happened after the high rate went into effect. This occurred on February 8; 1929, and the Atlantic Coast Line Railroad Company was obliging enough to furnish a statement of its revenue from that date to January 31, 1931, on logs in Florida and showed the points of origin and destination (Exhibit 61, R. 1101-1109). That exhibit shows that 18,602 cars of logs moved in this period of approximately two years, but it did not show when during that period any of those cars moved. The Florida interveners had a check made to determine when those cars moved and to whom they went. This analysis excludes the Hines to Palatka trainload movement of Wilson Cypress Company which as above shown will not again move under the high rate.

That analysis is in the form of exhibits (See R. 1166a-1174) and deals with the movements to the various destinations. The movements to Eastport were the end of the Brooks-Scanlon Corporation shipments, which we have discussed above. These produced a revenue of $10,403.43 in the first year of the high rate. The movements to Lacoochee and Otter Creek were the conclusion of the Cummer Cypress Company business before its trackage arrangement with the Seaboard Air

Line was made. These produced a revenue of $90,117.09 in the first year of the high rate, and $4,095.26 in the second year of the high rate. Now if we exclude the Wilson Cypress Company trainload movement, which must end shortly at any rate, and which we have shown was only made by reason of abnormal circumstances and even then would not have moved except on the reliance that this Court would do what it did, and exclude the trainload movements of the Brooks-Scanlon Corporation and the Cummer Cypress Company which are admitted to be over, we can see what kind of revenue was produced under the high rate formerly prescribed by the Interstate Commerce Commission.

This leaves us with a total of 4,222 cars moving in the first year of the high rate, and a gross revenue derived therefrom of $101,370.68. It leaves us with a total of 2,973 cars moving in the second year of the high rate, and a gross revenue derived therefrom of $66,179.49. This is what the log business had gotten down to in two years of the high rate. The only conclusion that could be reached is that if this high rate were continued another year or two the railroad would not be hauling a handful of logs in Florida.

(3) *The Effect of the Former Order of the Commission Upon the Traffic of the Carrier in Pine Logs in Florida.*

We desire to present another comparison, well illustrating the arbitrary method in which the Commission

has approached this problem. The report at page 173 avers that pine wood is of primary importance in the Florida lumber industry. This is correct. The average annual production of pine lumber in Florida is from three-quarter of a billion to one billion feet (R. 874). Cypress comes next with an average annual Florida production of about two hundred million feet (R. 874). Hardwood timber grows in small stands interspersed in the pine and cypress tracts, and generally speaking the logging of it, and the logs thereby produced, is incidental to and a by-product of the logging operations of the pine and cypress manufacturers (R. 874, 748). The average annual production in Florida of hardwoods is indeterminate, and probably is not more than five or ten per cent of the pine and cypress produced in Florida (R. 748).

So the Commission has nothing to say about cypress or hardwood but properly devotes some attention to the pine business. At pages 173 and 174 of the report it shows that the Southern Pine Association has estimated that there are over 24 billion feet of pine in Florida. It then refers to the map as showing that the Atlantic Coast Line Railroad "forms a network which virtually covers the State". It then quotes, from Mr. Perrin the freight traffic manager of the Atlantic Coast Line who assumed, without any actual information, that half of all this timber was reasonably adjacent to his railroad, and who then said, "However, if the Atlantic Coast Line can be assumed to transport 40 per cent of the logs to be produced in Florida from timber now standing, it will handle approximately nine billion feet * * *". Mr. Perrin then

computes the difference in revenue on this nine billion feet between the Cummer Scale and the scale prescribed by the Interstate Commerce Commission on an average haul of 81 miles. Neither Mr. Perrin nor the Commission ever anywhere actually assumed that the Atlantic Coast Line would transport 40 per cent or one-half of one per cent of these logs, and even the Examiner pointed out when he stopped the cross-examination of Mr. Perrin on this testimony, that it had been made to clearly appear that Mr. Perrin's testimony in this respect "was based upon assumptions and hopes" (R. 898). We shall point out what the record shows about this pine business, and there is no contradiction or ambiguity about the record on this subject.

As has been pointed out, the carrier failed and refused to produce any figures showing the amount of revenue which had been derived from the traffic in question under the Cummer Scale. The record shows that the carrier proved, and the Commission's former report shows, that under the Cummer Scale there was a "substantial movement in less than trainloads". What the revenue was from that "substantial movement" or from any movements in trainloads of anyone other than the shippers who here testified only the carrier knows and the carrier refuses to disclose it. We can, however ascertain from the record the amount of revenue which was derived from the trainload movements of the shippers who here testified under the Cummer Scale during the years preceding the entry of the former order of the Commission. And Exhibit 61 of the carrier has furnished data and information from which has been ascertained

the revenues which were derived from the intrastate transportation of pine logs during each of the first two years of the effectiveness of the intrastate rate prescribed by the Commission (R. 861-862, and Exhibits 121 and 122, R. 1173-1174).

We shall first ascertain and set forth the amount that was derived from these *trainload movements* of pine logs only during the years immediately preceding the date of the former order of the Commission prescribing the intrastate rate.

The record in the former proceeding (Former Record, 600 and 360-361) and the testimony in the reopened proceedings (R. 747, 766) show that the revenues of the carrier from trainload movements of pine logs to Putnam Lumber Company and Brooks-Scanlon Corporation alone were as follows:

1923	$410,007.29
1924	471,739.16
1925	482,400.13
1926	467,391.47*
1927	402,157.86*
1928	353,136.00

*The total payments of Putnam Lumber Company for trainload movements of pine and cypress are set out in the record but the payments on pine are not segregated from the payments on cypress for the years 1926 and 1927. The record does show (Former Record, 600 and 360-361, and R. 746) that the ratio of pine to cypress was about the same in 1926 and 1927 as in the three preceding years. That ratio is therefore used in segregating the payments. All other figures are exact.

We can observe in the above figures the blighting influence of this proceeding, for the revenues began to diminish in 1926 when this proceeding began. But let us see the figures for 1929 and 1930 after the order had become effective. Bear in mind that in those two years, and for those two years alone there can be spelled out of the record the total amount of revenue derived by the carrier from the log traffic in Florida under any scale of rates and then only under the increased rate prescribed by the Commission.

Figures for these years are in Exhibits 121 and 122 (R. 1173-1174). They show that from February 8, 1929, to January 31, 1930, the entire revenue which was derived by the carrier from the Florida intrastate pine log traffic, in carloads and in trainloads, was the sum of $31,052.33 (See also the report of the Commission at page 171).

And for the period commencing February 1, 1930, and ending January 31, 1931, the entire revenue derived by the carrier from the intrastate pine log traffic, in carloads and in trainloads, was the trifling sum of $5,228.84 (R. 1171 and report of Commission at page 171).

So it is to be observed that the amount of the entire revenue derived by the carrier from the Florida intrastate traffic in pine—the major factor in the Florida lumber industry—during the second year of the high rate (1930) was less than one and two-tenths (1.2%) per cent of the revenue derived from such intrastate traffic in trainload quantities to two shippers alone dur-

ing the year in which this proceeding was initiated.

The report of the Commission at page 174 quotes the testimony of the carrier's witness to the effect that nine billion feet of pine logs may be assumed to be reasonably adjacent to the carrier's tracks in Florida and might be hauled over it. If that railroad were to now undertake to haul nine billion feet of pine logs and hauled them at the rate it was hauling pine logs in Florida in the second year of the unlawful high rate, it would take a trifle over six thousand years to perform the undertaking.

Excluding the Hines to Palatka trainload movement of the Wilson Cypress Company, which we have shown would not move again at the high rate and could only last for a short while anyhow, the revenue produced at the high rate on cypress logs in the first year of the high rate was $76,866.90 and in the second year $36,387.01, and on hardwood logs in the first year of the high rate was $96,971.97 and in the second year $28,658.90 (186 I. C. C. p. 171). So the traffic in these logs (of lesser importance in the lumber industry) was following the decline in the traffic in pine logs.

(4) *The Effect of the Depression on the Log Traffic.*

The Interstate Commerce Commission is unwilling to assume full responsibility for the havoc that was wrought by its former order. At page 171 the report observes:

> "The generally depressed conditions throughout the country, in Florida, in the lumber industry generally, and in the Florida log industry have also had a marked influence upon the volume of the log movement in Florida".

At various other places in the report similar attempts are made to shift the blame for what has happened to the depression. This is directly contradicted by the record. We shall show what the witnesses said on the subject. Mr. Cummer testified that in 1929 the Cummer Cypress Company shipped its entire output and that it enjoyed a very satisfactory business during the first six months of 1930 (R. 739). Mr. Fleishel testified that the Putnam Lumber Company made more money in 1929 than it ever did in any year and that it was a pretty good year in the lumber industry generally in Florida and the southeast, and that the depression did not strike the lumber business until in the spring of 1930 (R. 753-754). Mr. Foley testified that 1929 was "a very satisfactory year in the lumber business", but that the Brooks-Scanlon Corporation lost that whole year in making the transfer of the location of its mill caused by the increased rates (R. 777). The Wilson Cypress Company had a "pretty good market" in the years, 1928, 1929 and 1930 and, Mr. MacPherson said he would say generally that business was "pretty good" (R. 793-794).

Not one lumberman contradicted this testimony and these were the large lumber operators speaking—men whose business it was to be familiar with the very subject they were talking about. The only witness who even

intimated the contrary was the witness Perrin, who having testified as a rate expert for the Atlantic Coast Line now assumed the role of lumber expert and announced (R. 880):

> "Statistics show that if there was any unusual degree of prosperity in the lumber industry in Florida in 1929 that condition must have been peculiar to Florida as distinguished from the lumber industry of the country as a whole."

He then produced his statistics (R. 1179, Exhibit 127) whereof he spoke. Those statistics show, among other things, the number of tons of lumber, shingles, laths, box, crate and cooperage material handled by the Atlantic Coast Line Railroad on its entire system in each year from 1920 to 1930 inclusive. And it shows (R. 1179) that in *1927* that railroad handled *3,045,574* tons of such materials, and in *1928*, *3,093,168* tons, and in *1929*, *3,109,401* tons, and in 1930, 2,211,258 tons. The railroad handled more lumber (but not logs) in 1929 than it did in 1928, and more in 1928 than it did in 1927. Mr. Perrin's statistics contradicted his testimony on the subject. Undoubtedly there was a falling off *in* the year 1930, but the year 1929 was one in which the sale of lumber was good.

We have referred to *all* the evidence in the record concerning the depression in the lumber business in Florida. Yet the Commission says that depressed conditions "had a marked influence upon the volume of the log movement in Florida."

(5) *Summary of the Evidence With Respect to the Revenue That May Be Reasonably Expected.*

The evidence shows that under the Cummer Scale of rates large and profitable businesses were established and prosperous communities grew up. The Commission reaches the conclusion at page 176 of the report that there will be a large intrastate movement of logs over the carrier's lines in the future. The history of the Florida lumber industry and past experience demonstrate the soundness of that conclusion *when the Cummer Scale or its equivalent is applicable.* The record of the two years application of the high rate prescribed by the former order of the Commission demonstrates that that high rate will not only "discourage patronage", but will effectually destroy the traffic, even when the lumber market is good, and that the only finding which could be made as to the revenue "which could reasonably be expected under the increased rates" is that that revenue would be trifling and inconsequential.

POINT V.

There Was No Sufficient Finding and No Evidence Upon Which the Commission Could Base a Sufficient Finding That the Alteration of the Intrastate Rate Would Produce or Would Be Likely to Produce Additional Income Necessary to Prevent an Undue Burden and to Maintain an Adequate (National) Transportation System.

(Applicable to Assignments of Error Nos. 1, 2, 3, 5 to 11 inclusive, 17 to 31 inclusive.)

(a) *The Low "Earnings" of the Railroad as a Whole or the Low "Earnings" from Log Traffic as Compared to Other Traffic Can Not Justify the Invasion of State Domain.*

As a preliminary to its estimate of what the revenue results would be from the prescribed intrastate scale "under normal economic conditions", the Commission declares in its conclusions and findings in its report of July 5, 1932 (188 I. C. C. text 187):

> "The record shows the low earnings of the defendant; the low earnings on its log traffic as compared with its earnings on other low grade commodities; the much lower earnings

> on its Florida log traffic than on its interstate log traffic; and the much lower level of the Cummer Scale than of other scales applicable interstate and intrastate throughout the South. These facts and the cost evidence clearly warrant the conclusions that the traffic moving under the Cummer Scale does not pay its 'fair proportionate share' of operation and maintenance alone".

Brief comment upon this statement of the Commission may well here be made. These "facts" and "cost evidence" do not warrant any such conclusion, even if they were pertinent to that question. The low aggregate earnings of the defendant carrier in and of themselves are insufficient to warrant the raising of the level of a particular rate.

Dayton-Goose Creek Railroad Company vs. United States (supra).

The comparison of the "earnings" on the log traffic of the carrier with the "earnings" on the other low grade commodities and the comparison of its "earnings" on its Florida log traffic with the "earnings" on its interstate log traffic does not pretend in any instance to be net earnings. They are wholly the result of computations by which rates are multiplied by tonnage and bear no relation to cost of service. As this Court pointed out in the *Florida Log case*, supra, text 213, 214, such estimates will not justify the

invasion of state domain by the Federal power.

When the report and order of the Interstate Commerce Commission of July 5th, 1932 was published, the level of the interstate and intrastate log rates throughout the South had so changed and was so changing (and with the permissive sanction at least of the Interstate Commerce Commission) that before the order became effective the general level in practical operation and effect was substantially that of, or lower than, the Cummer Scale. It was solely upon those "facts" and the "cost estimates" that the Commission reached the conclusion that "the traffic moving under the Cummer Scale does not pay its fair proportionate share of operation and maintenance alone".

The so-called cost evidence to which the Commission makes reference is no more nor less than a series of computations based upon averages of the cost of handling all freight. The costs so shown are not the cost of transporting logs. This subject will be hereinafter fully considered under Point VII. of this brief, and we shall there show that this method of determining cost, if in fact cost of service is material to the inquiry here, has been condemned both by this Court with respect to this particular commodity and by the Interstate Commerce Commission as well.

(b) *The Estimate as to Future Revenue Under the Increased Rates Which the Commission Made.*

However, all of this is beside the point. For the Com-

mission nowhere has found what, if any, amount of additional income would be produced by the present alteration of the intrastate rate under existing economic conditions.

It says, at page 189:

> "Accordingly, on the basis of an average of 7,431 cars a year under normal economic conditions, which basis we believe conservative, the gross revenues under the rates prescribed by the previous order herein would be more than $100,000 a year greater than under the Cummer Scale, now in effect."

Not only is that estimate confined solely to the movement which will occur and the revenue which will be derived per annum under "normal economic conditions", but it was also frankly founded upon the express belief that the log movement in Florida would not be materially curtailed under the prescribed rate and that the rates prescribed are "the same or substantially the same as the rates generally in effect and under which logs move freely throughout the South".

We point out here how obviously contrary to the record the first of those assumptions was and how the second has been shown by subsequent proceedings even more at variance with the facts than the first, due to then existent and subsequent alterations of the level of interstate and intrastate log rates elsewhere in the South,

including those on four railroads in interstate commerce in Florida.

(c) *The Record Shows That the Movement of Logs Over the Carrier Will Be Materially Curtailed by the New Order of the Commission.*

Not only do the Newly Reduced Rates established all over the South show that logs will not move under the high rate, but the testimony here directly established the fact that the remnant of the log business of the carrier in Florida was going to shrink materially if the rate here prescribed by the Commission were put into effect in this proceeding. It would appear that experience should have sufficiently demonstrated that, from the destruction which resulted from the first order, but in addition to that the testimony as to the future was direct and positive.

We have pointed out that the president of Wilson-Cypress Company (which company shipped almost half of the logs that moved on the lines of the carrier in Florida in the two year period of the high rate) testified, and his testimony was in nowise contradicted, that the company would not ship any logs under any rate substantially higher than the Cummer Scale (R. 783). So if the Interstate Commerce Commission is to estimate the revenue which will be received under the two scales of rates, it can cut off half of its estimate under the high rate right there.

F. S. Buffum Company, Incorporated, is a new party to this proceeding. It alleges in its bill of complaint (R. 527) attacking the order that it began operations in Jack-

sonville in 1930 (R. 531), that under the high rate then in effect it could not ship logs to its mill by railroad but relied almost entirely upon receiving logs by truck and by water (R. 531-532) which only enabled it to operate intermittently (R. 532), that after the restoration of the Cummer Scale in 1931 it substantially increased its rail shipments of logs so that, whereas in 1930 under the high rate it averaged about 12 cars of logs a month by rail, in 1932 under the Cummer Scale it was receiving an average of 76 carloads of logs per month, an increase of about 633 per cent (R. 532). It averred that its investment and business were placed in jeopardy by the Commission's order (R. 533) and that it had been giving employment to about 125 persons at its mill and approximately 100 more persons who were engaged in cutting its logs (R. 531). All of this was substantiated by the testimony of the president of the company (R. 956-962). He testified (R. 959):

> "The restoration of the Cummer Scale enabled us to bring in a large additional supply of logs over the Atlantic Coast Line, and it was only after the restoration of that scale that we were able to draw from longer distant points, thus supplementing our truck and water supply, and thereby receive sufficient total supply to enable us to operate our plant continuously. Unless the Cummer Scale or its equivalent is continued in effect we cannot bring in any logs by rail, other than an occasional car from nearby points."

Again (R. 962) he testified:

> "The cancellation of the Cummer scale would undoubtedly cause an almost immediate and almost total elimination of railroad movement of logs into our mill."

This testimony likewise was not contradicted, but apparently had no effect upon the Commission's report.

The Wilson Lumber Company of Florida, located at Perry, was in the former litigation in this Court and is an appellant here. The secretary of that company testified (R. 981):

> "Wilson Lumber Company of Florida first began to ship logs over the Atlantic Coast Line Railroad in Florida in 1928, just a few months before the Cummer scale was superseded by the scale prescribed by the Interstate Commerce Commission. When the mill of the Wilson Lumber Company of Florida was built I did not have any information about the proposal to change the rates. Had we had any information that the rates on logs would be more than doubled we would not have built the mill."

He showed that that Company could obtain logs by trucks and "in view of the uncertainty of whether the Cummer scale will continue in effect" was obtaining bids for trucking its logs (R. 982). Illustrating this he showed one bid for moving the logs from one tract of land to the

mill by truck which was at substantially the same cost as moving them under the Cummer Scale. The revenue on those logs under the Cummer Scale would be around $30,000, and the Company would move them over the railroad "if the Cummer Scale remains in effect" (R, 982).

There was no testimony that any shipper would ship any logs at the high rate, and it is apparent from the record that with the high rate in effect the shippers will have to rely upon securing their logs by truck and by water or be forced out of business with further losses of investment and further unemployment resulting from the action of the Commission in this proceeding and with further reductions in the revenues received by the carrier.

(d) *The Estimate as to Future Revenue Under the Increased Rate Is Wholly Insufficient to Justify the Invasion of State Domain.*

All that the Commission has done is compute the difference in "earnings" under the two scales of rates upon 7,431 cars per year with the "belief" that the log movement would not be "materially curtailed" under the prescribed rate—all related to "normal economic conditions." The Commission's report recognized that the then existing economic conditions were not normal and it did not attempt to prophesy when normal economic conditions would return.

Even if this finding were applicable to existing economic conditions as distinguished from normal economic conditions, it would fall far short of the requirements of the Wisconsin Fares Case supra, the New York Case, supra,

and the Florida Log Case, supra, with respect to the substantial disparity and substantial burden which must be made to *Nearly appear* before the Interstate Commerce Commission is authorized to invade State domain.

POINT VI.

Even If It Were Possible to Find Any Unjust Discrimination Against Interstate Commerce in This Proceeding, There is No Finding and No Evidence Upon Which the Commission Could Base a Finding That That Discrimination was of Such Character and Consequence That It Was the Affirmative Duty of the Commission, as an Important Step in Maintaining an Adequate National Railway Transportation System, to Remove It.

(Applicable to Assignments of Error Nos. 17 to 26 inclusive, 30, 43, 44).

We now examine the character of burden which the Commission says exists. At pages 188-189 the report of July 5, 1932, discusses the number of cars of logs that moved in Florida during the two years of the high rate and the revenue derived therefrom. It discards the cars that moved in the trainloads to Brooks-Scanlon Corporation and to Cummer Cypress Company for it recognizes that those movements are ended. It determines the remaining cars to be 14,862 and computes the revenue derived on those cars under the high scale formerly prescribed by it during these two years, and the revenue which

would have been derived on the same cars under the Cummer Scale, and it concludes:

> "Accordingly, on the basis of an average of 7,431 cars a year under normal economic conditions, which basis we believe conservative, the gross revenues under the rates prescribed by the previous order herein would be more than $100,000 a year greater than under the Cummer Scale, now in effect. The application of the Cummer Scale, therefore, places a substantial burden upon defendant's interstate revenues. If the revenues yielded by the Cummer Scale are not sufficient to cover the cost of the service, as the cost evidence indicates, it would follow that part of the above stated amount would constitute a dead loss in net revenue."

The record shows some 18,602 cars of logs moved intrastate during the two years following the increase in rates under the unlawful order of the Interstate Commerce Commission, 186 I. C. C., text 188. As has been pointed out, the Commission found that 3,740 of these cars moved in trainload movements that had ceased and would not be resumed (Text 188). Approximately 8,000 of this number which the Interstate Commerce Commission divides between two years of "normal economic conditions" moved in trainloads from Hines to Palatka for Wilson Cypress Company. There will be no more trainload movements to Palatka under the high rate, according to the uncontradicted testimony of the president of that company. This

alone would more than reduce the Commission's figures by half.

But accepting, for the purpose of argument, the Commission's figures, the critical *national* situation requiring invasion of State domain and prerogatives by Federal power and all this record and effort is said to be an annual sum which "under normal economic conditions" would amount to some indeterminate part of $100,000. The Commission did not even estimate what that "part" would amount to under "normal economic conditions." What it would amount to in the abnormal year 1933, or the many abnormal years which may confront us, is wholly unmentioned in the report.

Just some part of $100,000 is the alleged burden said to exist. If it were an actual burden of all of $100,000 a year, it would require 32 years for the removal of that burden to counterbalance the burden which was laid upon the Brooks-Scanlon Corporation alone by the former order of the Commission. And the burden which is now laid upon investments and employment in Florida by this new order of the Commission is not considered.

It appeared in the *Wisconsin* case (Wisconsin Railroad Commission v. C. B. & Q. R. Co., supra) that the loss in actual revenue, by reason of the refusal to permit the increase in State rates, would be approximately $6,000,000 per annum. In the *New York* case (New York v. United States, supra) the amount was approximately $12,000,000 per annum. In the *Louisiana* case (United States v. Louisiana, supra) the order involved a plan outlined to produce between $100,000,000 and $125,000,000 in increased revenue to the carriers annually.

It cannot be said that the removal of the burden here, even assuming that any burden may exist, amounting to an indeterminate part of $100,000 per year "under normal economic conditions" is an "important" step in maintaining an adequate "national railway system" or that any such burden could constitute an "obstruction" to interstate commerce which is so "real and substantial" as to authorize the exercise of Federal power to supersede State power. Particularly is this true when it here appears that there is no longer any substantial disparity between the level of interstate rates and intrastate rates applicable generally upon logs in the Southern rate group, and the Cummer Scale of rates which is under attack.

POINT VII.

The Cost and Revenue Studies Founded Upon System Averages are Insufficient to Supply the Essential Facts as to the Particular Traffic and Revenue and the Effect of the Intrastate Rates Existing and Future Upon the Income of the Carrier.

(This is applicable to Assignments of Error Nos. 1, 2, 3, 5 to 11 inclusive, and 14 to 31 inclusive.)

The only basis, other than the rate comparisons, upon which the order of the Interstate Commerce Commission claims support is the cost evidence which is reviewed in that report. The report begins the consideration of the

cost evidence with the statement (186 I. C. C. at 176-177):

> "It is manifest that if the Cummer Scale produces less revenue than the cost of the service, declines in the traffic have the favorable effect of reducing defendant's losses and that an increase in the traffic would only serve to augment those losses."

It winds up with the conclusion at p. 187 of the report:

> "It is of course well known, as defendant concedes, that it is impossible on a system like the defendant's, engaged in the general transportation of all kinds of freight and of passengers, to determine accurately the exact cost of transporting any one commodity. From the evidence submitted in this case, however, we are convinced that the defendant's revenue under the Cummer scale of $15.12 per car for transporting a car of logs weighing 56,754 pounds a distance of 81 miles, and transporting the empty car back, is insufficient under all the circumstances and conditions to cover the full cost of the service."

(a) *The Cost Studies of the Carrier Were Insufficient and Were Condemned as Such by the Commission.*

We propose to examine the evidence upon which that conclusion purports to be based. The railroad, through its witness Mr. Lamb, put in evidence these costs studies which are discussed from pages 177 to 183 of the report.

Those cost studies proceed upon the following theory: The total expenses, or cost, of all freight handled on the Atlantic Coast Line Railroad for the year 1929 was $36,308,812.74 (R. 1138). This amount was, of course, spread over a great many accounts in accordance with the rules and regulations of the Interstate Commerce Commission for the classification of accounts. Mr. Lamb then eliminated what he says are all or substantially all of the yard and terminal expenses, which involve the handling of less-than-carload freight and other matters which Mr. Lamb says may have no relation to handling logs. This elimination leaves him with $26,701,014.07, which he terms "haulage expense." This term "haulage expense" is a misnomer, for if he had eliminated all terminal expense he would have eliminated a greater amount. This is demonstrated by the fact that the Interstate Commerce Commission, when it eliminated terminal expense, was left with only $24,463,384 for haulage expenses (186 I. C. C. 196).

Mr. Lamb then observes that among those total expenses there are certain specific expenses which he terms "out-of-pocket" expenses. They are the direct costs of freight service, that is, trainmen's wages, cost of fuel,

water, lubricants and other supplies for locomotives and trains and repairs. Those "out-of-pocket" expenses on all freight during that year amounted to $6,920,683.75. This amount is 19.0606 per cent, or approximately one-fifth, of $38,308,812.74 (the total expenses) and 25.9192 per cent, or approximately one-fourth, of $26,701,014.07 (the so-called "haulage expenses"). His theory then is that the out-of-pocket expense of any freight service is approximately one-fifth of the total expense of that service and approximately one-fourth of the haulage expense of that service.

Having ascertained the out-of-pocket expense of any particular freight service, he will multiply it by five to ascertain the total expense and by four to ascertain the haulage expense. He will then add certain percentages to the resulting figures for taxes and a profit on the business and the final figures so achieved are said by him to represent the amount his railroad should receive. One final figure, he says, will include only haulage costs and the other will include all costs. He then says that the proper figure for the cost of transporting logs will lie somewhere in between the two final figures so achieved, because some of the terminal costs are not attributable to the transportation of logs and others are.

This is illogical, because it is not reasonable to assume that the relation between out-of-pocket, or direct costs, and other costs is a fixed ratio in the handling of all freight. It is merely the use of a system average. But the more important fallacy in the theory occurs when Mr. Lamb undertakes to ascertain the out-of-pocket expenses of the log traffc in Florida—the basic data from

which his other calculations are derived. He did not undertake to find out what the actual out-of-pocket expense of the log traffic in Florida was. Instead he undertook to determine what was the average out-of-pocket expense of handling *all* freight in Florida during the year and to use that average cost as the out-of-pocket cost of handling logs.

He therefore determined that the entire out-of-pocket expense incurred during the year by the railroad in Florida (or rather the third division of the railroad which comprises substantially all of its lines in Florida) in transporting all freight amounted to $2,059,610.66 (186 I. C. C. 177). The gross ton-miles of all freight in Florida during the year were 2,332,812,000 (186 I. C. C. 178). Dividing these ton-miles by this out-of-pocket expense produced an average out-of-pocket expense of .0882888 cent per gross ton-mile. He assumed this to be the out-of-pocket expense per gross ton-mile of the log traffic in Florida, although it was the average out-of-pocket expense per gross ton-mile of all traffic in Florida, and accordingly used it as his basic data for figuring costs of the log traffic.

He would multiply this assumed out-of-pocket expense per gross ton-mile by the number of gross ton-miles in any particular log movement and then multiply the result by four and by five and then add on a percentage for taxes and profit and declare the two resulting figures to represent the cost of that log movement, one figure being said to overstate the cost and the other to understate it.

It will be observed at once that these figures are just as applicable to the perishable and expensive fruit and vegetable traffic in Florida as they are to logs. The cost

so produced is only an average cost of the handling of all freight in Florida, carload and less-than-carload, fruits, and vegetables, manufactured products, and all other commodities, as well as logs. It is well known that the handling of these other commodities is much more expensive than the handling of logs and that these other commodities will and do bear higher freight charges than logs.

The great expense attendant upon the transportation by the carrier of fruits and vegetables in Florida had been fully testified to by representatives of that carrier in other proceedings before the Interstate Commerce Commission and that testimony was produced in this proceeding by the appellants (R. 1185-1205).

An average of the cost of handling all freight in Florida fails, in addition, to give consideration to the fact that this average contains an unusual proportion of terminal expense due to the fact that approximately 45% of the total tons of freight handled on the Atlantic Coast Line Railroad system either originated or terminated in Florida or moved entirely within that State (186 I. C. C. 166). This means that the total out-of-pocket costs in Florida contain an excessive percentage of pick-up and delivery charges, assembly and switching services in connection with the interstate operations in which the large costs of getting the traffic started or delivered are incurred in Florida whereas nearly all of the ton-miles are made over the balance of the system in the transportation to or from Florida.

To add together all these costs of handling all freight in Florida and then strike an average and then declare that average to be the average cost of handling logs is

absurd. First, it is obviously erroneous, and second, it is the use of a "system average" in determining the cost of handling a particular commodity, a method condemned by this Court and by the Interstate Commerce Commission.

The Commission itself was forced to recognize this, and it concludes its review of the railroad's cost evidence by dismissing it in the following language (p. 182-183 of the report):

> "The unit cost figure of 0.0882888 cents per gross ton mile was admitted by defendant to represent merely the average out-of-pocket expense of handling all traffic on the third division. It cannot, therefore, be accepted as indicating the average out-of-pocket cost to defendant of transporting logs in Florida. *Nor. Pac. Ry. v. Dept. Public Works, 268 U. S. 39; Calif. Growers' & Shippers' Protective League v. S. P. Co., 129 I. C. C. 25, 52.* It appears that nearly 25 per cent. of the traffic moving in Florida consists of fruit and vegetables which require special and costly service. The cost of such service enters into the average out-of-pocket cost of the third division and would apparently tend to make it higher than the actual out-of-pocket cost of the log traffic. The conclusion seems to follow that the average cost figure of 0.0882888 cents per gross ton mile is higher than the actual out-of-pocket cost of the Florida log traffic."

The arbitrary manner in which the Commission has approached this problem is probably no better examplified than in its insistence upon setting forth in minute detail in its report a series of transportation costs which it acknowledges to be wholly insufficient, and after so doing condemn such cost figures as system averages which "cannot, therefore, be accepted as indicating the average out-of-pocket cost to defendant of transporting logs in Florida."

(b) *The Determination of Costs by System Averages is Improper, Particularly in the Case of Low Grade Commodities.*

It is to be observed that by a rare coincidence the decision of this Court which condemns system averages as indicative of the cost of specific transportation hauls of a particular commodity was a case involving rates on logs. *Northern P. R. Co. v. Department of Public Works, 268 U. S. 39.* In that proceeding the State of Washington attempted to fix rates for the transportation of logs intrasate, on the basis of costs as indicated solely by system averages. This was condemned by this Court in emphatic language, as follows:

> "The department's findings concerning operating costs rested largely upon deductions from data found in published reports of the carriers and in their exhibits filed in this case. Instead of attempting to show by evidence, reasonably specific and direct, what the actual operating cost of

this traffic was to the several carriers, the Department created a composite figure representing the weighted average operating cost per 1,000 gross ton miles of all revenue freight carried on the four systems, and made that figure a basis for estimating the operating cost of the log traffic in Washington. *This was clearly erroneous.*

"A precise issue was the cost on each railroad of transporting logs in carload lots in western Washington, the average haul on each system being not more than 32 miles. In using the above composite figure in the determination of this issue the Department necessarily ignored, in the first place, the differences in the average unit cost on the several systems; and then the differences on each in the cost incident to the different classes of traffic and articles of merchandise, and to the widely varying conditions under which the transportation is conducted. In this unit cost figure no account is taken of the differences in unit cost dependent, among other things, upon differences in the length of haul; in the character of the commodity; in the configuration of the country; in the density of the traffic; in the daily loaded car movement; in the extent of the empty car movement; in the nature of the equipment employed; in the extent to which the equipment is used; in the expenditure required for its maintenance. Main line and branch line freight, interstate and intrastate, carload and less than carload, are counted alike. *The Department's error*

was fundamental in its nature. The use of this factor in computing the operating costs of the log traffic vitiated the whole process of reasoning by which the Department reached its conclusion." (Italics supplied.)

And what the State of Washington itself could not do in the regulation of intrastate rates on logs in that State, the Commission most assuredly cannot do in regulating intrastate rates on logs in the State of Florida.

The Interstate Commerce Commission has consistently held to the same opinion as was expressed in this last cited case by this Court. See *Calif. Growers & Shippers' Protective League v. S. P. Co., 129 I. C. 25;* cited in the above quotation from the report in this case. Thus, in *Western Trunk Line Class Rates, 164 I. C. C. 1, 188* the Commission expressed an unwillingness, "to assume that average unit line-haul cost on all traffic represent line-haul costs on class traffic." The reason why "system averages" will not do is readily apparent.

(c) *The "System Average" Costs Computed by the Commission After Condemning this Method of Ascertaining Costs.*

Now having discarded the cost studies submitted by the railroad, the Commission, finding itself devoid of cost studies in the record, proceeds to a most remarkable feat of reasoning. On page 183 of the report the Commission begins with this statement:

"There appears to be no doubt that the operating costs per unit are generally higher in Florida than the average for the defendant's system as a whole either including or excluding Florida."

The principal reasons why average costs of all freight may be higher in Florida than elsewhere on the system are that it is a "terminal" state, that is, freight traffic either ends or begins there, and there is no through interstate traffic. All interstate freight traffic in Florida therefore receives a terminal service, that is, it is loaded or unloaded and delivered. This is of course one of the major expenses in freight handling, and vastly increases costs attributable to that State when unit costs are determined by dividing the costs incurred by the ton-miles of traffic made in the State. But it does not follow that intrastate freight is any more costly to handle there than it is in Georgia or North Carolina.

A second principal reason why the average cost of all freight in Florida may be higher than elsewhere on the system is the very large traffic, actual and relative, in perishable fruits and vegetables, which requires high standards of transportation service and attention at a very heavy cost, but which cost is not in any way to be attributed to the transportation of logs. We have shown that those characteristics of the Florida traffic, and particularly of the perishable fruit and vegetable traffic, were elaborately set forth in the record (R. 1185-1205).

However, disregarding these facts, we shall follow the reasoning of the Commission. Having arrived at the con-

clusion that the average cost of handling all freight is greater in Florida than it is elsewhere on the system, the Commission therefore deduces (p. 184 of the report):

> "In view of this fact, system figures including Florida, which are not in question, may be utilized as the basis for approximately the cost of transporting logs in that State."

Thus the conclusion is not that the average cost of transporting *logs* on the system may be used to determine the cost of transporting *logs* in Florida, but that the average cost of transporting *all freight* of every kind, character and description, including perishable fruits and vegetables, silks, satins and all other high grade commodities, on the whole system may be used to determine the cost of transporting *logs* in Florida. This is just as logical as to say: The average mountain is larger than the average mole-hill, therefore to determine the size of a small mountain we will measure the average mole-mill.

The Commission then sets out to measure the average cost of handling all freight on the system in the year 1929 and declares that it is thereby determining the average cost of handling logs in Florida. This occupies the balance of the report down to the conclusion and the detailed calculations are set forth in Appendix E of the report.

Appendix E, as will be observed by the Court, is a highly involved statistical compilation, necessitating the use of a mass of figures and a multitude of computations not displayed in the exhibit itself. The data relied upon to produce the result are not supported by record reference

save in one instance; where else in the record these various data appear is a matter upon which the Commission has failed to enlighten either the parties or the Court.

The Court will observe that the title of the Exhibit E cost study of itself shows that the study produces merely an "estimated cost of transporting logs in Florida", and it is "based on A. C. L. average costs per unit". In other words, the title of the Commission's exhibit recognizes that the result is a mere estimate and that it is based entirely on system average costs.

It is interesting to observe the method by which the Commission proceeded to construct this cost evidence. It began with the total freight operating expenses of the railroad in 1929 of $36,308,813 (186 I. C. C. 196). It eliminated, as expenses not involved in handling logs, the sum of $1,281,069. These items so eliminated were: maintenance of wharves and docks, floating equipment, outside agencies, advertising, traffic associations, industrial and immigration bureaus, and the cost of superintendence and general expenses in connection with those eliminated items. All other expenses in connection with the handling of all freight were assumed to be just as applicable to logs as to any and all other freight. Before proceeding further we point out that if these eliminated items had been left in they would have increased the cost which the Commission has computed for the average car of logs by $1.02. So if it be said that the Commission made any adjustment from the purely average cost for the simpler nature of the log traffic, that adjustment was $1.02 per car on the average car of 56,754

pounds traveling a distance of 81.36 miles (which was the average during the two year period of the high rate).

Having made this trifling and inconsequential deduction, the Commission apportions all of the remaining $35,027,744 between haulage and non-haulage, or terminal, expenses. The haulage expenses ($24,643,384) so apportioned are divided by the gross ton-miles of all freight handled on the system in the year (11,600,829,000), and an average haulage expense per gross ton-mile ($.0021243) thus determined (186 I. C. C. 196-197). The gross ton-miles in the movement of the average car of logs, that is, the tons of the weight of the car plus the load of 56,754 pounds multiplied by the loaded movement of 81.36 miles and in addition the tons of the weight of the car multiplied by the 81.36 miles of the empty return movement, is then computed and found to be 4994 gross ton-miles. The average haulage expense per gross ton-mile ($.0021243) of all freight is then multiplied by the gross ton-miles in the movement of the average car of logs (4994 gross ton-miles) and the result ($10.61) is termed the "haulage expenses" (186 I. C. C. 197) of the average car of logs.

The Commission then adds "non-haulage" expenses. To determine those expenses it goes back to the apportionment which it made of all freight expenses between haulage and non-haulage expenses, and ascertaining that it there apportioned $10,384,360 to non-haulage expenses, it deducts approximately one-fourth of that amount for excess terminal expenses incurred for less-than-carload over that incurred for carload freight upon some "estimate" that that is about the right deduction for the difference in non-haulage expenses between carload and less-than-carload freight. The

remaining non-haulage expense ($7,828,582) is divided equally among the total loaded cars of all freight carried during the year (1,211,775) with the result that it is determined that the average non-haulage expense per car is found to be $6.46 (186 I. C. C. 196-197).

The haulage expenses of $10.61 is then added to the non-haulage expense of $6.46, making a total of $17.07 per car which is denominated "operating expenses". A percentage (approximately 45%) of these "operating expenses" is then added for taxes and profit (although no profit at the rate here added was being earned by the traffic as a whole at the time) and the final result so achieved is a cost of $24.69 (186 I. C. C. 197). Observing that the Cummer scale on this average car of logs would have produced only $15.12 in revenue the Commission concludes that it is too low. The rate which it prescribed would produce a revenue of $31.21 on this average car of logs.

Having condemned the use of system averages in this very report, the Commission contrary to the decision of this Court and its own decisions proceeds to determine a purely system average cost of handling all freight traffic and label that determination "Estimated Cost of Transporting Logs in Florida" when the cost so determined has no more relation to the handling of a car of logs than it has to the handling of a car of early strawberries and no more relation to handling any freight in Florida than it has to the handling of any freight in Virginia or Alabama. The cost so determined is nothing more or less than the average cost of transporting a car of a given weight containing the average freight a given distance. And the sole reason for

assuming that the Cummer Scale does not produce a reasonable return on logs in Florida is that it produces less than the *average* cost of transporting in 1929 a car containing a given weight of the *average freight* a given distance, anywhere on the system of the Atlantic Coast Line.

Freight rates are made up of schedules constituting a multitude of different levels: high-grade and valuable property, perishables and the like bear very high rates and produce greatly more than the average cost of transporting the average car. The cost and expense properly chargeable to high-grade freight is of course both actually and theoretically greatly in excess of that charged to low-grade commodities, which latter move largely in considerable quantities in regular movements. The very fact that, as found by the Commission (186 I. C. C. 166), in 1928 "the system log tonnage constituted 7 per cent. of the total system tonnage, whereas the revenue from the log tonnage was only 1.9 per cent of the total revenue", demonstrates that logs do not and will not bear the average charge per ton made for the transporting of all commodities. The very term "average cost" implies that there must be many below as well as many above the average. So it is readily understandable why both this Court and the Interstate Commerce Commission have repeatedly condemned any such method of ascertaining the cost of transporting a single commodity.

(d) *The Cost Evidence With Respect to the Log Movement of the Wilson Cypress Company from Hines to Palatka.*

The only other cost evidence was that relating to the trainload movement of the Wilson Cypress Company from Hines to Palatka. At our request the railroad produced the out-of-pocket expenses in connection with the movement for the month of November, 1930 (R. 909-910, 1184). That shows that these expenses of that movement for that month amounted to $2,398.55 (R. 1184 and 186 I. C. C. 181). There were 490 cars of logs in the trains and 8 cars of other freight and 553 cars returning empty. Disregarding the fact that more empty cars were handled than loaded ones, so that the month could not have been average in that respect, we point out that the average direct expense per loaded car was $4.81. This $4.81 per car was the amount the railroad would not have spent if it had not run these log trains. Of course, there were indirect, or overhead costs, which went on whether the logs moved or not and toward the payment of which the movement of the logs should have made some contribution. The Commission found that the revenue received under the high rate in effect at the time was $41.60 per car and under the Cummer scale it would have been $20.48 (186 I. C. C. 182). Using Mr. Lamb's theory the Commission multiplied the out-of-pocket expense per car and obtained a haulage cost of $18.51 per car, to which it added taxes of $2.91 and profit or return on investment of $6.10 obtaining a total cost of $27.52 per car (186 I. C. C. 182).

But for any such purpose as obtaining total costs these out-of-pocket expenses of this movement are erroneous. Mr. Lamb's attention was directed (R. 911) to the fact that the charge for locomotive fuel coal seemed excessive. He could not explain this at the time but promised to do so later. His letter of explanation, dated after the proceeding was closed (R. 1206), showed that in computing the cost of this coal he had included five mills per ton per mile for transportation of such coal on the rails of the Atlantic Coast Line up to the Florida State line. The result of this was to increase the out-of-pocket charge for coal about one-third. Of course, it was not an out-of-pocket expense as it was never paid to anyone.

The record shows that the Commission's own Classification of Operating Expenses Accounts forbids any such charge (R. 132, 182, 243). And the Commission's report says (page 184):

> "Coal is charged to the operations in Florida at the average system cost, notwithstanding a substantial haul from the Alabama, Virginia or West Virginia fields to that state is involved."

Adding in that charge to the out-of-pocket costs and then following Mr. Lamb's theory of multiplying the out-of-pocket costs by four and then adding nearly fifty per cent. of the result for taxes and profits results in that erroneous charge being magnified approximately six hundred per cent in the total cost so computed. So the cost figure of $27.52 per car developed by the Commission for this movement, on which it found the revenue

under the high scale to be $41.60 per car, is obviously far exaggerated. It will be remembered that this movement was nearly half of the total movement in Florida during the two years of the high rate.

The important thing, as we see it, about this cost evidence with respect to this particular movement is that every time the railroad incurred the direct expense of $4.81 (assuming the entire out-of-pocket costs were correct) it got back $20.48 even under the Cummer Scale. The difference between those two amounts went toward the paying of the indirect and overhead costs of the railroad which go on whether the traffic moves or not. It is only by *volume* of traffic that these indirect and overhead costs of the railroad can ever be met. In 1932 the railroads were nearly all operating at a loss whereas some years before they had been profitable enterprises, and this was not because the rates were not just as high as they ever were, but because they were not securing the same volume of the traffic. That was pointed out by this Court in the former appeal in this proceeding where this Court said (282 U. S. at page 214):

> "The raising of rates does not necessarily increase revenue. It may in particular localities reduce revenue instead of increasing it, by discouraging patronage."

No principle could be ever better illustrated than by what has occurred in this proceeding.

(e) *The Evidence in the Original Hearing Before the Interstate Commerce Commission With Respect to the Compensatory Character of the Cummer Scale of Rates.*

The Cummer Scale of rates was shown to have originated in a contract dated June 29th, 1903, between the Cummer Lumber Company, which had established a mill in Jacksonville, Florida, and the Jacksonville & Southwestern Railroad, which was a railroad owned by the lumber company and constructed by it as a plant facility (Former Record, 258-260). The contract was to continue in effect for fifteen years. The Atlantic Coast Line Railroad bought the Jacksonville & Southwestern Railroad in 1904, acquiring the contract with the railroad (Former Record, 19).

On November 8, 1909, Mr. Walters, the Chairman of the Board of the Atlantic Coast Line Railroad wrote to Mr. Cummer a letter (Former Record, 311-312) in which he said: "I can assure you we have no more desire than you to make any change in the traffic agreements of June 29th, 1903, as we consider them quite as advantageous to us as they are to you, * * *".

In 1913 the Carpenter-O'Brien Company was locating a mill at Eastport, in the environs of Jacksonville, and in connection with the location of that mill in Jacksonville entered into an agreement, dated January 26, 1914, (Former Record, 261), with the Atlantic Coast Line Railroad for the transportation of about one billion feet of pine timber in Lafayette and Taylor Counties,

Florida, to its mill on rates which were approximately in line with the scale provided in the contract between the Cummer Lumber Company and Jacksonville & Southwestern Railroad Company. Observe, however, that the contract with the Cummer Lumber Company provided for a rate of $8.00 per car of 50,000 pounds for distances between 60 and 90 miles and for each additional 10 miles over 90 miles an additional charge of $1.00 per car. The rate voluntarily agreed upon and given to the Carpenter-O'Brien Company was $12.00 per car of 50,000 pounds from points between Clara and Perry, Florida, to Cedar Creek (or Eastport) Florida, the distance from Perry, Florida, being 166 miles (Former Record, 20).

It will thus be noted that when the Atlantic Coast Line Railroad in 1914 made this contract, instead of conforming to the scale provided in the contract with the Cummer Lumber Company, which would have been $16.00 per car for 166 miles, it voluntarily gave to the Carpenter-O'Brien Company (the predecessor of the Brooks-Scanlon Corporation) a lower rate of $12.00 per car. The railroad filed the tariff with the Florida Railroad Commission as a trainload tariff, but that Commission required that it either withdraw the tariff or make it applicable to single car loads anywhere in Florida, and the railroad elected to apply the scale to single cars as well as trainloads (Former Record, 628).

This action was not taken by the railroad either hastily or unadvisedly. After ten years of actual experience with the scale of rates, the rates given to the Carpenter-O'Brien on the long haul were 25% lower than the rates originally provided in the Cummer Lumber

Company contract, and the railroad voluntarily published the scale of rates for general application. The railroad cannot be heard to say that in 1914, when it voluntarily published this scale of rates, it did not know more about this scale of rates and its effect than anyone else, and that it had not had ample opportunity to investigate it and to reach its own conclusions about it.

The Florida Railroad Commission had made no investigation of the reasonableness of the rate when in 1914 it required the railroad to either withdraw the rate or apply it generally and informed the railroad at the time that if the rate was found to be unremunerative the railroad could apply to that Commission to change it (See statement of Chairman of Florida Railroad Commission, Former Record, 627-629). But the railroad never made any application to the Commission for any change in that rate (Former Record, 629), nor has anyone ever complained to the Florida Commission about the level of the rate although its doors have been open to receive any such complaint during all these years (R. 623).

In 1918 these rates were increased 25%, and again in 1920 they were increased 25% of their then existing level, and in 1922 they were reduced 10%, along with the increases and reduction in all freight rates, so that after 1922 the Gummer Scale of rates was at all times more than 40% higher than when it was published in 1914. (Former Record, 268-269).

When this proceeding came on in 1926, the railroad in its answer to the complaint before the Interstate Commerce Commission denied that there was or had been

any violation on its part of the Interstate Commerce Act and prayed "that it be hence dismissed" (Former Record, 199-200). Moreover, in the proceeding the railroad disclaimed any contention that the Cummer scale of rates was not compensatory and stated that it had not made and was not making any proposal to revise that scale of rates (Former Record, 491, 495-496).

The railroad introduced a cost study in the original proceeding (Former Record, 294-307). The same Mr. Perrin who was the principal witness of the railroad in the re-opened proceeding, after pointing out in the original proceeding that the average revenue per car under the Cummer Scale of the shipments to the Brooks-Scanlon Corporation and Putnam Lumber Company was $20.47, stated that in order "*to remove any incorrect impression that may exist that there is a very large amount of profit*" in these shipments, he had asked Mr. White, the Superintendent of Transportation of the railroad, to make a cost study with respect to those shipments (Former Record, 522). The cost study was then presented showing a small profit (Former Record, 294-307, 522-532, 560-562 and 709-715). Of course, Mr. White was not brought back in the re-opened proceeding, but a new statistician with a new theory of cost accounting was produced for the purpose of showing a loss instead of a profit. The difference between Mr. White and Mr. Lamb only illustrates the fact that the same statistics, if voluminous enough, may be used to prove any pre-conceived notion.

After the former unlawful order of the Interstate Commerce Commission was entered and attacked in the Courts, in 1929, the railroad intervened in defense of that

order and then and there for the first time expressed any dissatisfaction with the Cummer Scale.

The authorities are clear that proof that a particular carrier established and maintained a particular charge for the carriage of a particular commodity for a substantial period of time is persuasive evidence that the charge so established and maintained is reasonable.

L. & N. R. R. Co. v. Finn, 235 U. S. 601; Service Lumber Co. v. Sumpter Valley R. Co., 67 Ore 63, 135 Pac. 539.

The major part of the traffic moved in solid trainloads (Former Record 23), which the Interstate Commerce Commission itself declared to be less costly than handling the traffic in single carloads (186 I. C. C. 182). In such case the whole train of cars was placed by the shipper on a spur track and the railroad need only hook an engine and caboose to the train, move it to its destination, and deliver the train to one shipper without any substantial switching or delivery service (186 I. C. C. 182). When we consider this, and the simple nature of the equipment used and simple service rendered in the log traffic generally, the absurdity of attempting to measure its cost by the *average* cost of handling the *average* freight, either on the whole system or in Florida, is peculiarly apparent. Peculiar local conditions which do exist and with which local authorities are familiar are the reason this Court has declared in this case that the "reasonableness per se" of intrastate rates is to be determined by "state authorities."

(f) *The Reasonableness Per Se of Intrastate Rates has been Declared by this Court in this Proceeding to be a matter for Determination by State Authorities and Not the Interstate Commerce Commission.*

The contention made by the Interstate Commerce Commission here is that if any intrastate rate on a single commodity on a single railroad in Florida produces less earnings per car than the average cost per car of handling all freight traffic on the entire railroad, that then the Commission is authorized to step into Florida and raise that rate by declaring it to be a burden upon interstate commerce.

At best this could only be considered a determination as to the reasonableness of the rate, and the contention so made has been effectively and completely disposed of by this Court in the former appeal in this case. There this Court stated that "the Commission reached the conclusion that the intrastate rates assailed were less than reasonably compensatory". Noting that the Commission had reached that conclusion from the evidence, this Court said (282 U. S. at 214):

> "But to justify the Commission in the alteration of intrastate rates, it was not enough for the Commission merely to find that the existing intrastate rates on the particular traffic were not remunerative or reasonably compensatory. The

> authority to determine the reasonableness per se of intrastate rates lay with the state authorities and not with the Interstate Commerce Commission."

And this Court there pointed out just what conclusions must be reached and what findings must be made to justify such action in this proceeding. We have hereinbefore demonstrated that those findings were not made and that there is no evidence upon which they could be made.

This whole inquiry into the remunerative or compensatory nature of the rates is immaterial. But we have dealt with it at some length to more thoroughly demonstrate the arbitrary and unreasonable character of the action of the Commission, in attempting to act here merely because it appears that logs, a low grade commodity, do not produce as much revenue per ton as the average per ton produced by all commodities, a matter which everyone knows, a matter which could have been established in two lines of the report, and a matter which this Court in this very proceeding has condemned as insufficient to justify the action taken.

POINT VIII.

The District Court Erroneously Assumed that the Interstate Commerce Commission had Found the Average Cost of Hauling Logs Over the Atlantic Coast Line Railroad System, Whereas the Commission Made No Such Finding and There was No Evidence of Record Upon Which Such Finding Could Be Based.

(This is applicable to Assignment of Error No. 27.)

The District Court in its opinion said *(State of Florida v. United States, 4 F. Supp. 477, at 479)*:

> "On the question of the cost of the service, figures were considered which showed the average cost of hauling logs over the Coast Line System; exact figures for the particular traffic in Florida not being available."

We respectfully submit that this statement is without foundation in the record. We have hereinabove fully considered the cost evidence and have demonstrated that it consists of an attempt to convert system average or Florida division average costs for the transportation of all freight into costs of transporting logs by so denominating them, and that the results obtained bore no direct or proximate relation to the cost of handling the particular traffic in question, either upon the system or in Florida.

POINT IX.

The Rate Comparisons Furnish No Cause for the Invasion of State Domain By the Federal Power.

(This is applicable to Assignments of Error 1 to 5 inclusive, and 26).

The opinion of the District Court and the Report dated July 5, 1932, of the Interstate Commerce Commission showed that both relied greatly upon the rate comparisons which had theretofore been made by the Interstate Commerce Commission. We have already pointed out in the preceding portion of the brief the extent to which the Newly Reduced Rates had been established throughout the Southern and Southwestern Territory at the time the reports and orders of the Interstate Commerce Commission dated July 5, 1932, and January 9, 1933, became effective. The supplemental bills showed them to have been established in whole or in part upon 22 railroads in 10 States in the Southern Rate Group and upon 5 railroads in 5 States in the Southwestern Rate Group, in interstate and intrastate commerce. They had been established in interstate commerce on four railroads in Florida, namely, the Frisco System, the Louisville & Nashville Railroad, and the Georgia & Florida Railroad, and the Central of Georgia Railway. They were found by the report of the Interstate Commerce Commission to be substantially on the same level as the Cummer Scale. There was attached to and made a part of each supplemental bill a map show-

ing the extent to which these rates were effective at the time of the hearing of the second re-opened proceeding before the Commission. Suffice it to say that they are applicable upon all or part of most if not all of the lines whose rates were used by the Interstate Commerce Commission as standards of comparison in the Rate Comparisons referred to in its report of July 5, 1932, and by the District Court in its opinion.

We submit that the necessary inference with respect to the Newly Reduced Rates on those 23 railroads in those 14 states is that logs will not move freely in the South at rates substantially higher than the Cummer Scale—a thing which Florida shippers have been asserting throughout this proceeding.

But beyond all this, the efficacy of rate comparisons as a basis for the action here attempted by the Interstate Commerce Commission was fully considered by this Court in the former appeal in this proceeding. There this Court said (282 U. S. at pages 213-214):

> "The Commission made a comparison of 'present interstate and intrastate rates and the proposed interstate rates from north Florida in cents per 100 pounds, and the earnings thereunder per car of 50,000 pounds for distances to 170 miles.' The 'earnings' thus set forth were merely the amounts receivable per car for the given number of pounds under the rates for the prescribed distances. The Commission also stated that the carrier had shown that the earnings under the Florida intrastate rates on logs were ma-

terially lower than the earnings under the interstate rates from Florida to Georgia on brick, sand, lime and cement. Comparing the Florida intrastate rates on logs with other intrastate rates and with interstate rates, the Commission reached the conclusion that the intrastate rates assailed were less than reasonably compensatory.

"But to justify the Commission in the alteration of intrastate rates, it was not enough for the Commission merely to find that the existing intrastate rates on the particular traffic were not remunerative or reasonably compensatory. The authority to determine the reasonableness per se of intrastate rates lay with the state authorities and not with the Interstate Commerce Commission."

So even if the railroads throughout the South had not found that high rates will not transport logs and thereupon reduced log rates to the level of the Cummer scale, the comparison of rates could only indicate that a rate was not "remunerative or reasonably compensatory", which is not enough to justify action by the Interstate Commerce Commission, and is a matter for the consideration of the State authorities.

POINT X.

The Intrastate Rates Prescribed by the Commission for Application in Florida Were Minimum Rates, and Not Otherwise. The Interstate Rates Prescribed by the Commission for the Transportation of Logs from Points in North Florida to Destinations in Georgia were maximum Rates, and Not Otherwise. At No Time or Place, Other Than in this Proceeding in Florida, has the Commission Attempted to Prescribe Other than Maximum Rates on Logs. The Fixing of Minimum Rates on Logs over the Atlantic Coast Line in Florida was Arbitrary.

(This is applicable to Assignments of Error Nos. 5, 23, 43 and 44).

The finding of the report is (186 I. C. C. 189):

"We further find that the intrastate rates on logs over 6 feet in length, except walnut, cherry, and cedar, applicable between points on the Atlantic Coast Line in Florida for distances of 170 miles and less are, and for the future will be, unjustly discriminatory against interstate commerce, and that such unjust discrimination can be and should be removed by the establishment between all points on the Atlantic Coast Line in Florida for distances of 170 miles or less

> of rates not less than the rates shown for such distances in Appendix F hereto, which are the rates found reasonable for interstate application from northern Florida to Georgia."

The caption of Appendix F is "Minimum rates per 100 pounds prescribed herein on Florida intrastate log traffic," and the distances and rates are then set forth.

Thus the intrastate rate here prescribed is a minimum rate statewide in its application, fixed at the level at which maximum interstate rates had been fixed from certain portions of Northern Florida to Georgia. The intrastate log rates of the Atlantic Coast Line Railroad throughout the State of Florida are frozen at this level by the order. And it will be observed that the maintenance of these intrastate rates is in nowise dependent upon the maintenance of the interstate rates.

This point was considered in the Louisiana case *(United States v. State of Louisiana, supra)*, this Court there pointing out that the order there involved was likewise assailed because the intrastate rates involved were minimum rates whereas the Commission in its order fixing the general level of interstate rates "did not require the carriers to increase their rates interstate, but only permitted them to do so at their option." This Court there answered that contention by saying:

> "The order precluded any unauthorized interference with State regulatory power by providing that it should be effective only so long as the surcharges upon interstate rates should be maintained by the carriers."

But in the case at bar there are no statewide interstate rates prescribed to which the intrastate rates could be related, and the intrastate rates prescribed are not dependent for their existence or continuance upon any interstate rates. The hands of the "State regulatory power" of the State of Florida are effectually and completely tied by the order and its dominion over its state rates wholly usurped. The interstate rates for the nonexistent traffic from Northern Florida to Georgia might be changed or ended at any time, but such action would have no effect upon the intrastate rates here prescribed.

POINT XI.

The Order of the Interstate Commerce Commission, Being Statewide in Its Scope was Beyond the Scope of the Issue on Which the Controversy was Tried, and the Proceeding Was Not Appropriate Nor was the Hearing Sufficient.

(This is applicable to Assignments of Error Nos. 28, 29, 32, 33, 34, 36, 42 and 44).

(a) *The Status of the Complainant, the Georgia Commission, in This Proceeding.*

The record here shows the repeated assertion upon the part of the Georgia Commission that this proceeding was instituted by it as *parens patriae* for the benefit of the Georgia log shippers. The former report of the Inter-

state Commerce Commission declares in terms that it was on their behalf that the Georgia Commission instituted this proceeding. Therefore, the position of the Georgia Commission before the Interstate Commerce Commission is no different from that which any Georgia log shipper would occupy had this proceeding been brought by him in his own behalf.

Nothing is more clearly settled by this Court than that a shipper, qua shipper, has no interest in or concern with the effect which the transportation charges paid by him may have upon the revenues of the carrier. The Court emphatically so held in the case of,

Dayton-Goose Creek R. Co. v. United States, supra,

where it examined and considered its former decisions in the light of the Transportation Act of 1920. If the rate which is applied to the shipment of any particular shipper is a reasonable rate, he has no right to or concern with the level of it (Dayton Goose Creek R. Co. v. United States, supra). He has, of course, no direct interest in any other rate than the one which is applied to the shipment of his own goods, except that he has the right to invoke the power of the Interstate Commerce Commission to protect him and his locality against the undue preference and undue prejudice which prior to 1920 were prohibited by Section 3 of the Act, and are now prohibited by Section 13 (4) of the Act as well.

Not only was the gravamen of the complainant's complaint before the Interstate Commerce Commission the

alleged undue advantage, preference or prejudice as between persons and localities on the one hand and interstate commerce on the other hand, but the position taken by the complainant at the hearing before the Examiner (Former Record, 403, 417-418) excluded any notion that the complainant was interested in or asserted any right other than that to which it is confined by the law laid down in the case of Dayton Goose Creek R. Co. v. United States, supra. Not one time but several times, Mr. Price, rate expert of and sole witness for the Georgia Commission in the former proceedings before the Examiner, in terms made it clear that the end sought to be achieved under his complaint was the extension of the then effective *intrastate* rate (Cummer Scale) interstate into Georgia (Former Record, 416-417). He also declared in terms that the proceeding was "not a revenue case" (Former Record, 417).

In the re-opened proceeding the Georgia Commission took only a prefunctory part, and did not pretend to introduce any evidence having any bearing upon revenues, past, present or future. At the beginning of the re-opened proceeding the representative of the Georgia Commission was reminded that he had taken the position that this was not a revenue case and was asked if the position of that Commission had changed (R. 622). The Examiner ruled that it was unnecessary for him to answer the question (R. 624). When the Georgia Commission introduced no evidence of any revenue burden these appellants moved to dismiss the proceeding (R. 649). That motion was referred to and denied by the Interstate Commerce Commission, (186 I. C. C. 160).

(b) *The Status of the Defendant, Atlantic Coast Line Railroad Company, in this Proceeding.*

As has been pointed out, the defendant carrier by its answer in the original proceeding, denied that its interstate rates were unjust and unreasonable; denied that it was responsible for any discrimination; denied any violation of the Interstate Commerce Act, as amended, and demanded that "it be hence dismissed". (Former Record, 199-200).

In the production of its evidence it disclaimed any contention that the Cummer Scale of rates was not compensatory (Former Record, 491).

The carrier stated in the former proceeding that it made no proposal as to the Florida intrastate rates "because this would not be the proper time to suggest that, nor would it be the proper time to suggest what the rates should be in Georgia." It was dealing only with the interstate rate from Florida to Georgia in the proceeding (Former Record, 495-496). In its motion to re-open this proceeding, which motion was filed in March of 1931, after the coming down of the mandate of this Court, the carrier did not assert that the Florida intrastate rate resulted in an unjust discrimination against interstate commerce, or that the revenue derived from the intrastate traffic in question under that rate (the Cummer Scale), had been or would be such as to impair the income of the carrier, or to cause an undue burden upon the carrier's interstate commerce, or to obstruct the maintenance of an adequate transportation service. On the contrary, the motion of

the carrier was directed entirely to the reasonableness of the intrastate rate as such, and might well have been considered appropriate had it been directed to and filed before the Florida State Commission, but was utterly inappropriate to invoke the exercise of any Federal power in this proceeding. For as was pointed out by this Court in this proceeding, the authority to determine the reasonableness per se of intrastate rates lay with the State authorities, and not with the Interstate Commerce Commission.

Florida v. United States, supra.

(c) *The Nature of the Proceeding Before the Commission.*

We have shown that not only has the Georgia Commission, representing Georgia shippers as it does, no right in or concern with the revenues of the carrier, but also that the Georgia Commission never pretended to offer a scintilla of evidence tending to support any one of the several findings that this Court by its opinion in the former appeal has held to be prerequisite to the entry of any order of the Interstate Commerce Commission fixing state-wide intrastate rates, in any proceeding brought to remove an unjust discrimination against interstate commerce under the Interstate Commerce Act, as amended.

Thereupon the Commission in the re-opened record permitted the carrier over the protest of the State of Florida, and in derogation of its own original answer, to undertake to prove against itself the allegations of the complaint. This proceeding, even before the Commission, is

essentially an adversary proceeding between a sole defendant and a sole complainant. And we respectfully submit that the Commission should not and the Court will not countenance such collusive conduct on the part of parties quasi-litigant in an adversary proceeding, where constitutional and sovereign rights are involved.

All tribunals, even those acting quasi-judicially, are bound to observe "those general rules established in our system of jurisprudence for the security of private rights", and are in duty bound to require that the proceedings had be appropriate to the case and just to the parties affected. *Hagar v. Reclamaion Dist., No. 108, 111 U. S. 701.*

And in no tribunal and in no proceedings however informal such proceedings may be, should parties quasi-litigant be permitted to approbate and reprobate in one and the same proceeding. For that is what the carrier here was permitted to do.

The Commission should not have exercised Federal power in this case, even though it concluded that it could do so, for the reasons set forth by this Court in the case of *Lawrence v. St. Louis-San Francisco Ry. Co., 274 U. S. 588, text 594-595,* where this Court said in speaking of the national and state powers in the regulation of railroads:

> "The delimitation of the respective powers of the two governments requires often nice adjustments. The federal power is paramount. But public interest demands that whenever possible conflicts between the two authorities and irritation be avoided. To this end it is important that the federal power be not exerted unnecessarily,

hastily, or harshly. It is important also that the demands of comity and courtesy, as well as of the law, be deferred to."

We repeat that not only is there a want of evidence upon which the Commission could make the findings held by this Court to be essential to justify the invasion of the State domain, but also the fundamental rules which underlie the conduct and determination of adversary proceedings which are controlling upon every body acting quasi-judicially, as well as the rules of comity and courtesy due by the National sovereign to the State sovereign required that this proceeding be dismissed.

POINT XII.

The Interstate Commerce Commission Has the Power to Prescribe Intrastate Rates Only When the "Jurisdictional Facts" Authorizing Such Action Have Been Made to "Clearly Appear". The Existence of Such Jurisdictional Facts is a Judicial Question Which Must be Determined by the Judicial Branch of Government in a Proper Judicial Proceeding, Irrespective of any Finding Which May Have Been Made by the Interstate Commerce Commission.

(Applicable to Assignments of Error 34 to 42, inclusive)

The jurisdiction of the Interstate Commerce Commis-

sion to exercise any regulatory power over intrastate rates depends upon the existence of facts which constitute a discrimination against or burden upon interstate commerce. The authority to determine and prescribe intrastate rates is primarily vested in the State and not in the Interstate Commerce Commission. The Interstate Commerce Commission has no concern with or authority over intrastate rates as such. It is only when intrastate rates interfere with and cast a burden upon interstate commerce that the Interstate Commerce Commission may exercise any jurisdiction whatsoever over such rates. The existence of the fact of such interference and burden must be found in the first instance by the Interstate Commerce Commission before it can have any jurisdiction over intrastate rates. Such finding by the Interstate Commerce Commission is a finding of its own jurisdiction and is subject to review by the courts and upon such review it is not sufficient that the finding be supported by what is known as "the substantial evidence" rule.

(a) *The Authority of the Interstate Commerce Commission to Prescribe Intrastate Rates Depends Upon the Existence of Jurisdictional Facts and the Determination as to the Existence of those Facts is a Judicial Question.*

In substantially all of the cases involving the jurisdiction of the Commission over intrastate rates which have been before this Court the fact of discrimination or bur-

den has been unquestioned or established by the overwhelming weight of the evidence and the questions contested have been with reference to the interpretation and application of the law.

Thus in the *Shreveport case, 234 U. S. 342*, where the Court upheld the power of the Interstate Commerce Commission to fix intrastate rates in order to remove discrimination against persons and localities, it is said, text 346:

> "It is undisputed that the difference was substantial, and injurjously affected the commerce of Shreveport."

It will therefore be seen that there no question was raised as to the fact of discrimination, that fact being admitted.

In the *Wisconsin case, 257 U. S. 563*, where the power here sought to be exercised was first sustained, it was shown without contradiction that the maintenance of the existing intrastate rates would reduce the carriers' revenue $6,000,000 below what it would be under intrastate rates on the general level prescribed for interstate rates and both the Commission and the Court held that this constituted discrimination against interstate commerce. Here again there was apparently no question as to the facts, but the question was as to the power of the Commission.

In cases where the Interstate Commerce Commission is exercising its direct authority, in prescribing interstate rates, this Court has held that the determination of questions of fact is by law imposed upon the Commission and

that the Court will review the testimony only to determine whether the findings of fact made by the Commission are supported by sufficient evidence to save the Commission's finding from being arbitrary action, that is, the "substantial evidence" rule. But prior to the former decision of this case (*Florida v. United States*, supra), this Court had used language which clearly indicated that where the jurisdiction of the State was to be ousted the evidence had to be much more convincing than was required where the Court was reviewing orders of the Interstate Commerce Commission fixing interstate rates.

In the case of *Railroad Commission of Wisconsin v. Maxcy, 281 U. S. 82*, decided March 12, 1930, the Court, in discussing the failure of the Court below to render an opinion, said:

> "* * * 'the respect due to the State demands that the need for nullifying the action of its legislature or of its executive officials be persuasively shown'."

In the *Wisconsin case*, supra, it is said that action of the Interstate Commerce Commission in changing State rates "* * * should be directed to substantial disparity which operates as a real discrimination against, and obstruction to interstate commerce, * * *". In other cases the Court has held that the intention of the Interstate Commerce Commission to interfere with the State function of regulating intrastate rates "is not to be presumed." *Arkansas R. R. Co. v. C. R. I. & P. Ry. Co., 274 U. S. 597.*

In the *Illinois Central Case, 245 U. S. 493, 510,* the Court said that:

> "* * * it should never be held that Congress intends to supersede or suspend the exercise of the reserved powers of a state, even where that may be done, unless, and except so far as its purpose to do so is *clearly manifested* (citing cases). This being true of an act of Congress, it is obvious that an order of a subordinate agency, such as the Commission, should not be given precedence over a State rate statute otherwise valid, *unless, and except so far as it conforms to a high standard of certainty.*" (Italics supplied.)

When dealing with interstate matters committed to its jurisdiction the Commission is acting as the agency of Congress in controlling matters which the Constitution expressly commits to the Federal Government. The Commission is, therefore, in such cases, acting as an administrative body and its findings can only be set aside when they are so wanting in support by any substantial evidence as to constitute arbitrary action. When the Interstate Commerce Commission comes to deal with intrastate rates, however, it is exercising a jurisdiction which depends upon the fact of discrimination against or burden upon interstate commerce and in such case the justification of its action must clearly appear.

The distinction is logically explained in the concurring opinion of Circuit Judge Bates, in the case of *Eastern Texas Railroad Company, et al. v. Railroad Commis-*

sion of Texas, et al., 242 Fed. 300, where it is said, text 307:

> "The Supreme Court has held that the Commission may determine what is a reasonable interstate rate, and what rate must be charged on intrastate business to prevent a discrimination when both rates are in use. But the authority of the Interstate Commerce Commission with reference to intrastate rates is purely incidental and remedial. The qualities of such an order are radically different from those of an order resulting from the exercise of the legislative function involved in ratemaking. To hold that it may, under any circumstances, regulate a state rate, is to carry the rules of interpretation to the extreme limit, in view of the proviso in the first section of the Interstate Commerce Act (Act Feb. 4, 1887, c. 104, 24 Stat. 379, Comp. St. 1916, §3261). It may be held that it has the power to make such orders affecting intrastate rates as are necessary to prevent discrimination; certainly, the authority will not go beyond the necessity. When the Interstate Commerce Commission acts with reference to such a matter, it makes, or should make, the same character of investigation and the same character of determination that would be made by a court if a carrier charging the intrastate and the interstate rates were prosecuted for a violation of the Interstate Commerce Commission Act. Its action would be more nearly judicial than legislative.

> Whenever such an order is under consideration by a court, the court would have to determine whether the jurisdiction of the Interstate Commerce Commission had been exceeded; and it would doubtless decline to apply the same rules with reference to the conclusiveness of the action of the Interstate Commerce Commission that obtain when that body is, in the exercise of its established legislative authority, making rates. It would not permit the Interstate Commerce Commission to conclusively determine its jurisdiction by determining the fact of the discrimination upon which its jurisdiction would depend."

In fixing interstate rates the Commission is exercising a legislative function, while *in determining the facts necessary to its jurisdiction over intrastate rates*, it is performing a judicial function.

The power of the Interstate Commerce Commission to fix intrastate rates because they cast a burden upon or discriminate against interstate commerce generally is found only by construction and implication. It involves an invasion of the powers otherwise reserved to the States. Only in a clear case of necessity will such power be sustained by the Court.

Some of the foregoing cases were cited to this Court on the appeal in connection with the former order of the Commission in this proceeding upon this very contention. In response to this contention, so made, the Court in its opinion said; 282 U. S., text 211:

> "The propriety of the exertion of the authority must be tested by its relation to the purpose of the grant and with suitable regard to the principle that whenever the Federal power is exerted within what would otherwise be the domain of State power, *the justification of the exercise of the Federal power must clearly appear.*" (Italics supplied.)

The Court declared that there was no necessity to examine the evidence to see whether it "properly supported" the findings of the Commission, but condemned the order for "lack of the basic or essential findings required to support the Commission's order." These were the findings upon which the jurisdiction of the Commission to act depended.

(b) *The Character of Review Which the Courts Must Give to Findings of Jurisdictional Facts Made by Administrative Tribunals Where Constitutional Rights are Involved.*

In the case of *Crowell v. Benson, 285 U. S. 22*, the Court considered and announced the rule as to the character of review which the courts must give as to findings of *jurisdictional facts* made by administrative tribunals where such findings involve constitutional rights. This Court there held that the Congress had authority to prescribe the procedure in cases of injury upon navigable waters, and to commit the determination of the facts, as to the

circumstances, nature; extent and consequences of the injury sustained, to the Compensation Commission established by it. But the Court then said; text 54:

> "What has been said thus far relates to the determination of claims of employees within the purview of the Act. A different question is presented where the determinations of fact are fundamental or 'jurisdictional', in the sense that their existence is a condition precedent to the operation of the statutory scheme. These fundamental requirements are that the injury occurs upon the navigable waters of the United States and that the relation of master and servant exists. These conditions are indispensable to the application of the statute, not only because the Congress has so provided explicitly, but also *because the power of the Congress to enact the legislation turns upon the existence of these conditions.*" (Italics supplied.)

It will be noted that the Court points out that the power of Congress to enact the legislation "turns upon the existence of these conditions", i.e., the jurisdictional facts of employment and that the injury occurs upon navigable waters of the United States.

In the case at bar the power of Congress to legislate as to intrastate rates "turns upon the existence" of the fact of discrimination against and burden upon interstate commerce. Unless that fact exists the Congress itself may not, under the Constitution, enact legislation

with respect to intrastate rates, and, of course, may not authorize a tribunal, created by it, so to do.

In the *Crowell Case, supra,* the Court held that the employer was entitled to a *trial de novo* upon the jurisdictional facts, saying, text 58:

> "And where administrative bodies have been appropriately created to meet the exigencies of certain classes of cases and their action is of a judicial character, the question of the conclusiveness of their administrative findings of fact generally arises where the facts are clearly not jurisdictional and the scope of review as to such facts has been determined by the applicable legislation. None of the decisions of this sort touch the question which is presented where the facts involved are jurisdictional or where the question concerns the proper exercise of the judicial power of the United States in enforcing constitutional limitations."

The case here comes squarely within the language above quoted, because here "the facts involved are jurisdictional" and "the question concerns the proper exercise of the judicial power of the United States in enforcing constitutional limitations".

This case is brought to enforce the constitutional right of the State of Florida and of its citizens to a judicial determination of their controversy and the judicial power of the United States is invoked to that end. We, therefore, rely upon the following language of the Court in the Crowell case, viz:

> "In cases brought to enforce constitutional rights, the judicial power of the United States necessarily extends to the independent determination of all questions, both of fact and law, necessary to the performance of that supreme function."

The question in the instant case is not only whether the Commission has acted improperly or arbitrarily, as shown by the record of the proceedings, in a case within the contemplation of the statute and of the Constitution, but also whether it has acted in a case to which the statute is applicable.

It has long been the settled rule of this Court that where State-made rates are to be interferred with, even upon constitutional grounds, by the power of the Court "that that power ought to be exercised only in the clearest cases", and that in such cases even where there have been findings of fact by a master, confirmed by the trial court, "this Court will not fetter its discretion or judgment by any artificial rules as to the weight of the master's findings, however useful and well settled these rules may be in ordinary litigation."

Knoxville v. Knoxville Water Company, supra.

This Court on the appeal of the former order of the Commission *(Florida v. United States, supra)*, has said that "the justification of the exercise of the Federal power must clearly appear." The Constitution not only vests the judicial power in the Courts, but recognizes that the States,

being sovereigns, are entitled to invoke the original jurisdiction of this Court in controversies between themselves and between themselves and others. It is inconceivable that Congress has attempted to authorize a subordinate administrative tribunal not only to invade the reserved powers of the State at will but also to *conclusively* determine for itself its own jurisdiction in connection with that invasion.

(c) *The Character of the Review of the Evidence Sought by the Appellants Here and Essential to the Preservation of their Constitutional Rights.*

Undoubtedly the appellants here are entitled to an independent judicial determination by this Court of the jurisdictional fact as to the existence of such discrimination against interstate commerce as is necessary to vest in the Interstate Commerce Commission authority to prescribe intrastate rates. Here the State of Florida asked for trial de novo, such as was granted in the Crowell Case, while the petitioning lumber companies asked for an independent determination of the jurisdictional question upon the evidence taken before the Commission.

When we consider the kind of a proceeding which this was, with the complainant first disclaiming any contention for the relief which was granted by the Commission and then in the re-opened proceeding refusing to state its position and the relief desired, and the defendant before the Commission first disclaiming any conten-

tion that the state rates were not remunerative and then in the re-opened proceedings undertaking to prove the contrary when no evidence on that subject was offered by the complainant there, and when we consider the evidence upon which the Commission relied and the findings which it made, it is not surprising that the appellants feel that the reserved rights and powers of the State have been invaded and usurped in an extra-judicial proceeding and that they are demanding a judicial determination of those rights.

The right to such a determination in such a case as this is sustained by logic and reason. Where two sovereigns, under the Constitution of the United States, are claiming conflicting jurisdiction, the case is certainly one "arising under this Constitution," as that language is used in Section 2 of Article III of the Constitution, wherein is defined the extent of the judicial power which is thereby established. As stated by Circuit Judge Batts, in *Eastern Texas Railroad Co. v. Railroad Commission of Texas*, supra, "in such a case the Court would not permit the Interstate Commerce Commission to conclusively determine its jurisdiction by determining the fact of the discrimination upon which its jurisdiction would depend". Were the rule otherwise it would simply mean that one of the parties in a controversy as to jurisdiction between two sovereigns under the Constitution, could determine for itself and against the other party without any right in the other party to a judicial determination of the conflicting claims so long as the decision, in its own favor, by the first party was supported by such evidence as would save it from being arbitrary action. To so hold is for the courts to abdi-

cate their constitutional powers and leave to a federal agency the conclusive determination of a controversy as to jurisdiction between it and a sovereign state and its citizens, and to strike down the reserved rights of the State under the Federal Constitution. *Knoxville v. Knoxville Water Co., supra; Crowell v. Benson, supra.*

We, therefore, confidently submit that both reason and authority require the independent determination, by this Court, of the fact of the existence of such a burden upon interstate commerce as is necessary to bring into being any power of the Interstate Commerce Commission to prescribe state rates before the order of the Commission can be upheld.

CONCLUSION

The Cummer Scale of rates, the lawful State rate, was voluntarily established by the carrier nearly twenty years ago. It was established after ten years' operating experience on one branch line of its road. After its establishment, it was twice increased by 25%, and once reduced by 10%, so that at all times after 1922, it was more than 40% higher than it was when originally established. When it was established the record shows that the Florida Railroad Commission informed the carrier in effect that its doors were and would remain open to consider the level of the rate in the event that the carrier wished to change it. More than fifteen years went by and when this proceeding was first initiated by the Georgia Public Service Commission, the carrier defended the rate and in those proceedings expressly disclaimed any notion of altering it. After the first

order of the Interstate Commerce Commission was entered the carrier intervened in defense of it. When the carrier did so, in 1929, it was the first time in nearly thirty years' operating experience under the Cummer Scale that any dissatisfaction of the rate was expressed by it. And that dissatisfaction has never yet been expressed in the only forum which, under the decision of this Court, has the jurisdiction to determine the "reasonableness of the rate per se", viz., the Florida Railroad Commission.

Twenty-three railroads operating between and in fourteen or more Southern and Southwestern States were permitted by the Interstate Commerce Commission to institute Newly Reduced Rates which are as low or lower than the Cummer Scale. They are applicable within and between every State in the Southern Rate Group except West Virginia. Those Newly Reduced Rates were substituted for higher rates which were among the chief standards of comparison employed by the carrier and the Interstate Commerce Commission, and upon which great reliance was placed by the carrier in the evidence and by the Interstate Commerce Commission in its report and order of July 5, 1932.

At the time when the Commission was making its orders here involved the general level of log rates throughout the Southern Rate Group had become or was then rapidly becoming that of the Cummer Scale or its equivalent, or lower. The intrastate rate prescribed is approximately double that generally in effect in interstate and intrastate commerce. No general level of interstate log rates had ever been established by the Commission. Nor had that Commission ever established log rates for interstate application

even on the single carrier involved in the order, except for application from the limited area in Northern Florida to Georgia within which area no logs have ever moved in interstate commerce on the lines of this carrier. The order here involved relates only to rates on a single commodity on a single railroad in a single State. It is at best an inquiry into the reasonableness per se of the Florida intrastate rates on logs.

The so-called cost studies prepared by the carrier but discarded by the Commission, and the cost study unlawfully prepared and relied upon by said Commission (Exhibit E to the Commission's report) were all based upon system averages and system averages have not only been repeatedly condemned by the Interstate Commerce Commission in its own reports and by this Court in its adjudicated cases, but were likewise condemned by the Interstate Commerce Commission in the very report under attack.

In addition to all this the Commission did not make the findings required by this Court in the Florida Log Case, supra, and could make no such findings from the evidence in the record before it. Not only did it make no findings as to the amount of revenue which had been derived in the past from the traffic in question under the existing intrastate rate (the Cummer Scale), but it refused to require the carrier to produce evidence upon this subject, although repeatedly urged by the State and by the interveners herein to require the carrier so to do. It made no findings as to the amount of revenue which could reasonably be expected to be derived from the traffic in question under the increased intrastate rate which the Commission proposed to establish. The Commission made certain indefinite con-

jectures in this connection which were not findings, and which were applicable solely to what revenue might be derived under normal economic conditions, while at the same time recognizing the present existence of abnormal economic conditions, and making no finding or guess when the present abnormal conditions would cease and normal conditions return. There was no evidence before the Commission upon which it could make this particular finding required by this Court either with respect to normal or abnormal times. The Commission failed to demonstrate by its findings that any burden which did exist was of such character and consequence that it was the affirmative duty of the Commission, as an important step in the maintenance of an adequate national transportation service, to remove the same, or, "that the alteration of the intrastate rates" would "produce or was likely to produce", an additional and greater amount of income and that such additional and greater amount of income was actually necessary to prevent "an undue burden upon the carrier's interstate revenues" and necessary to maintain an adequate (national) transportation service, nor was there any evidence before the Commission upon which those findings could be made.

The one thing that is demonstrated by the report of the Interstate Commerce Commission is that there will be no interstate commerce in logs at the interstate rate prescribed approximately four years ago, and in force and effect ever since. The report has further demonstrated the accuracy of the forecast made by the Florida shippers that the unlawful order of the Interstate Commerce Commission originally entered in this proceeding would destroy pros-

perous communities and millions of dollars in property. It likewise has shown that for the time being at least the unlawful order almost completely destroyed the traffic in pine logs, and when that unlawful order was set aside by the order of this Court, it was rapidly destroying the lesser traffic in cypress and hardwood logs. And to a like extent it was destroying the revenue derived from that traffic, as this Court said might happen.

The truth is that from the very beginning of this controversy, the Interstate Commerce Commission, the carrier and the District Court have assumed that the power and duty of the Interstate Commerce Commission to deal with this State rate was no less than its power and duty to deal with interstate rates in general, without regard to the power and duty of the State in that connection, and without regard to peculiar local conditions surrounding the establishment and operation and maintenance of the state rate.

If this order of the Interstate Commerce Commission can be upheld, then indeed the State is deprived of every vestige of control over its own rates and the Federal Commission has unified control of the rates and concerns of the carriers to the entire exclusion of State authority.

We submit that under the Federal Constitution, the laws of Congress, and the decisions of this Court, the order of the Commission must go down.

Respectfully submitted,

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APPENDIX

STATUTES RELIED UPON

The Interstate Commerce Act, (41 Stat. L., 474):

Section 1:

"(2) The provisions of this Act shall also apply to such transportation of passengers and property and transmission of intelligence, but only in so far as such transportation or transmission takes place within the United States, but shall not apply—

(a) To the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one State and not shipped to or from a foreign country from or to any place in the United States as aforesaid;

"(5) All charges made for any service rendered or to be rendered in the transportation of * * * property * * * shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful."

Section 3:

"(1) That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or

any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

Section 13:

"(1) That any person, firm, corporation, company, or association, or any mercantile, agricultural, or manufacturing society or other organization, or any body politic or municipal organization, or any common carrier, complaining of anything done or omitted to be done by any common carrier subject to the provisions of this Act, in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts; whereupon a statement of the complaint thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint, or to answer the same in writing, within a reasonable time, to be specified by the Commission. If such common carrier within the time specified shall make reparation for the injury alleged to have been done, the common carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier or carriers shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matter com-

plained of in such manner and by such means as it shall deem proper.

(2) * * * The Interstate Commerce Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made, to or before said Commission by any provision of this Act, or concerning which any question may arise under any of the provisions of this Act, or relating to the enforcement of any of the provisions of this Act. And the said Commission shall have the same powers and authority to proceed with any inquiry instituted on its own motion as though it had been appealed to by complaint or petition under any of the provisions of this Act, including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had excepting orders of the payment of money.

(3) Whenever in any investigation under the provisions of this Act, or in any investigation instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any State, or initiated by the President during the period of Federal control, the Commission, before proceeding to hear and dispose of such issue, shall cause

the State or States interested to be notified of the proceeding. The Commission may confer with the authorities of any State having regulatory jurisdiction over the class of persons and corporations subject to this Act with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such State bodies and of the Commission; and to that end is authorized and empowered, under rules to be prescribed by it, and which may be modified from time to time, to hold joint hearings with any such State regulating bodies on any matters wherein the Commission is empowered to act and where the rate-making authority of a State is or may be affected by the action taken by the Commission. The Commission is also authorized to avail itself of the cooperation, services, records, and facilities of such State authorities in the enforcement of any provision of this Act.

(4) Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall

prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding."

Section 15:

"(1) That whenever, after full hearing, upon a complaint made as provided in section 13 of this Act, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the Commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged or collected, by any common carrier or carriers subject to this Act for the transportation of * * * property * * * as defined in the first section of this Act, * * * is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this Act, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and

reasonable individual or joint rate, fare, or charge, or rates, fares or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged * * * and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect, any rate, fare or charge, for such transportation * * * other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be * * *"

Section 15a:

"(2) In the exercise of its power to prescribe just and reasonable rates the Commission shall initiate, modify, establish or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will, under honest, efficient and economical management, and reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation. Provided, That the Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust and unreasonable, and to prescribe dif-

ferent rates for different sections of the country."

(3) The Commission shall from time to time determine and make public what percentage of such aggregate property value constitutes a fair return thereon, and such percentage shall be uniform for all rate groups or territories which may be designated by the Commission. In making such determination it shall give due consideration, among other things, to the transportation needs of the country and the necessity (under honest, efficient and economical management of existing transportation facilities) of enlarging such facilities in order to provide the people of the United States with adequate transportation: *Provided*, That during the two years beginning March 1, 1920, the Commission shall take as such fair return a sum equal to 5½ per centum of such aggregate value, but may, in its discretion, add thereto a sum not exceeding one-half of one per centum of such aggregate value to make provision in whole or in part for improvements, betterments or equipment, which, according to the accounting system prescribed by the Commission, are chargeable to capital account.

(4) For the purposes of this section, such aggregate value of the property of the carriers shall be determined by the Commission from time to time and as often as may be necessary. The Commission may utilize the results of its investigation under section 19a of this Act, in so far as deemed by it available, and shall give due con-

sideration to all the elements of value recognized by the law of the land for rate-making purposes, and shall give to the property investment account of the carriers only that consideration which under such law it is entitled to in establishing values for rate-making purposes. Whenever pursuant to section 19a of this Act the value of the railway property of any carrier held for and used in the service of transportation has been finally ascertained, the value so ascertained shall be deemed by the Commission to be the value thereof for the purpose of determining such aggregate value.

(5) Inasmuch as it is impossible (without regulation and control in the interest of the commerce of the United States considered as a whole) to establish uniform rates upon competitive traffic which will adequately sustain all the carriers which are engaged in such traffic and which are indispensable to the communities to which they render the service of transportation, without enabling some of such carriers to receive a net railway operating income substantially and unreasonably in excess of a fair return upon the value of their railway property held for and used in the service of transportation, it is hereby declared that any carrier which receives such an income so in excess of a fair return, shall hold such part of the excess, as hereinafter prescribed, as trustee for, and shall pay it to, the United States.

(6) If, under the provisions of this section, any carrier, receives for any year a net railway

operating income in excess of 6 per centum of the value of the railway property held for and used by it in the service of transportation, one-half of such excess shall be placed in a reserve fund established and maintained by such carrier, and the remaining one-half thereof shall, within the first four months following the close of the period for which such computation is made, be recoverable by and paid the Commission for the purpose of establishing and maintaining a general railroad contingent fund as hereinafter described. For the purposes of this paragraph the value of the railway property and the net railway operating income of a group of carriers, which the Commission find are under common control and management and are operated as a single system, shall be computed for the system as a whole, irrespective of the separate ownership and accounting returns of the various parts of such system. In the case of any carrier which has accepted the provisions of section 209 of this amendatory Act the provisions of this paragraph shall not be applicable to the income for any period prior to September 1, 1920. The value of such railway property shall be determined by the Commission in the manner provided in paragraph (4)."

The District Court Jurisdiction Act (C. 32, 38 Stat. L., 219):

"The Commerce Court, created and established by the Act entitled 'An Act to create a Commerce Court and to amend the Act entitled "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, as heretofore amended, and for other purposes,' approved June eighteenth, nineteen hundred and ten, is abolished from and after December thirty-first, nineteen hundred and thirteen, and the jurisdiction vested in said Commerce Court by said Act is transferred to and vested in the several district courts of the United States, and all Acts or parts of Acts in so far as they relate to the establishment of the Commerce Court are repealed. Nothing herein contained shall be deemed to affect the tenure of any of the judges now acting as circuit judges by appointment * * *.

The venue of any suit hereafter brought to enforce, suspend, or set aside, in whole or in part, any order of the Interstate Commerce Commission shall be in the judicial district wherein is the residence of the party or any of the parties upon whose petition the order was made, except that where the order does not relate to transportation, or is not made upon the petition of any party the venue shall be in the district where the matter complained of in the petition before the Commission arises, and except that where the or-

der does not relate either to transportation or to a matter so complained of before the Commission the matter covered by the order shall be deemed to arise in the district where one of the petitioners in court has either its principal office or its principal operating office. In case such transportation relates to a through shipment, the term 'destination' shall be construed as meaning final destination of such shipment.

The procedure in the district courts in respect to cases of which jurisdiction is conferred upon them by this Act shall be the same as that heretofore prevailing in the Commerce Court. The orders, writs, and processes of the district courts may in these cases run, be served, and be returnable anywhere in the United States; and the right of appeal from the district courts in such cases shall be the same as the right of appeal heretofore prevailing under existing law from the Commerce Court. No interlocutory injunction suspending or restraining the enforcement, operations, or execution of, or setting aside, in whole or in part, any order made or entered by the Interstate Commerce Commission shall be issued or granted by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, unless the application for the same shall be presented to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a circuit judge, and unless

a majority of said three judges shall concur in granting such application. When such application as aforesaid is presented to a judge, he shall immediately call to his assistance to hear and determine the application two other judges. Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the Interstate Commerce Commission, to the Attorney General of the United States, and to such other persons as may be defendants int he suit; *Provided*, That in cases where irreparable damage would otherwise ensue to the petitioner, a majority of said three judges, concurring, may, on hearing, after not less than three days' notice to the Interstate Commerce Commission and the Attorney General, allow a temporary stay or suspension, in whole or in part of the operation of the order of the Interstate Commerce Commission for not more than sixty days from the date of the order of said judges pending the application for the order or injunction, in which case the said order shall contain a specific finding, based upon evidence submitted to the judges making the order and identified by reference thereto, that such irreparable damage would result to the petitoner and specifying the nature of the damage. The said judges may, at the time of hearing such application, upon a like finding, continue the temporary stay or suspension in whole or in part until decision upon the application. The hearing upon such applica-

tion for an interlocutory injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction, in such case if such appeal be taken within thirty days after the order, in respect to which complaint is made, is granted or refused; and upon the final hearing of any suit brought to suspend or set aside, in whole or in part, any order of said Commission the same requirement as to judges and the same procedure as to expedition and appeal shall apply. A final judgment or decree of the district court may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of such final judgment or decree, and such appeals may be taken in like manner as appeals are taken under existing law in equity cases. And in such case the notice required shall be served upon the defendants in the case and upon the attorney general of the state.

The Commerce Court Act (C. 309, 36 Stat. L., 539):

"SEC. 1. That a court of the United States is hereby created which shall be known as the Commerce Court and shall have the jurisdiction now possessed by circuit courts of the United States and the judges thereof over all cases of the following kinds:

First. All cases for the enforcement, otherwise than by adjudication and collection of a forfeiture or penalty or by infliction of criminal punishment, of any order of the Interstate Commerce Commission other than for the payment of money.

Second. Cases brought to enjoin, set aside, annul or suspend in whole or in part any order of the Interstate Commerce Commission.

Third. Such cases as by section three of the Act entitled 'An Act to further regulate commerce with foreign nations and among the States,' Approved February nineteenth, nineteen hundred and three, are authorized to be maintained in a circuit court of the United States.

Fourth. All such mandamus proceedings as under the provisions of section twenty or section twenty-three of the Act entitled 'An Act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, as amended, are authorized to be maintained in a circuit court of the United States.

Nothing contained in this Act shall be construed as enlarging the jurisdiction now possessed by the circuit courts of the United States or the judges thereof, that is hereby transferred to and vested in the Commerce Court.

The jurisdiction of the Commerce Court over cases of the foregoing classes shall be exclusive; but this Act shall not affect the jurisdiction now possessed by any circuit or district court of the United States over cases or proceedings of a kind not within the above-enumerated classes."

"Sec. 211. All cases and proceedings in the Commerce Court which but for this chapter would be brought by or against the Interstate against the United States, and the United States Commerce Commission, shall be brought by or may intervene in any case or proceeding in the Commerce Court whenever, though it has not been made a party, public interests are involved."

"Sec. 212. The Attorney General shall have charge and control of the interests of the Government in all cases and proceedings in the Commerce Court, and in the Supreme Court of the United States upon appeal from the Commerce Court; if in his opinion the public interest requires it, he may retain and employ in the name of the United States, within the appropriations from time to time made by the Congress for such purposes, such special attorneys and counselors at law as he may think necessary to assist in the discharge of any of the duties incumbent upon

him and his subordinate attorneys; and the Attorney General shall stipulate with such special attorneys and counsel the amount of their compensation, which shall not be in excess of the sums appropriated therefor by Congress for such purposes, and shall have supervision of their action: *Provided*, that the Interstate Commerce Commission and any party or parties in interest to the proceeding before the Commission, in which an order or requirement is made, may appear as parties thereto of their own motion and as of right, and be represented by their counsel, in any suit wherein is involved the validity of such order or requirement or any part thereof, and the interest of such party; and the court wherein is pending such suit may make all such rules and orders as to such appearances and representations, the number of counsel, and all matters of procedure, and otherwise, as to subserve the ends of Justice and speed the determination of such suit: *Provided, further*, That communities, associations, corporations, firms, and individuals who are interested in the controversy or question before the Interstate Commerce Commission, or in any suit which may be brought by anyone under the terms of this chapter, or the Acts of which it is amendatory or which are amendatory of it, relating to action of the Interstate Commerce Commission, may intervene in said suit or proceedings at any time after the institution thereof, and the Attorney General shall not dis-

pose of or discontinue said suit or proceeding over the objection of such party or intervenor aforesaid, but said intervenor or intervenors may prosecute, defend, or continue said suit or proceeding unaffected by the action or non-action of the Attorney General of the United States therein.

"Sec. 213. Complainants before the Interstate Commerce Commission interested in a case shall have the right to appear and be made parties to the case and be represented before the courts by counsel and under such regulations as are now permitted in similar circumstances under the rules and practice of equity courts of the United States."

Act of February 13, 1925 (C. 229, 43 Stat. L. 936).

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That sections, 128, 129, 237, 238, 239, and 240 of the Judicial Code as now existing be, and they are severally, amended and re-enacted to read as follows:

* * * * *

"Sec. 238. A direct review by the Supreme Court of an interlocutory or final judgment or decree of a district court may be had where it is so provided in the following Acts or parts of Acts, and not otherwise:

* * * * *

(4) So much of 'An Act making appropriations to supply urgent deficiencies in appropria-

tions for the fiscal year 1913, and for other purposes,' approved October 22, 1913, as relates to the review of interlocutory and final judgments and decrees in suits to enforce, suspend, or set aside orders of the Interstate Commerce Commission other than for the payment of money."

Act of January 31, 1928 (C. 14, 45 Stat. L. 54).

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled*, That the writ of error in cases civil and criminal, is abolished. All relief which heretofore could be obtained by writ of error shall hereafter be obtainable by appeal.

"Sec. 2. That in all cases where an appeal may be taken as of right it shall be taken by serving upon the adverse party or his attorney of record, and by filing in the office of the clerk with whom the order appealed from is entered, a written notice to the effect that the appellant appeals from the judgment or order or from a specified part thereof. No petition of appeal or allowance of an appeal shall be required; *Provided, however*, That the review of judgments of State courts of last resort shall be petitioned for and allowed in the same form as now provided by law for writs of error to such courts."

Act of April 26, 1928 (C. 440, 45 Stat. L. 466).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress

Assembled, That section 2 of an Act entitled "An Act in reference to writs of error," approved January 31, 1928, Public, Numbered 10, Seventieth Congress, be, and it is hereby, amended to read as follows:

"Sec. 2. The statutes regulating the right to a writ of error, defining the relief which may be had thereon, and prescribing the mode of exercising that right and of invoking such relief, including the provisions relating to costs, supersedeas, and mandate, shall be applicable to the appeal which the preceding section substitutes for a writ of error."

Act of October 22, 1913 (C. 32, 38 Stat. L. 220)—Judicial Code, Section 210.

"A final judgment or decree of the Commerce Court (district court) may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of said final judgment or decree. Such appeal may be taken in like manner as appeals from a district court of the United States to the Supreme Court, and the Commerce Court (district court) may direct the original record to be transmitted on appeal instead of a transcript thereof. The Supreme Court may affirm, reverse, or modify the final judgment or decree of the Commerce Court (district court) as the case may require. Appeal to

the Supreme Court, however, shall in no case supersede or stay the judgment or decree of the Commerce Court (district court) appealed from, unless the Supreme Court or a justice thereof shall so direct; and appellant shall give bond in such form and of such amount as the Supreme Court, or the justice of that court allowing the stay, may require. An appeal may also be taken to the Supreme Court of the United States from an interlocutory order or decree of the Commerce Court (district court) granting or continuing an injunction restraining the enforcement of an order of the Interstate Commerce Commission, provided such appeal be taken within thirty days from the entry of such order or decree. Appeals to the Supreme Court under this section shall have priority in hearing and determination over all other causes except criminal causes in that court." (36 Stat. L. 1150.)

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IN THE

Supreme Court of the United States

October Term, 1933.

STATE OF FLORIDA, EUGENE S. MATTHEWS, MAMIE EATON-GREENE, AND W. B. DOUGLASS, ETC., ET AL.,

Appellants,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, GEORGIA PUBLIC SERVICE COMMISSION, AND ATLANTIC COAST LINE RAILROAD,

Appellees.

No. 342.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION.

SEPARATE BRIEF FOR APPELLANT, WILSON LUMBER COMPANY OF FLORIDA, SUGGESTING EFFECT OF CHANGE IN GOVERNING STATUTE SUBSEQUENT TO DECISION OF COURT BELOW.

J. V. NORMAN,
Louisville, Ky.,
Attorney for Wilson Lumber Co. of Florida.

WESTERFIELD-BONTE COMPANY, INCORPORATED, LOUISVILLE, KY.

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Reference to Official Report of the Opinion Delivered in the District Court and the Reports and Orders of the Interstate Commerce Commission.

The opinion of the Court below was rendered and filed in the Clerk's office on February 24, 1933, and is

cited as "State of Florida, *et al.*, v. United States of America, *et al.*, reported in 4 F. Supp. 477." The reports and orders of the Interstate Commerce Commission are dated respectively July 5, 1932, and are cited, "Georgia Public Service Commission v. Atlantic Coast Line Railroad Company," reported in 186 I. C. C. 157, and January 9, 1933, cited, "Georgia Public Service Commission v. Atlantic Coast Line Railroad Company," reported in 190 I. C. C. 588.

Statement as to Jurisdiction.

On April 19, 1933, the appellants filed and served upon all opposing counsel their separate typewritten statement in compliance with paragraph 1 of Rule 12 of the Revised Rules of Practice of this Court. Under date of May 1, 1933, the Atlantic Coast Line Railroad Company, one of the appellees, filed its typewritten statement against the jurisdiction of this Court, including a motion to dismiss the appeal or affirm the decision of the lower Court. Briefs upon the motion to dismiss or affirm were filed by the appellants and said appellee, and on October 9, 1933, this Court noted probable jurisdiction in the case and ordered that further consideration of the motion to dismiss or affirm be postponed to the hearing of the case on the merits.

STATEMENT SUGGESTING CHANGE IN GOVERNING STATUTE SUBSEQUENT TO DECISION OF THE COURT BELOW.

This appellant has joined with other appellant lumber companies in a brief containing a full statement and discussion of the issues arising under the statute in effect at the time the order of the Interstate Commerce Commission and the judgment of the lower Court were entered and nothing there said will be here repeated. The sole purpose of this separate brief is to present the suggestion that the order of the Interstate Commerce Commission, here in issue, even if valid when made, which is, of course, not conceded, must now be set aside because the statute, upon which rested the authority to make such order, has now been repealed and a new statute enacted. The amendment of the statute was by Act of Congress, approved by the President June 16, 1933, being Section 205 of the "Emergency Railroad Transportation Act, 1933." Of course, this amendment was not only subsequent to the making of the order here in issue, but also subsequent to the decision of the lower Court. The question we raise is therefore not presented by any assignment of error but this Court takes judicial notice of acts of Congress and in now raising this question we rely upon the authority of *United States* v. *Alaska Steamship Co.*, 253 U. S. 113. That case arose on a petition filed by numerous interstate carriers and carriers by water against the United States and Interstate Commerce

Commission to set aside and enjoin an order of the Interstate Commerce Commission prescribing certain forms of bills of lading to be used by such carriers in domestic and export transportation. The case was heard by three Judges, as required by statute, and an order was entered refusing to dismiss the petition and granting an injunction *pendente lite*.

Subsequent to the decision of the lower Court, and while the case was on appeal to this Court, Congress passed an act known as "The Transportation Act of 1920," which terminated the Federal control of railroads and amended in various particulars previous acts to regulate interstate commerce. This Court, taking notice of said act, entered an order requesting counsel to file briefs concerning the effect of the change in the act upon the pending case. This Court thereupon held that the change in the act would necessarily require changes in the forms of the bills of lading and that therefore the effect of the enactment of the statute was to make the case a moot one, although the question of the power of the Commission to prescribe bills of lading was "still existent" and not modified by the provisions of the new law. This, of course, was a holding in effect that the order of the Commission was invalid because of the change in the act. This Court thereupon reversed the case and remanded it to the lower Court, with directions to dismiss the petition "without prejudice to the right of the complainants to assail in the future any order of the Commission prescribing bills of lading after the enactment of the new legislation."

The order of the Interstate Commerce Commission, here in issue, is by its terms a continuous order but if we are correct in the views here expressed, even were it valid when made, it became invalid on June 16, 1933, when the statute, on which rested the authority to make such order, was amended. We, therefore, take if that it is appropriate to here suggest the repeal of the statute, upon which rested the authority to make the order here in issue, and the enactment of new provisions in lieu thereof, and to briefly discuss the effect thereof.

ARGUMENT AS TO EFFECT OF THE CHANGE IN THE STATUTE.

The order of the Interstate Commerce Commission, here in issue, is based solely on the power of the Commission to change intrastate rates to remove a revenue burden on interstate commerce, the Commission having expressly refused to find the existence of discrimination against persons and localities. The power to change intrastate rates in order to remove a revenue burden on interstate commerce generally, was never expressly granted in any of the acts of Congress and was first found by interpretation, by this Court, in the case of *Wisconsin Railroad Commission* v. *C. B. & Q. R. Co.*, 257 U. S. 563, because of the "dovetail relation" between Section 13 (4) and Section 15a (2) of the Interstate Commerce Act, as amended by the Transportation Act of 1920 (Sections 416-422, 41 Stat. at L., 484-488, Chap. 91, U. S. C. Title 49). Prior to

the enactment of the Transportation Act, this Court had upheld the power of the Interstate Commerce Commission to remove "unjust discrimination against persons and localities in interstate commerce. *Shreveport case* (*Houston, E. & W. T. R. Co. v. U. S.*), 234 U. S. 342. By Section 13 (4), which was added by the Transportation Act of 1920, Congress authorized the Commission to remove "unjust discrimination against interstate commerce" and by Section 15a (2) provided that the Commission should "initiate, modify, establish or adjust" rates so that the carriers, as a whole or in groups, will, under honest and efficient management, "earn an aggregate annual net railway operating income, equal as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation." Other subsections of Section 15a, there being eighteen in all, set up an elaborate plan for carrying out the provisions of subsection 2 thereof, and provided, among other things, for the maintenance of uniform rates, recapture of excess earnings, and the loaning of same to weaker lines. (Section 13 (4) and Section 15a are reproduced in full in the Appendix hereto).

This Court summarized the provisions of Section 15a, as it then stood, in *Dayton Goose Creek Railroad v. U. S.*, 263 U. S. 455, as follows:

> "Title 4 of the Transportation Act, embracing 418 and 422, is carefully framed to achieve its expressly declared objects. Uniform rates enjoined for all shippers will tend to divide the

business in proper proportion so that when the burden is great, the railroad of each carrier will be used to its capacity. If the weaker roads were permitted to charge higher rates than their competitors, the business would seek the strong roads with the lower rates and congestion would follow. The direction given to the Commission in fixing uniform rates will tend to put them on a scale enabling a railroad of average efficiency among all the carriers of the section to earn the prescribed maximum return. Those who earn most must hold one-half of the excess primarily to preserve their sound economic condition and avoid wasteful expenditures and unwise dividends. Those who earn less are to be given help by credit secured through a fund made up of the other half of the excess. By the recapture clauses Congress is enabled to maintain uniform rates for all shippers and yet keep the net returns of the railways, whether strong or weak, to the varying percentages which are fair respectively for them."

By an Act of Congress, entitled "The Emergency Railroad Transportation Act, 1933," approved by the President June 16, 1933, this entire plan and the elaborate machinery set up to carry it out, is abandoned, and in lieu thereof, under Table 2, "Amendments to Interstate Commerce Act," Section 205 provides:

"Section 15a of the Interstate Commerce Act, as amended (U. S. C., Title 49, Sec. 15a), is amended to read as follows:

"15a (1) When used in this section, the term 'rates' means rates, fares and charges, and all

classifications, regulations, and practices relating thereto.

"(2) In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenue sufficient to enable the carriers, under honest, economical and efficient management, to provide such service."

This constitutes the entire section as amended and it will be noted that the amended act contains no provision for the earning of a fair return by the carriers, for the maintenance of uniform rates, for the recapture of excess earnings (referred to by this Court in the *Dayton Goose Creek Case, supra,* as "the key provision of the whole plan"), or for the loaning of money to the weaker carriers.

By the amendment the entire plan of the Transportation Act of 1920, as embodied in Section 15a of the Interstate Commerce Act, to treat the railroads as a unit, provide for the maintenance of uniform rates and to have the Commission initiate, modify, establish or adjust such rates" so that the carriers, as a whole, or in groups, should earn a fair return, is now abandoned. In lieu thereof is the simple direction that "in the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors," etc. Thus it is that the elaborate Act, upon which the Interstate

Commerce Commission relied as giving jurisdiction to enter the order in question, has now been superseded by the direction that in prescribing rates "the Commission shall give due consideration, among other factors," to three named factors, to-wit: (1) The effect of the rates on the movement of traffic; (2) the need, in the public interest, of adequate and efficient railway transportation service at the lowest possible cost consistent with the furnishing of such revenue; and (3), the need of revenue sufficient to enable the carriers to provide such service.

Thus the new Act is nothing more than an enumeration of some of the factors to which the Commission shall "give due consideration in the exercise of its power to prescribe just and reasonable rates."

Congress is presumed to have amended the Act with knowledge of the interpretation which this Court had placed upon it and therefore with knowledge that such repeal carried with it the repeal of the power of the Commission to fix intrastate rates to remove a revenue burden from interstate commerce. The individual carrier is, of course, still protected from the prescription by State authority of rates so low as to be confiscatory, and Congress, having repealed the Act by which it sought to establish the unified system of transportation, has left the individual railroads to their rights under general law.

The question here is whether, under the new Section 15a (2), there is any requirement that the Court, by interpretation, should vest in the Interstate Commerce Commission the power to fix individual intra-

state rates to remove a revenue burden on interstate commerce. All the cases in which this Court has sustained the power of the Interstate Commerce Commission to fix intrastate rates to remove a revenue burden, even under the old Section 15a, were "general revenue cases" where the Commission, in order to comply with the revenue provision of the act, prescribed a general level for interstate rates and required intrastate rates to be brought up to that level. *Wisconsin Railroad Commission* v. *C. B. & Q. R. Co.*, 257 U. S. 563; *New York* v. *U. S.*, 257 U. S. 591; *State of Florida, et al.*, v. *U. S.*, 282 U. S. 194; *U. S.* v. *State of Louisiana*, —— U. S. —— (decided November 6, 1933, not yet reported). This is the only case to come before this Court even under the old act in which the Commission has undertaken to require the changing of a particular intrastate rate over one railroad in order to remove a revenue burden.

It is respectfully submitted that even if the power here sought to be exercised existed under the old Section 15a, a proposition which we have always contested, no such power could possibly be found in the new Section 15a. The language of the new act affords no basis for an interpretation that Congress intended to thereby vest in the Interstate Commerce Commission power to fix intrastate rates for the purpose of removing a revenue burden on interstate commerce. As to the vital question of revenue, the affirmative duty which the old Act imposed on the Commission to "initiate, modify, establish or adjust" rates so that the carriers as a whole or in groups should earn a given

return is supplanted by the requirement that the Commission shall "give due consideration," among other things, "to the need of revenue sufficient to enable the carriers" to provide adequate and efficient service at the lowest possible cost consistent with the furnishing of such service. Clearly the new act does not require uniformity of rates, distribution of traffic or revenues, revenue sufficient to provide for the carriers, as a whole or in groups, a given percentage return on investment, nor in fact does it include any of the numerous provisions of the old act.

In order to carry out the purpose of the elaborate plan set up by the old Section 15a, this Court found that it was necessary that the Interstate Commerce Commission be given power to remove a revenue burden on interstate commerce by raising intrastate rates to the level prescribed for interstate rates. Now that the plan itself has been abandoned there is no occasion for finding, by interpretation, the existence of the extraordinary power which this Court held was necessary to carry out the purpose of the plan. No longer will revenues, provided for a given carrier, contribute to the maintenance of a general transportation system, for under the new act this revenue, no matter how great, is retained by the carrier collecting it. It cannot be said that the maintenance of a particular intrastate rate on one commodity over one railroad can have any such direct relation to the purpose of the new act as to justify a finding by interpretation of the extraordinary power in a Federal tribunal to invade the domain of State authority and fix intrastate rates.

Under the old Section 15a the affirmative duty of the Commission, with respect to fixing rates, related to *all* carriers as a whole, or to *all* in each rate group as a whole, and to *aggregate* income, as distinguished from the income of a particular carrier. The rates to be prescribed to accomplish the purpose of the act were to be uniform rates, under which some carriers would earn more than a fair return and this was to be recaptured and loaned to the weaker carriers. Under the new Section 15a this plan of treating the carriers as a whole has been abandoned. Surely it cannot be reasonably contended that in order to carry out the provisions of the new Section 15a, which are confined to designating some factors, which, among others, are to be considered in making interstate rates, it is necessary for the Interstate Commerce Commission to invade the domain of State authority to fix intrastate rates on a given commodity over a single railroad. We submit that proper administration of the new act does not require that interpretation go to such lengths.

CONCLUSION.

For the reasons fully set forth in the principal brief of the appellant lumber companies, it is respectfully submitted that the order of the Interstate Commerce Commission, here under attack, should be set aside as invalid when made, and only by such action can the rights of those who have paid the unlawful rates be protected. But should the Court not so conclude, then it is respectfully submitted that said order became in-

valid with the passage, on June 16th, 1933, of the amendment repealing the provisions of the act upon which rested authority to make such order.

Should the Court not hold the order void *ab initio* but concur in the view here expressed as to the effect of the amendment to the statute, it would seem that in any event the order of the Interstate Commerce Commission should be held invalid and the case remanded to the lower Court, with directions to enter judgment setting it aside and enjoining its future enforcement.

Whatever be the judgment of the Court, we trust we are justified in thus bringing to the attention of the Court the matter of the change in the governing statute and its probable effect on the proper disposition of this case.

Respectfully submitted,

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Attorney for Wilson Lumber Co. of Florida.

APPENDIX.

STATUTES REFERRED TO

SECTION 13 (4) OF INTERSTATE COMMERCE AC

"(4) Whenever in any such investigation the Commi sion, after full hearing, finds that any such rate, fa charge, classification, regulation, or practice causes a undue or unreasonable advantage, preference, or prej dice as between persons or localities in intrastate co merce on the one hand and interstate or foreign co merce on the other hand, or any undue, unreasonable, unjust discrimination against interstate or foreign co merce, which is hereby forbidden and declared to be u lawful, it shall prescribe the rate, fare, or charge, or t maximum or minimum, or maximum and minimum, ther after to be charged, and the classification, regulation, practice thereafter to be observed, in such manner as, its judgment, will remove such advantage, preferenc prejudice, or discrimination. Such rates, fares, charg classifications, regulations, and practices shall be observ while in effect by the carriers parties to such proceedi affected thereby, the law of any State or the decision order of any State authority to the contrary notwit standing."

SECTION 15a OF THE INTERSTATE COMMERCE ACT.

Sec. 15a. [*Added February 28, 1920.*] [*U. S. Cod title 49, sec. 15a.*] (1) When used in this section t term "rates" means rates, fares, and charges, and classifications, regulations, and practices, relating theret

the term "carrier" means a carrier by railroad or partly by railroad and partly by water, within the continental United States, subject to this Act, excluding (a) sleeping-car companies and express companies, (b) street or suburban electric railways unless operated as a part of a general steam railroad system of transportation, (c) interurban electric railways unless operated as a part of a general steam railroad system of transportation or engaged in the general transportation of freight, and (d) any belt-line railroad, terminal switching railroad, or other terminal facility, owned exclusively and maintained, operated, and controlled by any State or political subdivision thereof; and the term "net railway operating income" means railway operating income, including in the computation thereof debits and credits arising from equipment rents and joint facility rents.

(2) In the exercise of its power to prescribe just and reasonable rates the Commission shall initiate, modify, establish or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will, under honest, efficient and economical management and reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation: *Provided*, That the Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to prescribe different rates for different sections of the country.

(3) The Commission shall from time to time determine and make public what percentage of such aggregate property value constitutes a fair return thereon, and such

percentage shall be uniform for all rate groups or territories which may be designated by the Commission. In making such determination it shall give due consideration, among other things, to the transportation needs of the country and the necessity (under honest, efficient and economical management of existing transportation facilities) of enlarging such facilities in order to provide the people of the United States with adequate transportation: *Provided*, That during the two years beginning March 1, 1920, the Commission shall take as such fair return a sum equal to 5½ per centum of such aggregate value, but may, in its discretion, add thereto a sum not exceeding one-half of one per centum of such aggregate value to make provision in whole or in part for improvements, betterments or equipment, which, according to the accounting system prescribed by the Commission, are chargeable to capital account.

(4) For the purposes of this section, such aggregate value of the property of the carriers shall be determined by the Commission from time to time and as often as may be necessary. The Commission may utilize the results of its investigation under section 19a of this Act, in so far as deemed by it available, and shall give due consideration to all the elements of value recognized by the law of the land for rate-making purposes, and shall give to the property investment account of the carriers only that consideration which under such law it is entitled to in establishing values for rate-making purposes. Whenever pursuant to section 19a of this Act the value of the railway property of any carrier held for and used in the service of transportation has been finally ascertained, the value so ascertained shall be deemed by the Commission to be the value thereof for the purpose of determining such aggregate value.

(5) Inasmuch as it is impossible (without regulation and control in the interest of the commerce of the United States considered as a whole) to establish uniform rates upon competitive traffic which will adequately sustain all the carriers which are engaged in such traffic and which are indispensable to the communities to which they render the service of transportation, without enabling some of such carriers to receive a net railway operating income substantially and unreasonably in excess of a fair return upon the value of their railway property held for and used in the service of transportation, it is hereby declared that any carrier which receives such an income so in excess of a fair return, shall hold such part of the excess, as hereinafter prescribed, as trustee for, and shall pay it to, the United States.

(6) If, under the provisions of this section, any carrier receives for any year a net railway operating income in excess of 6 per centum of the value of the railway property held for and used by it in the service of transportation, one-half of such excess shall be placed in a reserve fund established and maintained by such carrier, and the remaining one-half thereof shall, within the first four months following the close of the period for which such computation is made, be recoverable by and paid to the Commission for the purpose of establishing and maintaining a general railroad contingent fund as hereinafter described. For the purposes of this paragraph the value of the railway property and the net railway operating income of a group of carriers, which the Commission finds are under common control and management and are operated as a single system, shall be computed for the system as a whole irrespective of the separate ownership and accounting returns of the various parts of such system. In the case of any carrier which has accepted the

provisions of section 209 of this amendatory Act the provisions of this paragraph shall not be applicable to the income for any period prior to September 1, 1920. The value of such railway property shall be determined by the Commission in the manner provided in paragraph (4).

(7) For the purpose of paying dividends or interest on its stocks, bonds or other securities, or rent for leased roads, a carrier may draw from the reserve fund established and maintained by it under the provisions of this section to the extent that its net railway operating income for any year is less than a sum equal to 6 per centum of the value of the railway property held for and used by it in the service of transportation, determined as provided in paragraph (6); but such fund shall not be drawn upon for any other purpose.

(8) Such reserve fund need not be accumulated and maintained by any carrier beyond a sum equal to 5 per centum of the value of its railway property determined as herein provided, and when such fund is so accumulated and maintained the portion of its excess income which the carrier is permitted to retain under paragraph (6) may be used by it for any lawful purpose.

(9) The Commission shall prescribe rules and regulations for the determination and recovery of the excess income payable to it under this section, and may require such security and prescribe such reasonable terms and conditions in connection therewith as it may find necessary. The Commission shall make proper adjustments to provide for the computation of excess income for a portion of a year, and for a year in which a change in the percentage constituting a fair return or in the value of a carrier's railway property becomes effective.

(10) The general railroad contingent fund so to be recoverable by and paid to the Commission and all accretions thereof shall be a revolving fund and shall be

administered by the Commission. It shall be used by the Commission in furtherance of the public interest in railway transportation either by making loans to carriers to meet expenditures for capital account or to refund maturing securities originally issued for capital account, or by purchasing transportation equipment and facilities and leasing the same to carriers, as hereinafter provided. Any moneys in the fund not so employed shall be invested in obligations of the United States or deposited in authorized depositaries of the United States subject to the rules promulgated from time to time by the Secretary of the Treasury relating to Government deposits.

(11) A carrier may at any time make application to the Commission for a loan from the general railroad contingent fund, setting forth the amount of the loan and the term for which it is desired, the purpose of the loan and the uses to which it will be applied, the present and prospective ability of the applicant to repay the loan and meet the requirements of its obligations in that regard, the character and value of the security offered, and the extent to which the public convenience and necessity will be served. The application shall be accompanied by statements showing such facts and details as the Commission may require with respect to the physical situation, ownership, capitalization, indebtedness, contract obligations, operation, and earning power of the applicant, together with such other facts relating to the propriety and expediency of granting the loan applied for and the ability of the applicant to make good the obligation, as the Commission may deem pertinent to the inquiry.

(12) If the Commission, after such hearing and investigation, with or without notice, as it may direct, finds that the making, in whole or in part, of the proposed loan from the general railroad contingent fund is necessary to

enable the applicant properly to meet the transportation needs of the public, and that the prospective earning power of the applicant and the character and value of the security offered are such as to furnish reasonable assurance of the applicant's ability to repay the loan within the time fixed therefor, and to meet its other obligations in connection with such loan, the Commission may make a loan to the applicant from such railroad contingent fund, in such amount, for such length of time, and under such terms and conditions as it may deem proper. The Commission shall also prescribe the security to be furnished, which shall be adequate to secure the loan. All such loans shall bear interest at the rate of 6 per centum per annum, payable semiannually to the Commission. Such loans when repaid, and all interest paid thereon, shall be placed in the general railroad contingent fund.

(13) A carrier may at any time make application to the Commission for the lease to it of transportation equipment or facilities, purchased from the general railroad contingent fund, setting forth the kind and amount of such equipment or facilities and the term for which it is desired to be leased, the uses to which it is proposed to put such equipment or facilities, the present and prospective ability of the applicant to pay the rental charges thereon, and to meet the requirements of its obligations under the lease, and the extent to which the public convenience and necessity will be served. The application shall be accompanied by statements showing such facts and details as the Commission may require with respect to the physical situation, ownership, capitalization, indebtedness, contract obligations, operation, and earning power of the applicant, together with such other facts relating to the propriety and expediency of leasing such equipment or facilities to the applicant as the Commission may deem pertinent to the inquiry.

(14) If the Commission, after such hearing and investigation, with or without notice, as it may direct, finds that the leasing to the applicant of such equipment or facilities, in whole or in part, is necessary to enable the applicant properly to meet the transportation needs of the public, and that the prospective earning power of the applicant is such as to furnish reasonable assurance of the applicant's ability to pay promptly the rental charges and meet its other obligations under such lease, the Commission may lease such equipment or facilities purchased by it from the general railroad contingent fund, to the applicant for such length of time, and under such terms and conditions as it may deem proper. The rental charges provided in every such lease shall be at least sufficient to pay a return of 6 per centum per annum, plus allowance for depreciation determined as provided in paragraph (5) of section 20 of this Act, upon the value of the equipment or facilities leased thereunder. All rental charges and other payments received by the Commission in connection with such equipment and facilities, including amounts received under any sale thereof, shall be placed in the general railroad contingent fund.

(15) The Commission may from time to time purchase, contract for the construction, repair and replacement of, and sell, equipment and facilities, and enter into and carry out contracts and other obligations in connection therewith, to the extent that moneys included in the general railroad contingent fund are available therefor, and in so far as necessary to enable it to secure and supply equipment and facilities to carriers whose applications therefor are approved under the provisions of this section, and to maintain and dispose of such equipment and facilities.

(16) The Commission may from time to time prescribe such rules and regulations as it deems necessary to carry

out the provisions of this section respecting the making of loans and the lease of equipment and facilities.

(17) The provisions of this section shall not be construed as depriving shippers of their right to reparation in case of overcharges, unlawfully excessive or discriminatory rates, or rates excessive in their relation to other rates, but no shipper shall be entitled to recover upon the sole ground that any particular rate may reflect a proportion of excess income to be paid by the carrier to the Commission in the public interest under the provisions of this section.

(18) Any carrier, or any corporation organized to construct and operate a railroad, proposing to undertake the construction and operation of a new line of railroad may apply to the Commission for permission to retain for a period not to exceed ten years all or any part of its earnings derived from such new construction in excess of the amount heretofore in this section provided, for such disposition as it may lawfully make of the same, and the Commission may, in its discretion, grant such permission, conditioned, however, upon the completion of the work of construction within a period to be designated by the Commission in its order granting such permission.

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In The
SUPREME COURT OF THE UNITED STATES

October Term, 1933.

STATE OF FLORIDA, Et Al.,
APPELLANTS,

versus

No. 342

UNITED STATES OF AMERICA, Et Al.,
APPELLEES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF GEORGIA,
ATLANTA DIVISION

SUPPLEMENTAL AND SEPARATE BRIEF OF THE STATE OF FLORIDA, EUGENE S. MATTHEWS, MAMIE EATON-GREENE AND W. B. DOUGLASS, AS RAILROAD COMMISSIONERS OF THE STATE OF FLORIDA.

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION.

SUPPLEMENTAL AND SEPARATE BRIEF OF THE STATE OF FLORIDA, EUGENE S. MATTHEWS, MAMIE EATON-GREENE AND W. B. DOUGLASS, AS RAILROAD COMMISSIONERS OF THE STATE OF FLORIDA.

On behalf of the State of Florida, and Eugene S. Matthews, Mamie Eaton-Greene and W. B. Douglass, as Railroad Commissioners of the State of Florida, we joined in the brief filed by and on behalf of all of the Appellants involved in this appeal. We concur in and rely upon all that

was said in that brief. But there are important questions here (some of which are not covered in the brief above-mentioned), involving the respective operations of the State and National governments, and involving the reserved power of the State. On that account, we feel that those matters should be presented to this Court by and on behalf of the State sovereign itself and its responsible officers themselves, in their own way and in their sovereign and official capacities. This we shall try to do with no more duplication than can reasonably be avoided. And where duplication of ideas is unavoidable, we have presented our views as concisely and briefly as possible without extended argument.

REFERENCE TO OFFICIAL REPORTS, STATEMENT AS TO JURISDICTION, STATEMENT OF THE CASE, AND SPECIFICATION OF ASSIGNMENTS OF ERROR INTENDED TO BE URGED.

References, statements and specifications referred to in this caption are set forth at pages 2 to 31 of the principal brief filed on behalf of all Appellants (hereinafter referred to as the Main Brief). They are full and complete and are here adopted and confirmed as a part of this Supplemental and Separate Brief.

In addition to the statement of the case set forth in the Main Brief we now point out that since the entry in the District Court of the Final Decree appealed from, and since this appeal was taken, the Emergency Railway Transportation Act, 1933, has become the law of the Land, and has effected sweeping changes in the Interstate Commerce Act,

as amended, which among other things, will be the subject matter of argument in the subsequent portions of this Brief.

ARGUMENT.

Summary

The points which will be argued in this brief are as follows:

Point I.

Section 205 of the Emergency Railway Transportation Act, 1933, effaced the affirmative duty of the Interstate Commerce Commission to initiate, modify, establish or adjust rates, and thus destroyed the "dovetail" relationship between Section 13 (4) and Section 15a of the Interstate Commerce Act, as amended.

Point II.

Any attempt on the part of Congress to authorize the Commission to fix a single intrastate rate upon a single commodity, over a single railroad, in a single state, solely because of the non-compensatory (or confiscatory) level of the intrastate rate, would be beyond its constitutional powers under the circumstances disclosed by this record. If any such attempt has been made, to that extent its act is inoperative and ineffective.

Point III.

At the time when the Commission entered its reports and orders there was no substantial disparity between the

Cummer scale of rates and the general level of interstate log rates existing in the Southern Rate Group. Hence the Commission was without the power to interfere with the intrastate rates in Florida and in attempting to do so its action was arbitrary and unreasonable.

Point IV.

The findings which this Court has declared to be "basic or essential" to the making of a valid order by the Commission here have not been made.

Point V.

The cost evidence is insufficient to supply the essential facts as to the particular traffic and revenue and the effect of the intrastate rates upon the income of the carrier.

Point VI.

The intrastate rates prescribed by the Commission's order were minimum rates definitely fixed at a particular level and not related to or dependent upon any interstate rates. The prescription of such rates by the Commission is unlawful and arbitrary.

Point VII.

The State of Florida is entitled to a trial *de novo* upon the existence of the jurisdictional facts which would entitle the Federal authority to invade the State domain.

POINT I.

SECTION 205 OF THE EMERGENCY RAILWAY TRANSPORTATION ACT, 1933, EFFACED THE AFFIRMATIVE DUTY OF THE INTERSTATE COMMERCE COMMISSION TO INITIATE, MODIFY; ESTABLISH OR ADJUST RATES, AND THUS DESTROYED THE "DOVE-TAIL" RELATIONSHIP BETWEEN SECTION 13 (4) AND SECTION 15a OF THE INTERSTATE COMMERCE ACT, AS AMENDED.

The final decree in this cause was entered on February 24th, 1933. In due course the assignments of errors were filed on April 19th, 1933. The Emergency Railway Transportation Act, 1933, became the law on June 16th, 1933. But the constitutional and statutory power of the Interstate Commerce Commission is challenged by the bills and supplemental bills in the Court below, as well as in the assignments of error upon this appeal (Assignments of Error 40, 41, 42 and 44, R. 1392-1393). We think the argument made under this point requires no assignment of error to support it, but if it does, the assignments last referred to are broad enough.

Section 205 *of the Emergency Railway Transportation Act,* 1933 (*Approved June* 16, 1933) *is as follows*:

"Section 205. Section 15a of the Interstate Commerce Act, as amended (U. S. C., title 49, sec. 15a), is amended to read as follows:

"'Sec. 15a. (1) When used in this section, the term 'rates' means rates, fares, and charges, and all classifications, regulations, and practices relating thereto.

"'(2) In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide such service.'"

The quoted section of the Act of June 16, 1933, entirely supersedes former Section 15a, which was written into the Interstate Commerce Act by Section 422 of the Transportation Act of February 28, 1920. There is no saving clause. Former Section 15a, thus displaced by new Section 15a, is printed in the Appendix.

The Transportation Act of 1920 likewise inserted in the Interstate Commerce Act Sections 13 (3) and (4). Those sections authorized the Interstate Commerce Commission to deal directly with intrastate rates where they were unduly discriminatory against interstate commerce. They are printed in the Appendix of this brief. The pertinent portion of the latter section is as follows:

"(4) Whenever in any such investigation the commission, after full hearing, finds that any such

rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate commerce on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce, which is forbidden and declared to be unlawful it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. * * * ".

(a) If the Emergency Railway Transportation Act, 1933, Has Materially Modified the Law Since the Appeal was Taken, this Court Will Apply the Law in Effect at the Time When Its Judgment was Rendered, NOTWITHSTANDING that the New Law Was Enacted After the Appeal was Taken.

The soundness of the principles stated in the foregoing sub-caption we shall demonstrate from an examination of the authorities in a subsequent sub-caption of this topic. But we shall first examine the statutes and the authorities to determine the extent to which the controlling law and the former purpose of Congress has been altered by it.

(b) It was Solely Because of the Dominating Force of Former Section 15a of the Interstate Commerce Act that the Commission Under Section 13 (4) of that Act was Authorized to Invade State Domain and Fix Intrastate Rates in the Interest of Carrier Revenue.

Former Section 15a, from its enactment, has been known as the revenue section of the Interstate Commerce Act. By its terms Congress commanded the Interstate Commerce Commission to,

> " * * * initiate, modify, establish or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the commission may from time to time designate) will * * earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation, * * * ".

It contained other elaborate provisions for the determination of a fair return, recapture of any excess, and the distribution of it through loans and otherwise, to members of the carrier group.

Never yet has this Court sustained the power of the Interstate Commerce Commission to invade state domain and to fix intrastate rates in the interest of carrier revenues without pointing out in effect that the driving force behind such construction was the mandate of Congress contained in former Section 15a.

The provisions of Section 13 (4) which were construed to authorize the Commission to thus invade state domain have in each instance been construed by this Court to be in effect supplementary to (as distinguished from independent of) the dominating force of Section 15a, a construction reached by interpretation in order that the mandate and purpose of Section 15a might be executed.

This Court first considered the "dove-tail relationship" between the two sections in the Wisconsin Passenger Fares Case, (*Railroad Commission of Wisconsin v. Chicago, B. & Q. R. Co.*, 257 *U. S.* 563). There the Court, in referring to Section 15a, said (Text 584):

> "The latter, the most novel and most important feature of the act, *requires* the Commission so to prescribe rates as to enable the carriers as a whole or in groups selected by the Commission, to earn an aggregate annual net railway operating income equal to a fair return on the aggregate value of the railway property used in transportation. For two years, the return is to be 5½ per cent, with ½ per cent for improvements, and thereafter is to be fixed by the Commission". (Italics supplied).

In further discussing Section 15a, and allied provisions, the Court said (text 585):

> "The new measure imposed an affirmative duty on the Interstate Commerce Commission to fix rates and to take other important steps to

maintain an adequate railway service for the people of the United States. This is expressly declared in Section 15a to be one of the purposes of the bill".

In considering the authority of the Commission to perform the "affirmative duty" cast upon it by Section 15a to execute the declared purpose of that Section, the Court pointed out that intrastate rates and the income therefrom played an important part in the income of the carriers, and that if the rates in intrastate commerce were fixed at a substantially lower level than those in interstate commerce, the share which the intrastate traffic would contribute would be proportionately less than that contributed by the interstate traffic, and said (text 586):

> "If the railways are to earn *a fixed net percentage of income*, the lower the intrastate rates, the higher the interstate rates may have to be. The effective operation of the act will reasonably and justly require that intrastate traffic should pay a fair proportionate share of the cost of maintaining *an adequate railway system*. Section 15a confers no power on the Commission to deal with the intrastate rates. What is done under that section is to be done by the Commission 'in the exercise of its powers to prescribe just and reasonable rates;' i.e., powers derived from previous amendments to the Interstate Commerce Act, which have never been construed or used to embrace the prescribing of intrastate rates. When we turn to para-

graph 4, Section 13, however, and find the Commission for the first time vested with a direct power to remove 'any undue, unreasonable, or unjust discrimination against interstate or foreign commerce', it is impossible to escape the *dovetail relation* between that provision and the *purpose of Section* 15a. If *that purpose* is interfered with by a disparity of intrastate rates, the Commission is authorized to end the disparity by directly removing it, because it is plainly an 'undue, unreasonable, and unjust discrimination against interstate or foreign commerce' within the ordinary meaning of those words". (Italics supplied).

In further considering the pertinent words in Section 13 (4), to-wit, "undue, unreasonable and unjust discrimination against interstate or foreign commerce", and by interpretation welding them into the weapon by which the purpose of Section 15a would be accomplished, the Court said further (text 587):

> "When we find that they aptly include a kind of discrimination against interstate commerce which the operation of the new act for the first time makes important, and which would seriously obstruct its chief purpose, we cannot ignore their necessary effect."

And in the companion case of the *Wisconsin case* (supra), to-wit, *New York vs. United States*, 257 *U. S.* 591), decided the same day, the Court in considering another general revenue order entered by the Interstate Commerce

Commission increasing passenger fares and milk rates in the State of New York again considered the meaning and force of former Section 15a of the Interstate Commerce Act, and said (text 601-602):

> "If the lower level of intrastate fares and rates is to be maintained, it will discriminate against interstate commerce, in that it will require higher fares and rates in the interstate commerce of the state to secure the income for which the Interstate Commerce Commission must attempt to provide by fixing rates under Section 15a of the Interstate Commerce Act, as amended by Section 422 of the Transportation Act of 1920 (41 Stat. at L. 456, 488, chap. 91), in carrying out the declared congressional purpose 'to provide the people of the United States with adequate transportation' ".

In *Dayton-Goose Creek Railway Company v. United States*, 263 *U. S.* 456, this Court examined the constitutionality and effect of Section 15a and the purpose of Congress in requiring the Commission to prescribe rates which would yield a fair return for the railroads and subject to recapture a part of the surplus earnings. The Court pointed out that the recapture clauses were the key provisions "of the whole plan". The Court there spoke through Mr. Chief Justice Taft, through whom it spoke in the Wisconsin Passenger Fares Case and the New York v. United States case (supra). The Dayton-Goose Creek Case is here cited to show the dominating effect of former Section 15a upon the con-

struction placed by the opinion upon the duties of the Commission with respect to rates.

And again, upon the former appeal respecting these very intrastate log rates, in *Florida v. United States*, 282 *U. S.* 194, this Court said (text 210-212):

> "The power of the Congress to authorize the Interstate Commerce Commission to establish intrastate rates in order to remove an unjust discrimination against interstate commerce is not open to dispute. (citing cases). In the exercise of this power, the Congress has given to the Commission authority not only to remove an undue prejudice as between persons or localities, but to establish a statewide level of intrastate rates when this is found to be *necessary to accomplish* the purpose of the statute. *In construing the statute this Court has held that the general provision of section* 13 (4) *prohibiting 'unjust discrimination against interstate commerce' and authorizing the Commission to establish intrastate rates to prevent such discrimination, is to be read in connection with Section* 15a, *both of which were added by Transportation Act,* 1920 (secs. 416, 4[illegible], 41 Stat. *at L.* 484, 488). *There is what this Court has called a 'dovetail relation' between the two provisions. The authority granted by section* 13 (4) *is thus to be considered in the light of the affirmative duty of the Commission to fix rates and to take other important steps to maintain an adequate national railway system.*

"As intrastate rates and the income from them must play a most important part in maintaining such a system, the effective operation of the Act requires that intrastate traffic should pay 'a fair proportionate share' of the cost of maintenance. And if there is interference with the accomplishment of the purpose of the Congress because of a disparity of intrastate rates as compared with interstate rates, the Commission is authorized to end the disparity by directly removing it. *Railroad Commission v. Chicago, Burlington & Quincy Railroad Company, supra; New York v. United States, supra.*

"The question in the present case, then, is not one of authority, but of its appropriate exercise. *The propriety of the exertion of the authority must be tested by its relation to the purpose of the grant and with suitable regard to the principle that whenever the federal power is exerted within what would otherwise be the domain of state power, the justification of the exercise of the federal power must clearly appear*". (Italics supplied).

And in *United States v. State of Louisiana, et al.*, (decided this term, Nov. 6, 1933, No. 17), this Court had before it another general revenue case arising out of the Fifteen Percent Case, 1931. This Court again examined the relationship between former Section 15a and Section 13(4) of the Interstate Commerce Act, and the effect of the

former upon the construction to be placed upon the latter, and in so doing said:

> "This Court has consistently held that this section is to be construed *in the light of section* 15a (2) *and as supplementing it*, so that the forbidden discrimination against interstate commerce by intrastate rates includes those cases *in which disparity of the latter rates operates to thwart the broad purpose of section 15a to maintain an efficient transportation system by enabling the carriers to earn a fair return*. So construed, section 13 (4) confers on the Commission the power to raise intrastate rates so that the intrastate traffic may produce its fair share of the earnings required to meet maintenance and operating costs and to yield a fair return on the value of property devoted to the transportation service, both interstate and intrastate." (Italics supplied).

We respectfully submit that the sum of all the foregoing decisions of this Court is that: (1) Section 13 (4) is insufficient in and of itself to authorize the Interstate Commerce Commission to invade State domain and fix intrastate rates in the interest of carrier revenues; (2) That it is only when that section is read in connection with the mandatory provisions of former Section 15a that this Court finds by interpretation that Section 13 (4) authorizes such invasion of State domain in the interest of carrier revenues; (3) That under the provisions of former Section 15a, it was the *affirmative duty* of the Commission to prescribe

rates which would insure sufficient revenue to provide a fair return for the carrier at all events, and that if the intrastate rates failed to provide their proportionate share of the revenue, it would be the affirmative duty of the Interstate Commerce Commission to supply this deficit by an increase in interstate rates, and thus and thereby cause an obstruction to interstate traffic and a consequent discrimination against interstate traffic within the inhibitions of the supplementing Section 13 (4); (4) That the purpose of the grant of authority found by this Court in "supplementing" Section 13 (4) in its dovetail relation with former Section 15a, was so found by the Court by interpretation to be necessary to enable the Commission to execute the affirmative commands of Congress set forth in former Section 15a which otherwise it could not execute.

(c) The Context, Purpose and Effect of New Section 15a of the Interstate Commerce Act.

New Section 15a does nothing other than direct the Commission that,

> "(2) In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide such service."

Gone are all the mandatory requirements with respect to fixed net income and the affirmative duty of the Commission to provide it, the recapture clause, the railway operating fund, and the like, which this Court in the *Wisconsin Case* (supra) referred to as the most important feature of the Act, and in the *Dayton-Goose Creek Case* (supra), described as "the heart of the plan", and which, in all of the revenue cases referred to above, is recognized as evidencing the dominating purpose of Congress with respect to the revenues of the carriers. In their place we have a simple specification of some of the factors which the Commission shall take into account when exercising its power elsewhere given to prescribe just and reasonable rates. And first among those factors is the effect of rates on the movement of traffic. And all of the factors specified are factors which the Commission in the absence of the new statute must give due consideration in any event. Thus we have a complete change in the purpose of Congress with respect to fixed income for the carriers and the affirmative duty of the Commission to fix rates to provide it.

A principle somewhat analogous to the one just asserted is one frequently laid down by this Court to the effect that a statute or part of a statute under a particular state of facts or circumstances may be operative, but when the facts and circumstances change the statute may become inoperative and ineffective.

Chastleton Corp. v. Sinclair, 264 *U. S.* 543.
Perrin v. United States, 232 *U. S.* 478.

(d) The Emergency Railway Transportation Act, 1933, Having Intervened and Materially Modified the Law Since the Appeal Was Taken, the Court Will Apply the Law in Effect at the Time That Its Judgment Is Rendered, Notwithstanding That the New Law Was Enacted After the Appeal Was Taken.

The Interstate Commerce Commission is a subordinate administrative agency of the Congress. It has only such powers and duties as "clearly appear" in the Acts of Congress which have been constitutionally enacted with respect to intrastate rates. And as was pointed out by this Court in the Florida Log Case, supra, even where the existence of a granted power is assumed, that power can be lawfully exercised only to effectuate the purpose of the grant. There, in speaking of the power, the Court says (text 211-212):

> "The propriety of the exertion of the authority must be tested by its relation to the purpose of the grant and with suitable regard to the principle that whenever the Federal power is exerted within what would otherwise be the domain of State power, the justification of the exercise of the Federal power must clearly appear."

In this case, it must be borne in mind that the questioned order of the Commission, which invaded State domain, is *prospective and continuing* in its character, and if the *purpose of the grant* has been stricken down by the new law or has been so materially modified as to substantially

affect "the propriety of the exertion of the authority", then the order of the Interstate Commerce Commission, even if lawful before the New Act (a thing which we deny), became upon the enactment of the New Act functus officio, or unlawful, and on that ground alone must be set aside.

The decisions of this Court and of the several Circuit Courts of Appeal construing them, bear out this view.

The principal law which we believe here controlling was first laid down by this Court, speaking through Chief Justice Marshall in *United States vs. Schooner Peggy*, 1 *Cranch* (*U. S.*) 103. The appeal there was from the District Court of Connecticut which had condemned a vessel as a prize under the then existing laws. Pending the appeal, there was proclaimed by the President a treaty convention which had been entered into by the two governments. The Court upon the appeal examined the judgment of the Court below and the convention and found that the former, while in accordance with the law when entered, was in contravention of the subsequently proclaimed convention.

In setting aside the judgment of the Court below, this Court, speaking through the Chief Justice, said in part (text 110):

> "'It is in the general true that the province of an appellate court is only to inquire whether a judgment when rendered was erroneous or not. But if, subsequent to the judgment, and before the decision of the appellate court, a law intervenes and positively changes the rule which governs, the law must be obeyed, or its obligation denied. * * * In such a case the court must decide according to

existing laws, and if it be necessary to set aside a judgment, rightful when rendered, but which cannot be affirmed but in violation of law, the judgment must be set aside.' "

And in *Gulf, Colorado & Santa Fe Railway Company vs. Dennis*, 224 *U. S.* 503, the Court again considered some of the principles here involved. The defendant in error, plaintiff below, had recovered a judgment for $75.00, including a statutory attorneys' fee of $20.00, in a justice's court in Texas. That judgment had been affirmed by the county court, the highest court in the State to which the case could be carried, considering the amount involved. Writ of error was taken from the county court to this Court.

The sole Federal question involved was whether the statute awarding the attorneys' fee was repugnant to the due process of law and equal protection clauses of the 14th Amendment to the Constitution of the United States. Pending an appeal, the statute was held invalid by the highest court of the State because the subject to which it related was not sufficiently expressed in the title to satisfy the *State Constitution.*

The Court examined the authorities including *United States vs. Schooner Peggy*, supra, and quoted with approval the identical language of Chief Justice Marshall, set forth above. It held that the principles laid down by Chief Justice Marshall were applicable in the case there under consideration. This Court pointed out that its jurisdiction was founded solely upon the Federal question, but that the State statute having been held invalid by the highest court of the State upon a non-Federal question, this Court would reverse

the cause and remand it to the Court from which it came so that the Court might apply to it the principles which had been determined by the Supreme Court of Texas after the case came to this Court. This Court declared where; pending writ of error, a statute of the state or a decision of its highest judicial tribunal intervenes and puts an end to the right which the judgment sustains, the Court should not ignore the changed situation and affirm or reverse the judgment with sole regard to the Federal question. But that on the contrary, it was the duty of the Court to recognize the changed situation and either to apply the intervening law or decision, or to set aside the judgment and remand the case so that the state court might do so.

In its conclusion, the Court said (text 509):

> "The present case is not one in which the writ should be dismissed, because that would leave the judgment to be enforced as rendered, which the intervening decision shows ought not to be done. Instead of being an obstacle to granting any effectual relief to the plaintiff in error, that decision constitutes in itself an all-sufficient ground for relieving it from the attorneys' fee, independently of the Federal question presented on the record; and for the reasons before stated we think it becomes our duty to vacate the judgment, so that the state court may apply the decision by awarding a new judgment in conformity therewith.
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> "The judgment is accordingly reversed, and the case is remanded for further proceedings not inconsistent with this opinion."

The principles asserted and the procedure followed in the case last cited are peculiarly applicable and appropriate here.

The same fundamental principles of law have lately been applied by two circuit courts of appeal, namely the Second and the Ninth Circuits, in disposing of writs of error coming on to be disposed of by those circuit courts of appeal, after repeal of the 18th Amendment from judgments of conviction entered by the trial courts before the repeal. Those two decisions are *Green vs. United States, C. C. A.* (9), decided December 14, 1933, (not yet reported) and *Smallwood vs. United States, C .C. A.* (5), decided December 19, 1933, (not yet reported).

In the Green case, the Court held that the repeal of the 18th Amendment had deprived Congress of the power of legislation on the subject of prohibition in so far as such power is derived from the Amendment. And that the Federal statute containing a saving clause as to criminal prosecutions (Section 13, R. S.) would be unconstitutional if applicable.

In the Smallwood case, supra, the Court, in different words, reached the same conclusion. It relied upon *Gulf, Colorado & Santa Fe Railway Company vs. Dennis, supra.*

United States vs. Alaska Steamship Company, et al, 253 *U. S.* 113, likewise illustrates the principle here discussed There the Interstate Commerce Commission, by its order dated March 4, 1919, had required certain carriers to use certain modified bills of lading, one pertaining to domestic and the other to export transportation.

Suit was filed in the District Court of the United States for the Southern District of New York to enjoin the order

and a temporary injunction was granted by the District Court. It was that order, granting the temporary injunction, which was under review in this Court.

Pending the appeal, the Transportation Act of 1920 was passed by Congress. Shortly afterwards, this Court entered an order requesting counsel to file briefs concerning the effect of the Transportation Act upon the cause. And briefs were filed. The Court examined the Transportation Act of 1920 and found that changes would be required in both forms of the bills of lading (which had been prescribed by the order of the Commission) so that they might conform to the requirements of the new statute.

The Court held that the change in the law had made the case moot, and in the course of the opinion said (text 116):

> "In the present case what we have said makes it apparent that the complainants do not now need an injunction to prevent the Commission from putting in force bills of lading in the form prescribed. The subsequent legislation necessitates the adoption of different forms of bills in the event that the power of the Commission be sustained. This legislation, having that effect, renders the case moot. (Citing cases).
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> "In our view the proper course is to reverse the order, and remand the cause to the court below with directions to dismiss the petition, without costs to either party, and without prejudice to the right of the complainants to assail in the future any order of the Commission prescribing bills of lading after the enactment of the new legislation."

The necessary effect of the decision of the Court in the Alaska case was *that Congress, by the enactment of the Transportation Act, 1920, had effaced the Congressional purpose evidenced by the former Act and, in so doing, had effaced the order of the Interstate Commerce Commission as well.* And notwithstanding that the Court held the cause moot, the Court effectually adjudged that the order there under attack was functus officio.

The principles involved in the Alaska case and those involved here are alike. The status of the order there and that of the order here are somewhat different in that the order there had been enjoined by the trial court, while in the case at bar, the court below refused to enjoin the order and dismissed the bill. For that reason, the court may deem it more appropriate here to construe and declare the new law which is now applicable to the case, and reverse the cause, with directions to the court below to apply the law as declared by this court, as was done in the case of *Gulf, Colorado & Santa Fe Railway vs. Dennis, supra.*

(e) The Purpose of the Grant of Authority Having Been Effaced, the Grant Will Be Deemed to be Inoperative and Ineffective, or, In Any Event, if Still Existent At All Would Be An Authority Which It Is Improper for the Commission to Exercise.

There can be no doubt that under the decisions of this Court, the purpose of the grant of authority interpreted by this Court to exist in Section 13 (4) of the Interstate Commerce Act, was to enable the Commission to perform its affirmative duty imposed upon it by the mandatory require-

ments of former Section 15a. And the purpose of the grant of authority having been effaced by the repeal of former Section 15a, the grant itself found by interpretation to exist in Section 13 (4) will be deemed to be no longer operative or effective.

But even if the bare authority remains, it is clear that it cannot properly be exercised to invade state domain or to maintain that invasion now that the purpose of the grant has been effaced. That principle, we think, is clearly settled by this Court in its opinion upon the former appeal involving these very log rates.

This Court in discussing the authority granted by Section 13 (4), the "dovetail relation" of that Section to former Section 15a, and the purpose of the grant, said in part (text 211-212):

> "The propriety of the exertion of the authority must be tested by its relation to the purpose of the grant and with suitable regard to the principle that whenever the Federal power is exerted within what would otherwise be the domain of State power, the justification of the exercise of the Federal power must clearly appear."

(f) The Meaning To Be Ascribed to Section 13 (4) After the Effacement of the Mandatory Provisions of Section 15a.

From the decisions of this Court we must deduce that "supplementing" and being in "dovetail relation" with former Section 15a the words of Section 13 (4) are insufficient, in and of themselves, without the dominating force

of former Section 15a to authorize the fixing of state rates purely in the interest of carrier revenue. There is no doubt that the two branches of the Congress when enacting Section 13 (3) and (4) considered that in and of themselves they did no more than incorporate in legislative enactment the principle of the *Shreveport Case* (234 *U. S.* 342). And that those two paragraphs of Section 13 in and of themselves did not attempt to extend the authority of Congress beyond the then existing law as construed by the Shreveport Case, except to authorize the Commission in like cases to fix the intrastate rate and thus accomplish directly what the Shreveport Case recognized its power to do by indirection.

Paragraphs 3 and 4 of Section 13 were offered as amendments in the Senate and House of Representatives, respectively, each sitting as a Committee of the Whole. And when so offered were explained by the Chairman of their respective Committees having the Transportation Act of 1920 in charge, namely, Senator Cummins and Mr. Esch, both men of long experience and great learning with respect to transportation matters. Their comments in the journals of Congress bear out our statement made above. Excerpts from their comments, respectively, are printed in the margin.*

*In presenting these amendments to the Committee of the Whole House, Mr. Esch, Chairman of the Committee on Interstate and Foreign Commerce of the House of Representatives, said:

"We also provide for the enactment into law of what is popularly known as the decision of the Supreme Court in the Shreveport Case. Where intrastate rates constitute an undue burden, advantage, preference or prejudice against interstate rates, such rates are declared to be unlawful. We have incorporated into law the decision of the court. When by reason of the low level of the intrastate rates an undue burden is cast upon the interstate traffic, the citizens and the shippers of

We are aware of course, that this Court speaking through Mr. Chief Justice Taft, in the *Wisconsin Passenger Fares Case* (supra), considered the legislative history of the Transportation Act of 1920, and reached the conclusion that the Committee Reports and the debates in Congress showing the Congressional intent were not controlling in the construction of Section 13 (4) in the light of the mandatory provisions of former Section 15a and in the "dovetail relation" found by the Court to exist between those two sections. But the mandatory and controlling provisions of Section 15a are gone. Of the two sections thus construed "in dovetail relationship" with one another, the dominating section has been repealed, and only the "supplementing" section remains. Congress is deemed to have known the importance placed by this Court upon the construction of it in its relation with Section 13 (4) and to have known the

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other states are compelled to pay higher interstate freight rates than they would have had to pay had that state enacted or put into force and effect proper intrastate rates. We give this power of determination to the Interstate Commerce Commission, but in order that the state commissions may have a proper hearing we provide that the state commission may, to use a phrase of the street, 'sit in' with the Interstate Commerce Commission. It can sit with the Interstate Commerce Commission; it can hear the testimony, and can present its full case, through its legally constituted authority. It can present the full case, but the final adjudication is to rest with the Interstate Commerce Commission and not with the state regulatory body. We believe that this getting together of the interstate and state regulatory bodies will lessen the number of Shreveport cases, better the feeling between the interstate and the state commissions, and promote the commercial interests of the country." 59 Cong. Rec. 66th Cong. 1st Sess. vol. 58, pt. 8, p. 8317.

(See Board of R. Comrs. v. Great Northern R. Co. 281 U. S. 412, footnote 5.)

effect of the repeal of the dominant section of the Act. *Thompson vs. Thompson*, 218 *U. S.* 611 (text 616).

We have examined the legislative history of the new Section 15a and find in it no light upon this subject, except the purpose of Congress to abandon the "key provision of the plan", viz the recapture clause and with it all of the mandatory provisions of former Section 15a which supported it. Under all these circumstances we respectfully submit that the legislative history of Sections 13 (3) and (4) now become of great importance in determining whether the grant of authority found by interpretation in Section 13 (4) in its aspect as "supplementing" former Section 15a is now operative or effective to authorize the Interstate Commerce Commission to intermeddle with State rates from a

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Senator Cummins, Chairman of the Committee on Interstate Commerce of the Senate, made the following statement to the Committee of the Whole of the Senate:

"I need not follow that case" (the Shreveport Case) "in all its phases; but it finally reached the Supreme Court of the United States, and the Supreme Court held that the authority of the Federal government as it could be vested in the Interstate Commerce Commission extended to the removal of a discrimination between the interstate rates and the intrastate rates, but no authority had been given by Congress to the commission to declare what the intrastate rate should be in comparison with the interstate rate. . . .

"The committee has attempted simply to express the decisions of the Supreme Court of the United States. We have not attempted to carry the authority of Congress beyond the exact point ruled by the Supreme Court in the cases to which I have referred; and the only thing we have done in the matter has been to confer upon the Interstate Commerce Commission the authority to remove the discrimination when established in a proper proceeding before that body—an authority which it does not now have. . . .

"The Supreme Court held that Congress had not conferred upon the Interstate Commerce Commission the right to prescribe a rate in the stead of one which had been condemned; but so far as the condemnation of the rates is concerned, the power of the Interstate

revenue standpoint alone, now that the driving force of former Section 15a no longer exists. For, as has been pointed out, it is well settled that all or part of an Act of Congress may be operative and effective at one time under one set of circumstances, and inoperative and ineffective at another time and under another set of circumstances.

Chastleton vs. Sinclair, supra.
Perrin vs. United States, supra.

But irrespective of the weight to be given to the legislative history of the Transportation Act, 1920, in construing Section 13 (4) of the Interstate Commerce Act, under the present circumstances, we think that the construction of it is controlled by the principles frequently laid down by this Court and succintly stated by it in *Illinois Central R. Co. vs. State Public Utilities Commission*, 245 *U. S.* 493, as follows:

> "In construing Federal statutes enacted under the power conferred by the commerce clause of the Constitution the rule is that it should never be held that Congress intends to supersede or suspend the exercise of the reserved powers of a state, even where that may be done, unless, and except so far as, its purpose to do so is clearly manifested (citing cases). This being true of an act of Congress, it is obvious that an order of a subordinate agency, such as the Commission,

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Commerce Commission is already ample, and it has succeeded in one way or another in removing the discriminations which have come under its notice without the statute which we now propose." Cong. Rec. 66th Cong. 2d Sess. vol. 59, pt. 1, pp. 142, 143.

should not be given precedence over a state rate statute otherwise valid, unless, and except so far as, it conforms to a high standard of certainty".

This same principle was confirmed by this Court upon the former appeal of the *Florida Log Rate Case* (supra), where the power of the Commission to invade state domain and prescribe intrastate rates was in question. That principle forbids that, the dominating former Section 15a having been repealed, the "supplementing" Section 13 (4) now be construed to authorize the invasion of state domain and determine the reasonableness of intrastate rates *per se* solely in the interest of carrier revenue.

It may be asked then, what meaning may be ascribed to the words "undue, unreasonable or unjust discrimination against interstate or foreign commerce", which is forbidden and declared to be unlawful and which this Court in the cases cited above held to be supplementary to the mandatory provisions of former Section 15a insofar as rates and fares are concerned? It is well in this connection to bear in mind that Section 13 (4) does more than deal with rates, fares and charges; it deals with *classifications, regulations and practices.*

Those latter words in Section 13 (4) were likewise new, and it may well be argued that the inclusion of them in Section 13 (4) had to do with the inclusion of the new language with respect to "undue, unreasonable and unjust discrimination against interstate or foreign commerce". And it might be argued that the power to remove unjust discrimination against interstate commerce as such should now be construed to be applicable to those aspects of the

Interstate Commerce law which under the still existent purpose of Congress the Interstate Commerce Commission has primary and direct control of, such as abandonment proceedings, new constructions and any other matters which have been or which may hereafter be committed to the direct and exclusive jurisdiction of the Commission by present or future valid acts of Congress.

For as has been pointed out, statutes may well be construed to be operative and effective under one set of circumstances and conditions, and inoperative and ineffective under a different set of circumstances and conditions. And the exercise of statutory authority under one set of circumstances and conditions may be proper, whereas under other circumstances and conditions it may be improper. (Cases cited supra). But whatever meaning may be ascribed to those words in the present or future state of the Interstate Commerce Act, it is clear that in the light of the former decisions of this Court they cannot "justify" the invasion of state domain to fix intrastate rates from the standpoint of carrier revenue alone.

(g) When In the Exercise of Federal Power Congress Enacts a Law Which Supersedes State Powers and Afterwards the Federal Act is Repealed or Becomes Inoperative and Ineffective, the State Law Which Had Been theretofore Superseded, Automatically Becomes Operative and Effective.

The principle stated in the sub-caption is borne out by many of the decisions of this Court. *Butler v. Goreley, Assignee*, 146 *U. S.* 303, is illustrative of this point. That case

involved the exercise of Congress of the bankruptcy power by the enactment of the Bankruptcy Act of 1867, and the repeal of that Act in 1878. When the Act of 1867 was passed there was in force and effect in Massachusetts an insolvency statute which was superseded by the Congressional Act last mentioned. The question was whether upon the repeal of the Bankruptcy Act of 1867 the Massachusetts law should have been re-enacted in order to become operative. This Court held not, and in so doing, said (text 314):

> "The repeal of the Bankruptcy Act of the United States removed an obstacle from the operation of the insolvency laws of the State and did not render necessary their re-enactment".

Upon the effacement of the dominating force of Section 15a by its amendment the order of the subordinate body of Congress, even if theretofore lawful (a thing denied), became immediately inoperative and ineffective and state power and state law automatically became operative and effective.

(h) There is No Dovetail Relation Between Sections 13 (3) and (4) and New Section 15a, which Does or Could Authorize the Commission to Strike Down a Single Intrastate Rate Upon a Single Railroad, Solely in the Interest of Carrier Revenue.

Our view is that not even the compelling force of former Section 15a construed with the supplementing aspect of Section 13 (4) was sufficient to authorize the Commission solely in the interest of the revenues of the carrier to invade state domain and strike down a single rate

covering a single commodity upon a single railroad in a single state where no general level had been prescribed for the same commodity throughout the rate group of which that railroad is a part, or at least throughout the territory or area co-terminus with the territory in which is applicable the state rate which is sought to be interdicted. We think that view is supported by the decision of this Court upon the former appeal (*Florida Log Rate Case, supra*), where this Court said: (Text 214)

> "But to justify the Commission in the alteration of intrastate rates, it was not enough for the Commission merely to find that the existing intrastate rates on the particular traffic were not remunerative or reasonably compensatory. The authority to determine the reasonableness per se of intrastate rates lay with the state authorities and not with the Interstate Commerce Commission."

Certainly this principle is not open to question now that the dominating force of former section 15a has been superseded by the simple specifications of new section 15a. This Court upon more than one occasion has said that the power vested in the judiciary to strike down a state statute or administrative order fixing a state rate because it was confiscatory (which means no more nor less than not reasonably compensatory), involves one of the most important of judicial governmental functions, and one which this Court itself will exercise only where a plain case of confiscation has been made.

Knoxville, v. Knoxville Water Company,
212 *U. S.* 1.

The power of the Federal government to strike down such a State statute or administrative order arises under the due process and equal protection clauses of the Fourteenth Amendment, and rests in the judiciary. It is a wholly different power from any authority ever vested by Congress in the Interstate Commerce Commission under the Commerce clause of the Constitution. The difference in the two rights and powers has frequently been recognized by this Court. *Minnesota Rate Cases*, (*Simpson v. Shepard*, 230 *U. S.* 352 and authorities cited.)

Plainly Congress has not attempted to confer upon a subordinate administrative or quasi-judicial body like the Commission a function which this Court itself so sparingly exercises.

Now that the dominant mandatory provisions of former Section 15a, requiring the Commission to so prescribe rates as to provide a fixed carrier revenue, have been displaced by the simple specifications of some of the factors to be considered when rates are prescribed, it is clear that the relationship between new Section 15a and Section 13 (4) is not such as to confer upon the Commission even *color* of right to make or continue its order here under attack.

Our conviction is that (for the reasons elsewhere asserted) the order here under attack was unlawful and invalid in the first instance; but that if the Commission ever had any authority to intermeddle with the State rate solely in the interest of carrier revenue under any circumstances, that authority is now inoperative and ineffective because of the change in the law set forth above.

POINT II.

ANY ATTEMPT ON THE PART OF CONGRESS TO AUTHORIZE THE COMMISSION TO FIX A SINGLE INTRASTATE RATE UPON A SINGLE COMMODITY, OVER A SINGLE RAILROAD, IN A SINGLE STATE, SOLELY BECAUSE OF THE NON-COMPENSATORY (OR CONFISCATORY) LEVEL OF THE INTRASTATE RATE, WOULD BE BEYOND ITS CONSTITUTIONAL POWERS UNDER THE CIRCUMSTANCES DISCLOSED BY THIS RECORD. IF ANY SUCH ATTEMPT HAS BEEN MADE, TO THAT EXTENT ITS ACT IS INOPERATIVE AND INEFFECTIVE.

(Applicable to Assignments of Error, Nos. 1 to 5 incl., 30 to 33, incl., 40 to 44, incl.)

We feel sure that this Court will not find that the compelling force of former Section 15a, construed in its aspect as being suplemented by Section 13 (4), was sufficient to authorize the Commission to invade State domain and strike down solely because *sic* it is non-compensatory (or confiscatory) a single rate on a single commodity, over a single railroad, in a single State, where no general level has been prescribed for that commodity throughout the rate group of which that railroad is a part, or at least throughout the territory or area co-terminus with the territory in which is applicable the State rate which is sought to be interdicted. Certainly this principle is not open to question now that the dominating force of former Section 15a has been superseded by the simple specifications of new

Section 15a. But if the Court should ascribe any such intent to Congress, then the Court must find that the Interstate Commerce Act as amended is to that extent in operative and ineffective because in conflict with the Tenth Amendment of the Federal Constitution and also because in conflict with Sections 1 and 2, Article III of the Constitution for the reasons set forth in sub-paragraph (h) of Point I above. And we now make and rely upon that contention. And if this question is reached and questioned by the Court we shall be glad to file a separate brief upon it.

POINT III

AT THE TIME WHEN THE COMMISSION ENTERED ITS REPORTS AND ORDERS THERE WAS NO SUBSTANTIAL DISPARITY BETWEEN THE CUMMER SCALE OF RATES AND THE GENERAL LEVEL OF INTERSTATE LOG RATES EXISTING IN THE SOUTHERN RATE GROUP. HENCE THE COMMISSION WAS WITHOUT THE POWER TO INTERFERE WITH THE INTRASTATE RATES IN FLORIDA AND IN ATTEMPTING TO DO SO ITS ACTION WAS ARBITRARY AND UNREASONABLE.

(Applicable to Assignments of Error Nos. 1 to 5, inclusive, and 32 and 33).

As we have pointed out in our main brief, at the very times when the Commission was entering its reports and orders of July 5, 1932, and January 9, 1933, the

carriers very generally throughout the Southern Rate Group were reducing their rates on logs to a level which the Commission itself found (190 I. C. C., text 589) to be "on substantially the same level as the Cummer Scale". The extent of the application of those rates so reduced is shown on the maps (R. 388 and 490), attached to the supplemental bills of complaint herein.

Those rates, so reduced, are the successors of the rates with which the Commission unfavorably compared the Cummer Scale. The representatives of some of the railroads which put these reduced rates into effect testified here (R. 1012-1048) at the instance of the Atlantic Coast Line Railroad, and with one accord showed that logs were not moving freely on those railroads, that the log traffic had been well-nigh destroyed at the high rates theretofore prevailing, and that the rates had been reduced in the hopes of regaining the traffic in some volume.

Those rates, so reduced, are applicable on twenty-two railroads, on intrastate and interstate commerce, in the Southern Rate Group, and in every State in that rate group except West Virginia. They are applicable on [illegible] railroads, on intrastate and interstate commerce, in five States in the Southwestern Rate Group. They are applicable, in intrastate and interstate commerce, in Florida upon four railroads. They are applicable over substantially all of the lines of the Louisville & Nashville Railway, which is controlled through stock ownership by the Atlantic Coast Line Railroad, and over the entire lines of the Nashville, Chattanooga & St. Louis Railway, which, in turn, is controlled through stock ownership by the Louisville & Nashville Railway. The details with res-

pect to the application and extent of these rates so reduced are set forth in our main brief. It is sufficient here to point out that the general level of log rates in the Southern Rate Group has become that of the Cummer Scale or its equivalent, or lower.

(a) The Nature of the Power Here Sought to be Exercised by the Commission.

This Court, upon the appeal from the former order of the Commission, pointed out *(282 U. S., text 208)* that the former order of the Commission, insofar as it related to interstate rates, was limited "to transportation from points in the Northern part of Florida to points in Georgia", and that this interstate commerce was "potential, no actual movement from Florida to Georgia having been shown". In its report of July 5, 1932, the Interstate Commerce Commission said (186 I. C. C., text 190):

> "Notwithstanding this parity of rates (during the two year period of the effectiveness of the former order), it appears from the evidence introduced at the further hearing that there was no movement of logs from Florida to Georgia during that period, except possibly an occasional carload."

The Commission therefore concluded (text 190):

> "* * * no finding in reference to undue prejudice against persons and localities in interstate commerce is necessary and we make no finding in that regard."

The Interstate Commerce Commission has not sought to justify its invasion of state domain on the ground of discrimination against persons and localities. It founds its invasion solely upon the revenue features of the Interstate Commerce Act as amended by the Transportation Act of 1920, Section 13(4) and Section 15a.

Nowhere in the Act is the power expressly given to prescribe intrastate rates in order to remove a revenue burden upon interstate commerce generally. But this Court has held that there was a "dovetail" relation between the "purpose" of the Act as set forth in Section 15a and the authority granted in Section 13(4), which authorized the interpretation that the Commission was vested with power to remove a revenue burden on interstate commerce caused by State rates.

Railroad Commission of Wisconsin vs. C. B. & Q. R. Co., supra;
New York vs. United States, supra;
Florida vs. United States, supra.

In discussing that interpretation in the appeal from the former order of the Commission in this proceeding this Court said (text 211-212):

> "The propriety of the exertion of the authority must be tested by its relation to the purpose of the grant and with suitable regard to the principle that whenever the Federal power is exerted within what would otherwise be the domain of State power, the justification of the exercise of the Federal power must clearly appear."

The "purpose" of the Act as expressed in Section 15a is related to all carriers as a *whole*, or to all in each rate group as a *whole*, and to *aggregate* income as distinguished from the income of a particular carrier, and the recapture clause was declared by this Court to be "the heart of the plan."

Dayton-Goose Creek R. Co. vs. United States, supra.

(b) There was no "Substantial Disparity" Between Interstate and Intrastate Rates Upon Which the Commission Could Act.

We have pointed out that the general level of log rates in the Southern rate group had become that of the Cummer Scale or its equivalent, or lower. The Interstate Commerce Commission has never undertaken to fix any general level of log rates in the Southern Rate Group. This is a case involving intrastate rates on a single commodity on a single railroad within and throughout a single State where the Commission has never made any findings or orders with respect to the corresponding interstate rates, either from all of the State or from all of the railroads within any portion of the State or for the railroads as a body in the rate group, and where the general level of the rates on the commodity in the rate group, as voluntarily established by the railroads and permitted by the Commission, is substantially the same as the intrastate rate which the Commission seeks to supersede by its order.

The power of the Commission here sought to be exer-

cised with respect to intrastate rates has never been sustained except upon the theory that the order which it entered was raising the level of the intrastate rates to the general level of the interstate rates which were found to be discriminated against. In the *Wisconsin case (257 U. S., text 590-591)* the Court said:

> "Action of the Interstate Commerce Commission in this regard should be directed to *substantial disparity* which operates as a real discrimination against, and obstruction to, interstate commerce, and must leave appropriate discretion to the State authorities to deal with intrastate rates as between themselves on the general level which the Interstate Commerce Commission has found to be fair to interstate commerce." (Italics supplied.)

In the appeal from the former order of the Commission in this proceeding this Court said (282 U. S., text 211):

> "And if there is interference with the accomplishment of the purpose of the Congress because of a disparity of intrastate rates as compared with interstate rates, the Commission is authorized to end the disparity by directly removing it."

In the recent decision of the case of *United States vs. State of Louisiana, supra*, the Court said:

> "This Court has consistently held that this section (Section 13(4)) is to be construed in the light of section 15a (2) and as supplementing it, so that the forbidden discrimination against interstate commerce by intrastate rates includes those cases in which disparity of the latter rates operates to thwart the broad purpose of section 15a to maintain an efficient transportation system by enabling the carriers to earn a fair return. * * *"

And in the case last mentioned this Court differentiated between the order there involved and the order which the Court had dealt with in the appeal from the former order of the Commission in this proceeding, saying:

> "A question different from that before us was presented in Florida v. United States, supra. There the discrimination was essentially one of undue prejudice against shippers, confined by the evidence to rates prevailing in northern Florida. It involved only one railroad and one commodity. It was not the general revenue proceeding authorized by Section 15a. The Court was careful to point out that the Commission had undertaken to establish a state-wide level of intrastate rates without any findings with respect to the corresponding interstate traffic which would tend to support the conclusion that a state-wide alteration of intrastate rates was necessary to protect the interstate commerce involved."

There is no "substantial disparity" between the interstate rates in the group and the intrastate rate operated upon by the order. The Commission has ignored the "purpose" of Section 15a as defined by this Court and was without the power to make the order here involved under the circumstances here set forth.

POINT IV.

THE FINDINGS WHICH THIS COURT HAS DECLARED TO BE "BASIC OR ESSENTIAL" TO THE MAKING OF A VALID ORDER BY THE COMMISSION HERE HAVE NOT BEEN MADE.

(Applicable to Assignments of Error Nos. 1 to 24, inclusive.)

In the decision of this Court (*Florida v. United States, 282 U. S. 194*) condemning the former order of the Interstate Commerce Commission for want of "basic or essential" findings, this Court declared that the findings which were lacking were (text 214-215):

> "The Commission made no findings as to the revenue which had been derived by the carrier from the traffic in question, or which could reasonably be expected under the increased rates, or that the alteration of the intrastate rates would produce, or was likely to produce, additional income necessary to prevent an undue burden upon the carrier's interstate revenues

and to maintain an adequate transportation service."

In our main brief in this case we have dealt at some length with the findings which the Commission made in connection with the order now under review and we have likewise fully reviewed the evidence, or lack of evidence, with respect to those various findings which this Court declared to be pre-requisite to the making of a valid order. We shall do no more here than briefly consider this subject, with the statement that it is fully covered in the main brief.

(a) There Was no Finding and No Evidence as to "the Revenue which had Been Derived by the Carrier from the Traffic in Question."

The Commission made no finding of the revenue which had been received by the carrier under the intrastate rate in question (the Cummer Scale of rates). It could not make any such finding because there was no evidence upon which it could be made. The carrier refused to disclose (R. 89-92), and the Commission refused to require it to disclose (R. 94-95, 715-719, 1153), the revenue which was received under the Cummer Scale of rates prior to the effective date of the former unlawful order of the Commission. After the Cummer Scale was restored the carrier showed (R. 1360-1370) the number of cars which moved in less than trainload lots, but showed nothing about the revenue received from such cars and showed nothing at all about the trainload movements of logs. The carrier likewise showed (R. 1180-1181) the number of cars which moved during a period of five months, but that period was

half within the time of the high rate and half within the time of the restored Cummer Scale and there is nothing to show how many of those cars moved under the one rate or the other. Also it showed nothing about revenue. *So there is nothing in the record from which the amount of revenue derived at any time under the Cummer Scale can be ascertained, and after the restoration of the Cummer Scale there is nothing from which even the number of cars which moved can be ascertained.*

(b) There Was No Finding as to the "Revenue Which Could Reasonably be Expected Under the Increased Rates", and no Evidence which would Support Such a Finding.

With respect to the revenue which could reasonably be expected under the increased rates proposed, the Commission had before it the record of the revenue which had been received by the carrier under two years application of the high rate prescribed by the former unlawful order of the Commission (R. 1101-1109). The Commission deducts from the 18,602 cars which moved in that two year period 3, 740 cars which were in trainload movements which have ended and divides the remaining 14,862 cars between the two years, thus getting 7,431 cars to the year (186 I. C. C., text 188). It then says "it seems probable" that "*under normal economic conditions*" the future movement under the high rate previously prescribed will be not less than this average of 7,431 cars per year (186 I. C. C., text 188). In making even that tentative prognostication it disregards the uncontradicted testimony of one shipper, who shipped in trainloads more than half of those logs so

counted by the Commission, that his trainload shipments will not again move at any rate substantially higher than the Cummer Scale (R. 783). It likewise disregards the uncontradicted testimony of other shippers, who shipped lesser quantities of logs during that period, that they would discontinue shipments if the high rate were again established (R. 962, 982). In particular, while recognizing in its report the existence of abnormal economic conditions at the time and making no prophecy as to the return of normal economic conditions, the Commission limits its finding as to the future movement under the rates prescribed in its order to "*normal economic conditions*," and not otherwise.

In connection with this insufficient finding the Commission adds its "belief" that the movement of logs in Florida will not be "materially curtailed" by the rates prescribed, which it says "are the same or substantially the same as the rates generally in effect and under which logs freely move throughout the South". (186 I. C. C., text 188). When it was later demonstrated that at this same time while the Commission was making its report and order here the railroads very generally throughout the South were putting into effect rates which the Commission found to be "on substantially the same level as the Cummer Scale", and when the representatives of the very railroads which had formerly maintained the high rates with which the Commission unfavorably compared the Cummer Scale testified in this proceeding that they had voluntarily put into effect these reduced rates in order to secure log traffic and showed that not only were logs not moving freely at the high rates they had been maintaining but also that under those high rates

the log traffic on those roads had been almost wholly destroyed, even then the Commission merely affirmed "all of the findings in our (its) prior report", (190 I. C. C., text 600).

The evidence showed that of the four large shippers, who alone paid to the carrier the sum of $652,311.87 (R. 731, 747, 766, 779) for the transportation of their logs in trainloads in 1926, and who testified in the original proceeding "that any material increase in the Florida intrastate rates would either cause them to move their plants to the timber or abandon operations", (282 U. S., text 214), only one remained. One of these shippers, who moved its plant to the woods *solely* because the former unlawful order of the Commission became effective, (R. 777), suffered a loss of $3,200,000 in making the move (R. 765) and the dismantling of its mill entirely destroyed the town of Eastport, then a town of 5,000 inhabitants in the environs of Jacksonville, (R. 767). We shall not deal specifically here with the losses suffered by other shippers, or the employees of those shippers, occasioned by the former order of the Commission or which it was testified would occur upon the present order of the Commission here involved becoming effective.

Deducting from the cars which moved during the two year period of the high rate the 3,740 cars, which the Commission found moved in two trainload movements which have ended, and deducting likewise the trainload movement of the remaining trainload shipper which movement will be discontinued under any rate substantially higher than the Cummer Scale according to the direct, positive and uncontradicted testimony of that

shipper (R. 783), we are left with a total of 4,222 cars moving in the first year of the high rate with a gross revenue derived therefrom of $101,370.68, and 2,973 cars moving in the second year of the high rate with a gross revenue derived therefrom of $66,179.49. It is evident that the traffic was almost wholly destroyed by just two years experience of the high rate prescribed by the former unlawful order.

The report of the Commission finds that pine wood is of primary importance in the lumber industry in Florida (186 I. C. C., text 173). Cypress is found to be next in importance, with hardwood third, the latter being cut incidentally to the logging operations in pine and cypress. In 1926, when this proceeding began, two shippers alone in Florida paid the carrier $167,391.47 for the transportation of pine logs in trainloads. The other revenues of the carrier from the transportation of pine logs in that year are unknown. In the first year of the high rate prescribed by the former unlawful order the entire revenue of the carrier from the transportation of pine logs in Florida amounted to $31,052.33 and in the second year it was but $5,288.84 (186 I. C. C., text 171). This shows what that order did to the transportation of the wood which is "of primary importance in the Florida lumber industry." And that little pine which did move during that second year of the high rate travelled an average distance of less than 13 miles, indicating plainly that it could not bear the rate at all for any but the very shortest hauls.

Omitting the trainload movements of the remaining trainload shipper, which will not move again at the high rate, the gross revenue of the carrier from cypress ship-

ments in the first year of the high rate was $73,866.00 and in the second year $36,387.01 (186 I. C. C., text 171). On hardwood the gross revenue of the carrier in the first year of the high rate was $96,971.97 and in the second year $28,658.90 (186 I. C. C., text 171). So the traffic in these logs was going the same way the pine log traffic had gone.

The only thing which this evidence demonstrates is that the high rate will destroy the traffic and "discourage patronage" and that the revenue produced under it will be trifling and inconsequential.

(c) There was no Finding that "The Alteration of the Intrastate Rates would Produce, or was Likely to Produce, Additional Income Necessary to Prevent Undue Burden Upon the Carrier's Interstate Revenues and to Maintain an Adequate Transportation Service," and no Evidence Upon which Such a Finding Could be Supported.

The Commission takes the 7,431 cars per year which it believes will move "*under normal economic conditions*" and, assuming that they would carry the average load and move the average distances of the cars which moved in the two years of the high rate, computes the revenue which would thus be received upon them under the Cummer Scale and the high rate prescribed by its former unlawful order respectively, ascertaining that the difference between the revenue so computed on the one scale and the other would be more than $100,000. It then says (186 I. C. C., text 189):

> "If the revenues yielded by the Cummer Scale are not sufficient to cover the cost of service, as the cost evidence indicates, it would follow that part of the above stated amount would constitute a dead loss in net revenue."

So, according to the belief of the Commission, the burden upon interstate commerce alleged to exist amounts under "*normal economic conditions*" to some indeterminate part of $100,000 a year. What it would amount to in the abnormal economic conditions prevailing at the time of the making of the Commission's order and ever since is not even estimated. But aside from the matters we have above pointed out and the fact that the cost evidence is utterly insufficient to demonstrate that "the revenue yielded by the Cummer Scale are not sufficient to cover the cost of service", we call attention to the fact that this is merely a computation of the earnings of a given number of cars, carrying a given weight and moving a given distance, under the two scales of rates.

The findings which this Court has said must be made have not been made and there is no evidence upon which they could be supported.

POINT V.

THE COST EVIDENCE IS INSUFFICIENT TO SUPPLY THE ESSENTIAL FACTS AS TO THE PARTICULAR TRAFFIC AND REVENUE AND THE EFFECT OF THE INTRASTATE RATES UPON THE INCOME OF THE CARRIER.

(Applicable to Assignments of Error Nos. 1, 3, 5 to 11, inclusive, and 24 to 31, inclusive).

The gist of the Commission's report on this subject is its conclusion that the revenue under the Cummer Scale is insufficient (text 187) "to cover the full cost of the service" and that therefore (text 176-177) "declines in the traffic have the favorable effect of reducing defendant's losses". Disregarding the fact that this is not a confiscation case and that the Courts of the United States are always open for the trial of such cases, the position of the Commission is that the carrier can come before it and undertake to prove that an intrastate rate produces less revenue than it believes to be the cost of the service and upon the Commission reaching that conclusion it can alter the rate.

The District Court agreed with that position saying (*4 F. Supp. 477*, text 480-481):

> "It was here established that the state rates produced a loss, and were a drain on the carriers. It might have been desirable to show the extent of the loss, but if that be impracticable,

> and if it appear that the loss will be in the future substantial and the carrier is not in position to absorb it without detriment to his service and support as an interstate carrier, a sufficient case is made to find an unjust discrimination against interstate commerce and to require its correction."

If that is the law then the Commission can decide as to the remunerative character of any and all intrastate rates and, upon its conclusion as to that character alone, alter them. If it be the law, it is certainly an innovation upon the law, for no such power over intrastate rates on the part of the Interstate Commerce Commission is to be found in any of the decisions of this Court, and no case by any Court was cited by the District Court in support of its above-quoted views. If it is not the law, and we think that, without more, the opinion of this Court on the appeal of the former order of the Commission thoroughly and effectively demonstrates it is not, then the Commission has erred in its concept of its duty and the District Court in its concept of the law, so that consequently the order here involved must go down. But putting this to one side, we propose to discuss briefly this cost evidence which was relied upon.

(a) The Cost Evidence Produced by the Carrier.

The cost evidence produced by the carrier is based upon two indefensible assumptions; first, that the average out-of-pocket or direct cost of handling one ton of the average of all freight one mile in Florida is the same

as the out-of-pocket or direct cost of handling one ton of logs one mile in Florida, and second, that the average relation of the direct costs to the indirect or overhead costs of handling all freight on the entire system is the same as the relation of the direct or out-of-pocket costs to the indirect costs of handling logs in Florida (186 I. C. C., text 177-180).

The out-of-pocket or direct costs incurred in the handling of *all* freight in Florida during the year 1929 is divided by the number of ton-miles made by *all* freight in that State in that year and the average direct or out-of-pocket cost per ton-mile thus ascertained (186 I. C. C., text 178). That average out-of-pocket cost per ton-mile is then assumed to be the out-of-pocket cost of hauling one ton of logs one mile (186 I. C. C., text 178).

The accountant of the Florida Railroad Commission pointed out (R. 839-840) that such an assumption took no account of the difference in cost of handling less-than-carload freight and carload freight, or of the difference in cost of handling freight in trainloads and carloads, or of the difference in cost of handling lightly loaded cars and heavily loaded cars. Nor did it take into account the difference in handling perishables which receive special service and logs which receive no special service whatever. Likewise it was pointed out that in addition to the special services required by perishables, their transportation is primarily an assembly service in Florida and the number of cars per train is less than in hauling logs and the loading is much lighter. It takes no account even of the difference in transportation cost per ton-mile between long hauls and short hauls, but proceeds upon the assumption that the direct cost of hauling

one ton one hundred miles is exactly ten times the direct cost of hauling one ton ten miles.

To illustrate the absurdity of this assumption we need only take a concrete example. Let us take thirty cars weighing fifteen tons each and load each car with ten tons of freight and move it in one train one hundred miles. We have seventy-five thousand gross ton-miles made by the train and applying to that figure the average direct cost per ton-mile (.0882888 cent) which the carrier used, we find that the direct cost of the movement is $66.22. Take forty of the same cars, load them each with thirty tons of freight, and move them the same distance. Using the same average direct cost per ton-mile, the direct cost of this movement is $158.92. The direct cost of one train so developed is nearly two and one-half times that of the other. Yet eighty-five per cent of the direct costs considered are made up of wages of the train crew and fuel for the locomotive (186 I. C. C., text 177). And everyone knows that the wages of the crews on the two trains considered would be identical or substantially so and that the difference in the fuel used in the two movements would be inconsequential. When we consider that the next assumption of the carrier is that these direct costs bear a fixed relation to total costs it is obvious how improper this method of determining costs of handling a particular commodity is, especially when, as is the case here, it is a low-grade commodity, requiring no special services and loading heavily to the car and with more cars to the train than the average.

The next assumption of the carrier in its cost evidence is that the direct or out-of-pocket expenses bear

a definite or fixed relation to total expenses. The direct expenses of handling all freight on the system are a certain percentage of the total expenses of handling all freight. Therefore having purported to ascertain the direct expenses of the log movement in Florida in the manner above set forth the carrier assumes that those direct expenses are the same percentage of the total expenses of the log movement as the percentage relationship between direct and total expenses in connection with the handling of all freight on the system.

The impropriety of that assumption is obvious and was demonstrated of record by the Florida Railroad Commission through its witness (R. 837-838) where it was pointed out that the out-of-pocket or direct costs depended primarily upon the number of trains operated and the time consumed by the trains between terminals, whereas the remaining costs for the most part "do not fluctuate according to the volume of business handled but represent expenses which are incurred regardless of the volume of business." It was also pointed out (R. 838):

> "* * * that, in a State like Florida where the traffic density is light, due to the large number of branch lines and being scattered over a wide area, thereby requiring the operation of a large number of trains to handle the same volume of business, the out of pocket expense would represent a much greater proportion of the total freight expense than they do on the system as a whole, where the train loading is

heavier and where fewer trains are operated to handle the same volume of business."

We have pointed out in our main brief that the use of system average costs to determine the cost of handling a particular commodity has been condemned by this Court and the Interstate Commerce Commission and that that Commission rejected this cost evidence saying that the unit cost per gross ton-mile so developed represented "merely the average out-of-pocket expense of handling all traffic in the third division" and "can not, therefore, be accepted as indicating the average out-of-pocket cost to defendant of transporting logs in Florida" (186 I. C. C., text 183). We here desire only to point out that the costs produced by this evidence are a combination of two system averages, first an average direct cost per ton-mile and, further, computed upon that, an average relationship of direct costs to indirect costs. It is a system average upon a system average, an unwarranted presumption upon an unwarranted presumption. And since it was discarded by the Commission we shall give it no further consideration here.

(b) The Cost Evidence Prepared by the Commission.

The cost evidence which the Commission prepared (186 I. C. C., Appendix E, text [illegible]-197) was a purely system average cost of the handling of all freight on the Atlantic Coast Line System with two exceptions. The first exception was that it deducted certain trifling expenses from the total system expenses, and the second

was that it increased the average cost by adding the cost of returning the empty car from the point of destination to the point of origin. The cost figures used by both the carrier and the Commission were those for the year 1929 instead of those of the abnormal years 1932 and 1933 when the order was to become effective.

The expenses which were deducted from the total expenses were less than four per cent. of those total expenses. In particular they were: maintenance of wharves and docks, floating equipment, outside agencies, advertising, traffic associations, industrial and immigration bureaus, and the small proportionate cost of superintendence and general expense in connection with these items so deducted (186 I. C .C., text 196). Every other expense of handling all freight was assumed to be just as applicable to and just as much occasioned by handling logs in Florida as any other freight handled anywhere on the system.

The Commission then divided all the remaining expenses between haulage and terminal expenses. It then divided the terminal expense (after making a deduction for the excess expense of handling less-than-carload freight over carload freight) by the number of cars of all freight handled in the year (on the assumption that all carload freight incurred the same terminal expenses) and found the average terminal expense per loaded car to be $6.46. The haulage expenses were then divided by the gross ton-miles made by all freight in the year, (on the assumption that one ton-mile of any and all freight cost just the same as another), and an "average haulage expense per gross ton-mile" of $.0021243 was determined. The Commission then determined the num-

ber of gross ton-miles involved in hauling the average car of logs in Florida the average distance and in hauling the empty car back to the point where it started, and multiplying this number of gross ton-miles by the "average haulage expense per gross ton-mile" produced a haulage expense for the average car of logs of $10.61.

Adding the terminal and the haulage cost so computed gave an operating cost of $17.07. If the Commission had left in all the trifling amounts, which it deducted from total expenses and which we have above enumerated, the operating cost would have been $17.77. Against this the Commission notes that the revenue from this same average car under the Cummer Scale would have been $15.12. But the Commission concludes that in addition to operating expenses the car should earn taxes and a return on investment of 5-3/4%, so it adds 44.655% of the operating expenses for that purpose resulting in a total cost of $24.69. If it had not left out the trifling accounts above mentioned this total cost would have been $25.71.

If it had left off the return empty movement of the car, which was not average of all freight traffic, the operating cost would have been $14.22, or less than the revenue under the Cummer Scale. Even adding in then the trifling accounts which were eliminated, the operating cost would be less than the revenue under the Cummer scale, and the Cummer scale would pay something toward taxes and profit.

We are astonished that the Commission is willing to treat the log traffic in Florida in every respect as if its cost were the average cost of handling all traffic, except that learning of one of the peculiarities of the log

traffic, namely, that the cars for the most part return empty, it adds that peculiarity on to the average cost and thereby—and solely thereby—brings the average operating cost above the revenue provided by the Cummer Scale.

The other peculiarities of the log traffic in Florida, namely, the heavy loading in the cars, the large number of cars to the train, the regularity of the movements, the simple nature of the equipment used, the fact that it requires no speedy or costly services, the fact that there are substantially no loss and damage claims in connection with it, the fact that the bulk of it requires substantially no terminal services or the simplest sort of terminal services, the fact that in the trainload shipments the shippers make most of the repairs to the cars, and the fact that the logs are processed at destination and thus produce additional traffic in the manufactured product, all these and the other peculiarities of this low grade traffic are disregarded. All these matters are purported to be taken care of by the trifling elimination which deducts seventy cents from the operating expenses of the average car or one dollar and two cents from the total cost of the average car, which total cost includes operating expenses, taxes and profit.

It is well known that the cost of handling a ton of freight in a heavily loaded car is less than the cost of handling a ton of freight in a lightly loaded car, and that the length of the haul varies the cost per ton-mile and that all of the other matters to which we have referred are material. The cost evidence prepared by the Commission is almost as purely a system average cost

study as could be made. We have shown in our main brief that such cost evidence is insufficient in such a proceeding as this to demonstrate anything and that both this Court and the Commission have condemned its use.

Northern P. R. Co. v. Dept. of Public Works, 268 U. S. 39;

California G. & S. P. League v. S. P. R. Co., 129 I. C. C. 25.

(c) There was no Justification for the Conclusions Reached by the Commission and by the District Court from the Cost Evidence.

The only other cost evidence was that with respect to the trainload shipments of the Wilson Cypress Company from Hines to Palatka in Florida during the month of November, 1930. That evidence showed an out-of-pocket or direct cost for that movement of $4.81 per car. The revenue under the Cummer Scale would have been $20.48 per car, and the revenue actually collected under the high rate then in effect was $41.60 per car (186 I. C. C., text 182).

Even this out-of-pocket or direct cost of $4.81 per car included a charge of five mills per ton-mile for the transportation of the coal used for locomotive fuel over the lines of the Atlantic Coast Line Railroad from the point where it was received by that railroad to Florida (R. 1206-1208), although the Commission had observed that no such charge was made in general in connection with coal (186 I. C. C., text 184).

The important thing disclosed by this evidence is that every time the railroad spent $4.81 (assuming for

this purpose the entire amount to be correct) it got back $20.48 under the Cummer Scale or $41.60 under the high rate then in effect. The difference between that cost of $4.81 and $20.48 under the Cummer Scale went toward the payment of the indirect and overhead costs of the railroad which went on whether the traffic moved or not. We are not dealing with a confiscation case here and the reasonableness of the rate "per se" is for the determination of the State authorities as this Court has declared. The subject of the inquiry was as to a burden on interstate commerce and the Interstate Commerce Commission has purported to find such a burden to exist. How can interstate commerce be burdened, or the transportation service impaired, by the railroad spending $4.81 and receiving back $20.48 every time it moves a car? If the railroad had that "burden" cast upon it in sufficient volume it might find itself in position to pay dividends. Of course that might not be the result. But in determining that question we would be dealing with the "reasonableness per se" of the rates.

We do not mean to be understood as saying that there are not indirect and overhead costs of a railroad toward which in all equity and fairness the component parts of the traffic should contribute. In determining the reasonableness of a rate the extent of that contribution is the dominant consideration. But we have hereinabove pointed out that the overhead and indirect costs do not vary in proportion to the volume of the traffic. To a great extent those expenses go on whether the traffic moves in volume or not. The additional ton of traffic which comes to the railroad can be aptly compared to the extra guest who comes to the hotel and occupies

a room which would be otherwise vacant. It is only by volume of traffic that these indirect and overhead costs of the railroad can ever be met. In 1932 the railroads were nearly all operating at a loss whereas some few years before they had been profitable enterprises, and this was not because the rates were not just as high in 1932 as they ever were, but because they were not securing the same volume of traffic.

When the Interstate Commerce Commission concludes that the Cummer Scale does not yield enough revenue to cover the "full cost of the service", it means that the Cummer Scale does not contribute as largely to the payment of these overhead and indirect costs as the Commission thinks it should, not that there is an out-of-pocket, or direct cost, loss on the operations at the Cummer Scale, for it would be impossible for it to reach the latter conclusion upon the evidence before it. We can not see how the railroad can be worse off financially or less able to perform its interstate functions or less able to render adequate transportation service if every time it moves a car it actually spends directly $4.81 and receives back $20.48. Certainly when we inquire further into the costs we are determining merely the "reasonableness per se" of the rate and can not be inquiring into any cause of impairment of the ability of the railroad to adequately perform the interstate transportation service required of it.

When the District Court declares that the State rates are a "drain on the carrier" we can only, with all due deference, say that that Court has not made the careful investigation of the record which the situation warrants. We do not here pretend to say whether the State

rates are "reasonable per se" or not. This is neither the proper time nor place for that determination. We do, however, confidently deny any statement that the rates are a "drain on the carrier" and by the same token we deny any statement that they impair the ability of the carrier to perform adequate transportation service, both interstate and intrastate.

Whatever may be the situation with respect to the reasonableness of the rate, the State authorities may at least claim jurisdiction of that territory between the point where intrastate rates actually impair the ability of the carrier to perform that adequate transportation service and the point where those rates are reasonable. If this small authority over its own rates does not even yet remain with the State, then not only has the Interstate Commerce Commission unified conrol over all rates but also we submit that this Court can not have meant what it said in the following plain and unambiguous statement contained in its opinion on the appeal from the former order of the Commission *(282 U. S., text 214)*:

> "But to justify the Commission in the alteration of intrastate rates, it is not enough for the Commission merely to find that the existing intrastate rates on the particular traffic were not remunerative or reasonably compensatory. The authority to determine the reasonableness per se of intrastate rates lay with the state authorities and not with the Interstate Commerce Commission."

POINT VI

THE INTRASTATE RATES PRESCRIBED BY THE COMMISSION'S ORDER WERE MINIMUM RATES DEFINITELY FIXED AT A PARTICULAR LEVEL AND NOT RELATED TO OR DEPENDENT UPON ANY INTERSTATE RATES. THE PRESCRIPTION OF SUCH RATES BY THE COMMISSION IS UNLAWFUL AND ARBITRARY.

(Applicable to Assignments of Error Nos. 5, 23, 43 and 44.)

The order of the Commission (R. 79) requires that the Atlantic Coast Line Railroad "establish, put in force and maintain rates for the transportation of logs" of the tariff description here involved,

> "* * * in intrastate commerce within and throughout the State of Florida for distances of 170 miles or less, which shall be the same as those set forth in Appendix F to the aforesaid report on further hearing."

The caption of Appendix F (R. 78) is "Minimum rates Prescribed Herein on Florida Intrastate Log Traffic," and the distances and rates are then set forth.

Thus the intrastate rate here prescribed is a minimum rate statewide in its application, fixed at a certain level expressed in cents per 100 pounds for the distances set forth. The intrastate log rates of the Atlantic Coast Line

Railroad throughout the State of Florida are "frozen" at this level by the order. And it will be observed that the maintenance of these intrastate rates is in nowise dependent upon the maintenance of any interstate rates.

This point was considered in the Louisiana case, *(United States v. State of Louisiana, supra)*, this Court there pointing out that the order there involved was likewise assailed because the intrastate rates involved were minimum rates whereas the Commission in its order fixing the general level of interstate rates "did not require the carriers to increase their rates interstate, but only permitted them to do so at their option." This Court there answered that contention by saying:

> "The order precluded any unauthorized interference with State regulatory power by providing that it should be effective only so long as the surcharges upon interstate rates should be maintained by the carriers."

But in the case at bar there are no statewide interstate rates prescribed to which the intrastate rates could be related, and the intrastate rates prescribed are not dependent for their existence or continuance upon any interstate rates. The hands of the "State regulatory power" of the State of Florida are effectually and completely tied by the order and its dominion over its state rates wholly usurped. The interstate rates prescribed in 1928 for the non-existent traffic from Northern Florida points to Georgia might be changed or ended at any time, but such action would have no effect upon the intrastate rates here prescribed.

POINT VII

THE STATE OF FLORIDA IS ENTITLED TO A TRIAL DE NOVO UPON THE EXISTENCE OF THE JURISDICTIONAL FACTS WHICH WOULD ENTITLE THE FEDERAL AUTHORITY TO INVADE THE STATE DOMAIN.

(Applicable to Assignments of Error Nos. 11, 26, and 34 to 43, inclusive.)

The Federal Government has no concern with or authority over intrastate rates as such. It is only when those intrastate rates interfere with or cast some burden upon interstate commerce that the Federal Government may exercise any jurisdiction over them. The interference or burden must exist or the power to remove it does not exist, and until it does exist the regulation of the rates is among the "reserved powers" of the State.

Even when the interference or burden does exist it may be of such sort or character that Congress has not chosen to exercise the Federal power of removal.

Minnesota Rate Cases, supra.

We think that we have demonstrated that the interference or burden upon interstate commerce here alleged to exist (by the reports and orders of the Interstate Commerce Commission) is not such an alleged interference or

burden as Congress in the exercise of the Federal power has directed the removal of. That being true, there is no occasion for any consideration of the character of review which must be made of the determination of the existence of the alleged interference or burden.

Assuming, however, for the purpose of this argument, that the interference or burden is alleged to be of such sort or character as Congress in the exercise of the Federal power has directed the removal of, we nevertheless point out that the actual existence of that alleged interference or burden is prerequisite to the existence of the power to remove it. And the determination of its actual existence is the determination of the jurisdiction to act.

The determination of such a question by the Interstate Commerce Commission is a very different matter from a determination by that Commission with respect to interstate rates, for over interstate rates both the Congress and that Commission have direct and exclusive control. This was pointed out in our main brief in this case, and we there referred to the character of findings which must be made by the Commission when superseding intrastate rates and demonstrated that in such cases "the justification of the exercise of the Federal power must clearly appear" to the Court.

We here again point out that there can be no question that the fact of the existence of the alleged interference with or burden upon interstate commerce is a jurisdictional fact and must be determined before there can be any jurisdiction to act.

(a) When the Determination of the Existence of the Jurisdictional Facts Upon Which Rests the Jurisdiction of an Administrative Agency to Act Involves Constitutional Rights, One Whose Constitutional Rights Are Invaded by such Determination, is Entitled to a Trial Before the Court Upon the Existence of those Jurisdictional Facts.

In the case of *Crowell v. Benson, 285 U. S. 22*, the Court, for the first time, considered and announced the rule as to the character of review which the courts must give as to findings of *jurisdictional facts* made by administrative tribunals where such findings involve constitutional rights.

That case arose out of an award made by the United States Employees' Compensation Commission under the Long Shoremens' and Harbor Workers' Compensation Act. Benson, against whom the award was made, applied to the Court for a trial de novo upon the jurisdictional facts involved. Under the Long Shoremen's Act, the jurisdiction of the Commission depended upon the claimant having been employed by the person against whom the award was sought and the injury for which award was claimed having occurred upon the navigable waters of the United States. It was claimed by Benson that the determination of these jurisdictional facts must be made independently by the Court and that in such determination he was entitled to a trial de novo, and that his right to such determination rested upon the Constitution of the United States.

The suit was instituted in the United States District Court for the Southern District of Alabama, which court

granted a hearing de novo and held that the evidence did not establish the jurisdictional facts and restrained the enforcement of the award. *33 F. (2d) 137; 38 F. (2) 306.* On appeal the United States Circuit Court of Appeals for the Fifth Circuit affirmed the decree. *45 F. (2) 66.*

On appeal, this Court affirmed the decision of the Fifth Circuit Court of Appeals and held that the Congress had authority to prescribe the procedure in cases of injury upon navigable waters, and to commit the determination of the facts, as to the circumstances, nature, extent and consequences of the injury sustained, to the Compensation Commission established by it. But the Court then said (text 54-55):

> "What has been said thus far relates to the determination of claims of employees within the purview of the Act. A different question is presented where the determinations of fact are fundamental or 'jurisdictional', in the sense that their existence is a condition precedent to the operation of the statutory scheme. These fundamental requirements are that the injury occurs upon the navigable waters of the United States and that the relation of master and servant exists. These conditions are indispensable to the application of the statute, not only because the Congress has so provided explicitly, but also *because the power of the Congress to enact the legislation turns upon the existence of these conditions.*" (Italics supplied.)

It will be noted that the Court points out that the

power of Congress to enact the legislation "turns upon the existence of these conditions", i. e., the jurisdictional facts of employment and that the injury occurs upon navigable waters of the United States.

In the case at bar the power of Congress to legislate as to intrastate rates "turns upon the existence" of the fact of interference with or burden upon interstate commerce. Unless that fact exists the Congress itself may not, under the Constitution, enact legislation with respect to intrastate rates, and, of course, may not authorize a tribunal, created by it, so to do.

The Court in the Crowell case dealt with the organic provision of the Constitution that the judicial power of the Federal Government is vested in the Courts, and speaking of these jurisdictional facts said (text 56-57):

> "In relation to these basic facts, the question is not the ordinary one as to the propriety of provision for administrative determinations. Nor have we simply the question of due process in relation to notice and hearing. It is rather a question of the appropriate maintenance of the Federal judicial power in requiring the observance of constitutional restrictions. It is the question whether the Congress may substitute for constitutional courts, in which the judicial power of the United States is vested, an administrative agency—in this instance a single deputy commissioner—for the final determination of the existence of the facts upon which the enforcement of the constitutional rights of the citizen depend. The recognition of the utility and convenience of

> administrative agencies for the investigation and finding of facts within their proper province, and the support of their authorized action, does not require the conclusion that there is no limitation of their use, and that the Congress could completely oust the courts of all determinations of fact by vesting the authority to make them with finality in its own instrumentalities or in the Executive Department. That would be to sap the judicial power as it exists under the Federal Constitution, and to establish a government of a bureaucratic character alien to our system, wherever fundamental rights depend, as not infrequently they do depend, upon the facts, and *finality as to facts becomes in effect finality in law.*" (Italics supplied.)

Cases may be cited (and were cited by the District Court in the case at bar as we shall hereinafter show) establishing the conclusiveness of orders of the Interstate Commerce Commission in respect to interstate rates where there is any substantial evidence to support the order. In the Crowell case the Court considered those decisions and said (text 58):

> "Similar considerations apply to decisions with respect to determinations of fact by boards and Commissions created by the Congress to assist it in its legislative process in governing various transactions subject to its authority, as for example, the rates and practices of interstate carriers, the legislature thus being able to apply its

standards to a host of instances which it is impracticable to consider and legislate upon directly and the action being none the less legislative in character because taken through a subordinate body. And where administrative bodies have been appropriately created to meet the exigencies of certain classes of cases and their action is of a judicial character, the question of the conclusiveness of their administrative findings of fact generally arises where the facts are clearly not jurisdictional and the scope of review as to such facts has been determined by the applicable legislation. None of the decisions of this sort touch the question which is presented where the facts involved are jurisdictional or where the question concerns the proper exercise of the judicial power of the United States in enforcing constitutional limitations."

The case here comes squarely within the language above quoted, because here "the facts involved are jurisdictional" and "the question concerns the proper exercise of the judicial power of the United States in enforcing constitutional limitations."

This case is brought to enforce the reserved powers of the State of Florida under the Federal Constitution, and the judicial power of the United States is invoked to that end. We, therefore, rely upon the decision of the Court in the case under discussion, and point out further that it was there said (text 60):

> "In cases brought to enforce constitutional rights, the judicial power of the United States necessarily extends to the independent determination of all questions, both of fact and law, necessary to the performance of that supreme function."

The determination of the existence of the alleged interference with or burden upon interstate commerce is the determination of a jurisdictional fact. Finality as to the determination of that fact "becomes in effect finality in law." And the determination of that fact adversely to the contentions of the State of Florida invades and usurps the powers of that State reserved to it under the constitution of the United States. We submit that upon the question of the existence of the jurisdictional fact the State of Florida was and is enitled to a trial de novo before the *judicial* department of the government.

(b) The Character of Judicial Review of the Jurisdictional Facts Accorded by the District Court in This Case Was Improper and Insuffcient.

In deciding what character of review it would give to the determination of these jurisdictional facts the District Court said *(4 F. Supp., text 481)*:

> "When, however, the very fact upon the existence of which the power to act depends has been contradictorily tried before the Commission itself, its conclusion fully expressed upon its record affirm-

ing the existence of the fact is certainly sufficient to put the burden upon those who deny it."

The District Court then refers to five decisions of this Court in which the rule was established that findings of the Commission will not be set aside if supported by "substantial evidence." Four of those decisions so referred to related solely to orders of the Commission with respect to *interstate* rates, and the fifth related to an order of the Commission with respect to a *practice* of interstate carriers in dealing with certain warehouses. Having referred to those cases and the "substantial evidence" rule there laid down, the District Court said (text 482):

> "We need not decide whether in this case the Commission's finding of unjust discrimination is entitled to any less weight because it is a prerequisite of its jurisdiction as well as the meritorious basis of its exercise, because we have examined the evidence independently and are led to the same conclusion that the unjust discrimination exists."

We respectfully submit that in its independent examination of the evidence the Court has misapprehended it, for it says (text 479):

> "On the question of the cost of the service, figures were considered which showed the average cost of hauling logs over the Coast Line System; exact figures for the particular traffic in Florida not being available."

We have pointed out that what was considered was the *average* cost of hauling a ton of the *average* of all freight on the System, and because a ton of logs under the Cummer scale did not produce revenue equal to that average cost, including taxes and profit, it was concluded that the Cummer scale was a burden on interstate commerce. The Court was in error as to this evidence and the opinion demonstrates that the erroneous conclusion so reached is the very foundation of its decision.

Again the Court, upon its independent examination of the evidence, finds (text 479) that "there was no substantial increase (in the log traffic) after the Cummer rates were restored following the decision of the Supreme Court above referred to." We have pointed out and here repeat that the record does not show either the revenue received or the volume of the traffic after the Cummer scale of rates was restored—not even for so much as one single day.

This is not the kind of determination of the facts, either jurisdictional facts or otherwise, which the State is entitled to have before its rightful domain is invaded and its reserved powers usurped.

In and by its bill of complaint and its supplemental bill of complaint the State of Florida asserted its right to a trial de novo upon these jurisdictional facts and demanded such trial (R. 25-26 and 359-360). It has steadfastly adhered to its assertion of that right and that demand and now and here repeats them.

CONCLUSION.

We respectfully submit that the foregoing pages, as well as the main brief, demonstrate that the order of the Interstate Commerce Commission under attack must be annulled and set aside because, among other things:

(*a*). Not even the dominating force of former Section 15a of the Interstate Commerce Act construed with the "supplementing" aspect of Section 13 (4) was sufficient to authorize the Commission solely in the interest of carrier revenue to invade State domain and strike down a single rate upon a single commodity, upon a single railroad, statewide in a single State, where no general level had been prescribed for the same commodity, either in the rate group or in the area in which the state rate was stricken down. Now that the dominating force of Section 15a is gone, there is no substantial color to support the contention that the authority *exists*. Otherwise, to that extent the Interstate Commerce Act as now amended would be inoperative and ineffective for the constitutional reasons pointed out above.

(*b*). If under any circumstances a grant of any such authority could be construed to have existed, the exercise of such authority was inappropriate to the grant under the circumstances of this particular case, and unjustifiable, under the former law, and without color of propriety or justification when and after the new law intervened.

(*c*). The Commission had fixed no general level of log rates for interstate commerce in the Southern Rate Group and had prescribed no interstate log rates in Florida except from North Florida origins to Georgia destinations on this single railroad, and has prescribed no other interstate log rates at all except a few isolated point-to-point maximum rates. The Florida intrastate rate prescribed by the Commission was a *minimum* rate, statewide in its application, and was "frozen" at the specified level, whereas the interstate rate prescribed applicable from North Florida points only to Georgia points for the non-existent interstate commerce was a *maximum* rate, the subsequent alteration of which by the carrier would in no wise affect the "frozen" intrastate rates.

(*d*). At one and the same time that it fixed for intrastate commerce in Florida minimum rates at almost twice the level of the state rate; it was permitting twenty-two carriers in the Southern Rate Group (including most of the railroads operating in most of the states of that rate group) to establish both interstate and intrastate rates found by the Commission to be substantially on the level of the Florida state rate condemned.

(*e*). The Commission failed to make the findings which this Court upon the former appeal specified must be made in order to justify the attempted invasion of state domain with respect to

carrier revenue. And such findings as the Commission did make were not only insufficient as such, but also related only to "normal economic conditions", although the report and order were made in the midst of abnormal times.

(*f*). The evidence did not support the "basic and essential findings" necessary to a valid order. Not only is it insufficient to support the order, but the Commission misapplied the law to such evidence as was adduced, including the cost evidence.

(*g*). An increase in log rates will not produce an increase in revenue. That is demonstrated by the havoc wrought by the former unlawful order of the Commission, by the almost total destruction of the log traffic in Florida by that order, and by the fact that many if not most of the other railroads in the Southern group whose rates were used as standards of comparison to condemn the Florida state rates, had established at the time of the entry of the order now under attack, rates which were substantially commensurate with the Cummer scale.

(*h*). The State of Florida in due course demanded a trial *de novo* by the judicial arm of the government upon the jurisdictional facts, and such trial was erroneously denied by the District Court.

(*i*). The action of the Commission was unwarranted and unjustified.

We respectfully submit that the order of the Interstate Commerce Commission under attack is unauthorized, unlawful and invalid under the Federal Constitution and the laws of Congress, existing at the time that the order was made, as well as upon and after the amendment of the Interstate Commerce Act by the Emergency Railway Transportation Act, 1933.

Respectfully submitted,

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APPENDIX

STATUTES RELIED UPON

The Interstate Commerce Act (41 Stat. at L. 484, 488).

SECTION 13:

(3) Whenever in any investigation under the provisions of this Act, or in any investigation instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any State, or initiated by the President during the period of Federal control, the Commission, before proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. The Commission may confer with the authorities of any State having regulatory jurisdiction over the class of persons and corporations subject to this Act with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such State bodies and of the Commission; and to that end is authorized and empowered, under rules to be prescribed by it, and which may be modified from time to time, to hold joint hearings with any such State regulating bodies on any matters wherein the Commission is empowered to act and where the rate-making authority of a State is or may be affected by the action taken by the Commission. The Commission is also authorized to avail itself of the cooperation, services, records, and facilities of such State authorities in the enforcement of any provision of this Act.

(4) Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding.

SECTION 15a:

(1) When used in this section the term "rates" means rates, fares, and charges, and all classifications, regulations, and practices, relating thereto; the term "carrier" means a carrier by railroad or partly by railroad and partly by water, within the continental United States, subject to this Act, excluding (a) sleeping-car companies and express companies, (b) street or suburban electric railways unless operated as a part of a general steam railroad system of transportation, (c) interurban electric railways unless op-

erated as a part of a general steam railroad system of transporation or engaged in the general transportation of freight, and (d) any belt-line railroad, terminal switching railroad, or other terminal facility, owned exclusively and maintained, operated, and controlled by any State or political subdivision thereof; and the term "net railway operating income" means railway operating income, including in the computation thereof debits and credits arising from equipment rents and joint facility rents.

(2) In the exercise of its power to prescribe just and reasonable rates the Commission shall initiate, modify, establish or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will, under honest, efficient and economical management and reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation: *Provided*, That the Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to prescribe different rates for different sections of the country.

(3) The Commission shall from time to time determine and make public what percentage of such aggregate property value constitutes a fair return thereon, and such percentage shall be uniform for all rate groups or territories which may be designated by the Commission. In making

such determination it shall give due consideration among other things, to the transportation needs of the country and the necessity (under honest, efficient and economical management of existing transportation facilities) of enlarging such facilities in order to provide the people of the United States with adequate transportation: *Provided*, That during the two years beginning March 1, 1920, the Commission shall take as such fair return a sum equal to 5½ per centum of such aggregate value, but may, in its discretion, add thereto a sum not exceeding one-half of one per centum of such aggregate value to make provision in whole or in part for improvements, betterments or equipment, which, according to the accounting system prescribed by the Commission, are chargeable to capital account.

(4) For the purpose of this section, such aggregate value of the property of the carriers shall be determined by the Commission from time to time and as often as may be necessary. The Commission may utilize the results of its investigation under section 19a of this Act, in so far as deemed by it available, and shall give due consideration to all the elements of value recognized by the law of the land for rate-making purposes, and shall give to the property investment account of the carriers only that consideration which under such law it is entitled to in establishing values for rate-making purposes. Whenever pursuant to section 19a of this Act the value of the railway property of any carrier held for and used in the service of transportation has been finally ascertained, the value so ascertained shall be deemed by the Commission to be the value

thereof for the purpose of determining such aggregate value.

(5) Inasmuch as it is impossible (without regulation and control in the interest of the commerce of the United States considered as a whole) to establish uniform rates upon competitive traffic which will adequately sustain all the carriers which are engaged in such traffic and which are indispensable to the communities to which they render the service of transportation, without enabling some of such carriers to receive a net railway operating income substantially and unreasonably in excess of a fair return upon the value of their railway property held for and used in the service of transportation, it is hereby declared that any carrier which receives such an income so in excess of a fair return, shall hold such part of the excess, as hereinafter prescribed, as trustee for, and shall pay it to, the United States.

(6) If, under the provisions of this section, any carrier receives for any year a net railway operating income in excess of 6 per centum of the value of the railway property held for and used by it in the service of transportation, one-half of such excess shall be placed in a reserve fund established and maintained by such carrier, and the remaining one-half thereof shall, within the first four months following the close of the period for which such computation is made, be recoverable by and paid to the Commission for the purpose of establishing and maintaining a general railroad contingent fund as hereinafter described. For the purposes of this paragraph the value of the railway prop-

erty and the net railway operating income of a group of carriers, which the Commission finds are under common control and management and are operated as a single system, shall be computed for the system as a whole irrespective of the separate ownership and accounting returns of the various parts of such system. In the case of any carrier which has accepted the provisions of section 209 of this amendatory Act the provision of this paragraph shall not be applicable to the income for any perior prior to September 1, 1920. The value of such railway property shall be determined by the Commission in the manner provided in paragraph (4).

(7) For the purpose of paying dividends or interest on its stocks, bonds or other securities, or rent for leased roads, a carrier may draw from the reserve fund established and maintained by it under the provisions of this section to the extent that its net railway operating income for any year is less than a sum equal to 6 per centum of the value of the railway property held for and used by it in the service of transportation, determined as provided in paragraph (6); but such fund shall not be drawn upon for any other purpose.

(8) Such reserve fund need not be accumulated and maintained by any carrier beyond a sum equal to 5 per centum of the value of its railway property determined as herein provided, and when such fund is so accumulated and maintained the portion of its excess income which the carrier is permitted to retain under paragraph (6) may be used by it for any lawful purpose.

(9) The Commission shall prescribe rules and regulations for the determination and recovery of the excess income payable to it unler this section, and may require such security and prescribe such reasonable terms and conditions in connection therewith as it may find necessary. The Commission shall make proper adjustments to provide for the computation of excess income for a portion of a year, and for a year in which a change in the percentage constituting a fair return or in the value of a carrier's railway property becomes effective.

(10) The general railroad contingent fund so to be recoverable by and paid to the Commission and all accretions thereof shall be a revolving fund and shall be administered by the Commission. It shall be used by the Commission in furtherance of the public interest in railway transportion either by making loans to carriers to meet expenditures for capital account or to refund maturing securities originally issued for capital account, or by purchasing transportation equipment and facilities and leasing the same to carriers, as hereinafter provided. Any moneys in the fund not so employed shall be invested in obligations of the United States or deposited in authorized depositaries of the United States subject to the rules promulgated from time to time by the Secretary of the Treasury relating to Government deposits.

(11) A carrier may at any time make application to the Commission for a loan from the general railroad contingent fund, setting forth the amount of the loan and the term for which it is desired, the purpose of the loan and

the uses to which it will be applied, the present and prospective ability of the applicant to repay the loan and meet the requirements of its obligations in that regard, the character and value of the security offered, and the extent to which the public convenience and necessity will be served. The application shall be accompanied by statements showing such facts and details as the Commission may require with respect to the physical situation, ownership, capitalization, indebtedness, contract obligations, operation, and earning power of the applicant, together with such other facts relating to the propriety and expediency of granting the loan applied for and the ability of the applicant to make good the obligation, as the Commission may deem pertinent to the inquiry.

(12) If the Commission, after such hearing and investigation, with or without notice, as it may direct, finds that the making, in whole or in part, of the proposed loan from the general railroad contingent fund is necessary to enable the applicant properly to meet the transportation needs of the public, and that the prospective earning power of the applicant and the character and value of the security offered are such as to furnish reasonable assurance of the applicant's ability to repay the loan within the time fixed therefor, and to meet its other obligations in connection with such loan, the Commission may make a loan to the applicant from such railroad contingent fund, in such amount, for such length of time, and under such terms and conditions as it may deem proper. The Commission shall also prescribe the security to be furnished, which shall be adequate to secure the loan. All such loans shall bear in-

terest at the rate of 6 per centum per annum, payable semi-annually to the Commission. Such loans when repaid, and all interest paid thereon, shall be placed in the general railroad contingent fund.

(13) A carrier may at any time make application to the Commission for the lease to it of transportation equipment or facilities, purchased from the general railroad contingent fund, setting forth the kind and amount of such equipment or facilities and the term for which it is desired to be leased, the uses to which it is proposed to put such equipment or facilities, the present and prospective ability of the applicant to pay the rental charges thereon and to meet the requirements of its obligations under the lease, and the extent to which the public convenience and necessity will be served. The application shall be accompanied by statements showing such facts and details as the Commission may require with respect to the psysical situation, ownership, capitalization, indebtedness, contract obligations, operation, and earning power of the applicant, together with such other facts relating to the propriety and expediency of leasing such equipment or facilities to the applicant as the Commission may deem pertinent to the inquiry.

(14) If the Commission, after such hearing and investigation, with or without notice, as it may direct, finds that the leasing to the applicant of such equipment or facilities, in whole or in part, is necessary to enable the applicant properly to meet the transportation needs of the public, and that the prospective earning power of the applicant is such

as to furnish reasonable assurance of the applicant's ability to pay promptly the rental charges and meet its other obligations under such lease, the Commission may lease such equipment or facilities purchased by it from the general railroad contingent fund, to the applicant for such length of time, and under such terms and conditions as it may deem proper. The rental charges provided in every such lease shall be at least sufficient to pay a return of 6 per centum, plus allowance for depreciation determined as provided in paragraph (5) of section 20 of this Act, upon the value of the equipment or facilities leased thereunder. All rental charges and other payments received by the Commission in connection with such equipment and facilities, including amounts received under any sale thereof, shall be placed in the general railroad contingent fund.

(15) The Commission may from time to time purchase, contract for the construction, repair and replacement of, and sell, equipment and facilities, and enter into and carry out contracts and other obligations in connection therewith, to the extent that moneys included in the general railroad contingent fund are available therefor, and in so far as necessary to enable it to secure and supply equipment and facilities to carriers whose applications therefor are approved under the provisions of this section, and to maintain and dispose of such equipment and facilities.

(16) The Commission may from time to time prescribe such rules and regulations as it deems necessary to carry out the provisions of this section respecting the making of loans and the lease of equipment and facilities.

(17) The provisions of this section shall not be construed as depriving shippers of their right to reparation in case of overcharges, unlawfully excessive or discriminatory rates, or rates excessive in their relation to other rates, but no shipper shall be entitled to recover upon the sole ground that any particular rate may reflect a proportion of excess income to be paid by the carrier to the Commission in the public interest under the provisions of this section.

(18) Any carrier, or any corporation organized to construct and operate a railroad, proposing to undertake the construction and operation of a new line of railroad to retain for a period not to exceed ten years all or any part of its earnings derived from such new construction in excess of the amount heretofore in this section provided, for such disposition as it may lawfully make of the same, and the Commission may, in its discretion, grant such permission, conditioned, however, upon the completion of the work of construction within a period to be designated by the Commission in its order granting such permission.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1933.

No. 342.

STATE OF FLORIDA, ET AL., *Appellants*,

versus

UNITED STATES OF AMERICA, ET AL., *Appellees*.

Appeal from the District Court of the United States for the Northern District of Georgia, Atlanta Division.

ADDITIONAL MEMORANDUM OF F. S. BUFFUM CO., INCORPORATED, BEING SUPPLEMENTAL TO POINT VII OF THE APPELLANTS' BRIEF, AND ALSO DEALING WITH THE LEGISLATIVE HISTORY OF THE AMENDMENT TO SECTION 15a OF THE INTERSTATE COMMERCE ACT, WHICH BECAME EFFECTIVE ON JUNE 16TH, 1933.

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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The Commission's So-Called "Computations of Cost", as Set Forth in Its Appendix E, and Explained in Its Report, is Based Upon System Average Costs, a Method Which Has Been Condemned by the Courts. The Resultant So-called "Total Cost Per Car" is Actually Higher Than the System Average "Total Cost Per Car", of Handling All Freight. Not Only is the Method Fundamentally Unsound for the Determination of the Cost of Handling Any Particular Commodity, but the Result of Its Use is Obviously and Especially Unsound as Applied to Any Such Low-Grade Heavy-Loading Commodity as Logs 2

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CASES CITED.

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The Commission's So-called "Computations of Cost", as Set Forth in Its Appendix E, and Explained in Its Report, is Based Upon System Average Costs, a Method Which Has Been Condemned by the Courts. The Resultant So-called "Total Cost Per Car" is Actually Higher Than the System Average "Total Cost Per Car", of Handling All Freight. Not Only is the Method Fundamentally Unsound for the Determination of the Cost of Handling Any Particular Commodity, but the Result of Its Use is Obviously and Especially Unsound as Applied to Any Such Low-Grade Heavy-Loading Commodity as Logs.

The so-called "total cost per car", computed by the Commission in its Appendix E,* which includes taxes and full return on investment, is $24.69 per car, which is the equivalent of revenue per loaded car-mile (the particular movement being 81.36 miles), of.....30.3 cents.

The average operating expense per loaded car-mile on *all freight* of the Atlantic Coast Line for the year 1929 (total freight expenses of $36,308,813, divided by total loaded car miles of 209,835,784), was.....17.3 cents.

The average revenue per loaded car-mile on all freight traffic of the Atlantic Coast Line for the year 1929 (total freight revenue of $53,188,639, divided by total loaded car-miles of 209,835,784) was.....25.3 cents.

The revenue per loaded car-mile under the minimum rate prescribed by the Commission (the rate of 5.5 cents per hundred pounds applied to the average car containing 56,754 pounds of logs, divided by the 81.36 miles which was the average distance of the movement), on logs is 38.4 cents.

This bare statement of comparative revenues and expenses per car-mile demonstrates that the Commission's

*A copy of Appendix E is hereto appended exactly as set forth in the Commission's report, except that, for the purpose of ready reference, the items of the computation have been numbered consecutively, and are hereinafter referred to by those numbers.

Appendix E formula is unsound. For it is obvious that the per car-mile revenue on one of the lowest grade commodities, logs, ought not and cannot be expected to pay rates which will yield per car-mile revenues which are in excess of the average car-mile revenues yielded by all freight, including manufactured articles and perishable fruits and vegetables, and the like, and including likewise less-than-carload freight. It is equally obvious that the cost per car per mile of handling logs cannot be greater than the average cost per mile of handling all freight. Yet such is the deduction of the Commission from its computation, and such is the effect of its order.

We shall briefly demonstrate how this fallacious deduction is arrived at in the computation. It will be noted that the operating expenses are segregated between haulage and non-haulage expenses. The non-haulage expenses are those in connection with terminals and yards, and the haulage expenses are the other expenses incurred.

Dealing first with the non-haulage expenses, we observe that the Commission shows the "Average Non-Haulage Expense per Loaded Car", as $6.46 (Item numbered 27 of Appendix E). This figure is arrived at by dividing all non-haulage expenses on all freight handled on the system (omitting a few trifling and inconsequential items) by the number of loaded cars of all freight handled on the system. It assumes that a car of logs incurs the same non-haulage or terminal and yard expenses, as any other car of any other freight.

We first call attention to the fact that the average car of all freight moved an average loaded distance of 173 miles (Item 23 of Appendix E, divided by Item 26). The average loaded log car moved 81.36 miles (Item 37). Obviously, the average loaded car moving 173 miles receives greater yard and terminal service than it would in moving 81 miles. If we merely reduced this to a per loaded car-mile basis the non-haulage expense for 81.36 miles would be $3.03 instead of $6.46. This alone would reduce the so-called total op-

erating expense (Item 46) from $17.07 per car, to $13.64 (or less than the average revenue under the Cummer Scale of $15.12). This correction, if carried throughout the entire formula to the end, would reduce the so-called "Total Cost Per Car" (Item 49) from $24.69, to $19.73.

Even with this correction, the non-haulage expense is subject to the further objection that it assumes that log traffic incurs as much terminal expense per car-mile as any other freight, which, of course, is obviously not true, because the carrier has practically no special terminal expenses or investment for log traffic. On the log trains the Commission found that "practically the only service performed * * * is the road haul" (R. 58). Patently the cost of $6.46, with approximately 45 per cent of that amount added for taxes and return on investment, is absurdly erroneous for terminal and yard expenses in connection with moving a car of logs in Florida.

Turning now to the haulage expenses computed by the Commission, we find that the Commission, having used the per loaded-car basis in determining non-haulage expense, shifted its method to the gross ton-mile basis in determining the haulage expenses. This shifting of methods would have the effect of augmenting the apparent haulage expense attributable to any heavy-loading freight, just as it would have the effect of minimizing the haulage expenses of commodities whose average loading per car is very light.

In this determination the total haulage expenses of all freight (omitting the few trifling and inconsequential items to which we have above referred) are divided by the gross ton-miles of all freight handled on the system upon the theory that the cost of hauling one ton of one commodity one mile is the same as the cost of hauling a ton of any other commodity one mile, regardless of the nature of the commodity, the length of haul, the average load, the hazard, the special services required for safe transportation, the volume or regularity of movement, or any other circumstances of the movement. In other words, the theory as-

sumes, contrary to the fact, that the cost of transporting one ton of logs is the same as the cost of hauling a ton of perishable fruit and vegetables, or high-valued merchandise, or any other freight.

Not only does this theory give no consideration to the foregoing matters, but it is also directly contrary to the accepted and established principle that the carload is the unit of freight transportation and its cost.

The cost of hauling a car containing 30 tons is certainly not twice the cost of hauling a car containing 15 tons.

The Interstate Commerce Commission has recognized for this reason that in comparing rates for transporting articles of different and varying average loadings, the car-mile revenue figures present a far better basis than ton-mile revenue. *Investigation & Suspension Docket 26, 26-c*, 22 I. C. C. 604, 620.

The average loading of all freight on the Atlantic Coast Line in 1929 was 15.6397 tons to the car (Item 24 of Appendix E), whereas the average loading of the log cars was 56,754 pounds, or 28.377 tons (Item 38 of Appendix E). Thus, the use of the gross ton-mile theory of computing haulage costs attributes nearly twice as much expense to the handling of the average car of logs as to the average car of all freight.

The use of these theories in the manner they were used by the Commission produces a purported cost for handling logs which is far above the actual average cost of handling all freight. To demonstrate this we shall use the same basic figures and compute the purely system-average cost of handling all freight per car-mile.

The total freight operating expenses for 1929 (Item 1 of Appendix E) were $36,308,813

The total loaded car miles of all freight handled on the system in that year (Item 23 of Appendix E), was ..... 209,835,784 miles

Dividing the total miles into total expenses gives an average operating expense per loaded car-mile of.....$.173.

Applying this figure per loaded car-mile to the average loaded car movement of the log cars, 81.36 miles, gives a total operating expense (on a purely system average), of $14.08

If we omit from the above figure the amount of money estimated in Appendix E (Item 18) as the excess of handling less-than-carload freight over and above the expense of carload freight, the figure of $.173 per loaded car-mile would be reduced to .....$.161

And the average operating expense per car for 81.36 miles would be $13.10

These operating expenses are purely system average and compare with the operating expense which the Commission has purported to compute (Item 46 of Appendix E) of $17.07

We have observed that the Commission has deducted certain trifling and inconsequential operating expenses as having no relation to log traffic (Items 2 to 15 of Appendix E). While these deductions by no means represent the true deductions which should be made for log traffic, and without attempting to make any corrections of the Commission's figures in this respect, we take off the same amounts which the Commission deducted. This leaves a total average loaded car-mile expense of.....$.155

And multiplying this by a haul of 81.36 miles, we have the total operating expense per car of.....$12.61

Thus, if the Commission's formula were founded upon a loaded car-mile basis throughout, the average expense per car, using average costs per unit, would be reduced from $17.07, to $12.61. The average expense per car of $12.61 is $2.51 per car less than the average revenue per car of

$15.12 under the Cummer Scale. In other words, the Cummer Scale under this system average cost computation yields approximately 20 per cent more than the average expense per car.

We call attention to the fact that in every instance shown above the loaded car-mile expense as determined above includes all expenses attributable to empty car return movements.

The Commission's formula adds $1.99 per car as an apportionment of taxes, and $5.63 per car as an apportionment of 5.75 per cent return on total investment, and arrives at "total cost per car" of..... .....$24.69

The term "total cost per car" is a misnomer. This is not the cost per car, but is the estimated revenue per car which would be required under the Commisson's theory to yield, on the log traffic, its full proportionate share of taxes and return on investment, or profit. Obviously, a figure which is designed to yield expenses plus taxes and full profit, cannot rightfully be called "the total cost per car".

The Commission's basis of apportionment for taxes and profit is based upon "investment" (as the term is used in Appendix E) and taxes for both passenger and freight operations, regardless of whether passenger operations are making or losing money upon the "investment" and taxes properly attributable to them. Furthermore, the apportionment assumes that the log traffic should pay an equal ratable share of the return on the "investment" and taxes thereon, whether it in anywise uses the expensive terminal and other "investments" or not.

Thus it will be noted that under the Commission's formula for apportionment of taxes, the log-shipper, on traffic utilizing the least expensive of taxable property, would be required to pay 11.67 cents for taxes on each dollar of operating expense (Item 47 of Appendix E), and would be required to pay 32.97 cents profit to the carrier upon each

dollar of operating expense (Item 48 of Appendix E). This aggregates 44.65 per cent of the operating expense. This aggregate percentage for taxes and profit is so high as to appear to us erroneous upon its face.

The total freight revenue of the carrier in 1929 (R. 1134a), was $53,188,639.00

The total loaded car miles of all freight (Item 23 of Appendix E) were ..... 209,835,784 miles

This produces a revenue per loaded car-mile for all freight carried in the year, of ..... $.253

The rate here prescribed applied to the average log car of 56,754 pounds, moving 81.36 miles, produces a revenue per loaded car-mile, of ..... $.384

The incongruity of logs producing 50 per cent more per car-mile than the average of all freight is apparent.

It is manifest that the computation of costs made by the Commission is basically and fundamentally unsound.

The Congress, in Amending Section 15a in 1933, Did Not Impose An Affirmative Duty Upon the Commission to Prescribe Rates so as to Provide a Fixed Return, and Did Not Follow the Recommendations of the Commission as to the New Law to be Substituted for Former Section 15a.

The Commission, in its Appendix E formula, and in the minimum rates prescribed for Florida intrastate log traffic, has proceeded upon the assumption that the old section 15a of the Act makes it the Commission's affirmative duty to prescribe intrastate rates on a single commodity on a single line of railroad in a single state which would yield, based upon average system costs, *at the very least*, a minimum revenue which would represent the expense of the service plus its share of all taxes and 5.75 per cent profit on investment.

Section 15a, as amended in 1933, wipes out the affirmative duty which was imposed upon the Commission under old 15a to adjust the rates of carriers as a whole or in rate groups so that the carriers would earn a profit upon investment. In the amendment the Congress took away, not only this duty, but the "heart" of the plan for recapture of excess earnings. Congress put in its place merely a statement of a new set of "factors", among others, to which the Commission "shall give due consideration" in the exercise of its powers to prescribe just and reasonable rates. The first of these is the "effect of rates on the movement of traffic." This factor was not mentioned in old 15-2 (3). The second factor in the new 15a is the need of adequate service *at the lowest cost.* The third factor is the need of revenue sufficient to provide service at the lowest cost. These changes conformed to matters of common knowledge that the transportation facilities are more than adequate to meet the needs of the country and that the time has come for restriction and withdrawal of unnecessary facilities, rather than the "enlargement" of the facilities.

Amended 15a is substantially different from the legislation proposed to Congress by the Interstate Commerce Commission as a substitute for old 15a. In its 46th Annual Report to Congress, December 1, 1932, the Commission said (page 18):

> It is our view, therefore, that section 15a should be remodeled to fit the conditions which actually beset the railroad industry, instead of the theoretical conditions which were assumed when its present provisions were made law. We renew our recommendations that the recapture provisions be repealed from the beginning, and that for the present rule of rate making in that section a simple rule be substituted which will make it clear that in regulating the general level of rates we shall always keep in mind and be guided by the need for producing, so far as possible, revenues which are sufficient for the maintenance of an adequate national railway transportation system, and also recognize the

principle that the railroads may justly earn a surplus in time of prosperity to offset deficiences in times of depression.

The Commission, in the same report, again referred to the special report upon this subject which it had rendered to Congress and which was set forth in the annual report for 1931, at pages 107-110 and in Appendix G thereto. In that Appendix G, which includes the Commission's proposed amendment to Section 15a the method of determining value as a rate basis is set up in great detail which "the Commission shall from time to time * * * determine * * * for each operating carrier" * * * (which place the affirmative duty upon the Commission so to do). Among the "factors" to be considered by the Commission in adjusting the general level of rates under its proposed bill were (1) the transportation *needs* of the country, (2) the necessity of maintaining railroad credit to attract capital and (3) the necessity of furnishing transportation "at the lowest rates consistent with adequate service and the meeting of the transportation needs". Having thus determined the factors and needs the Commission, under its proposed bill, was to "endeavor to adjust the general level of rates" so that the carriers as a whole, or in each rate group, would earn, as nearly as may be, a fair return." (Pages 362-63-64, I. C. C. An. Rep. Dec. 1, 1931.)

The Commission's amendment to old Section 15a leaves no question as to the plain intention to place the affirmative duty upon the Commission to so adjust the general rate level. The Commission's proposed amendment, (p. 364) further provides that:

> "The fact that such aggregate net railway operating income falls below such amount in times of economic depression or rises above it in times of economic prosperity shall not necessarily be regarded as a reason for raising or reducing rates, as the case may be; but THE DUTY of the Commission in the exercise of sound discretion SHALL BE to maintain so far as

possible a general level of rates which over a period of years will produce earnings consistent with the principles, above set forth, to be observed in the determination of the fair return; and the commission SHALL INITIATE, MODIFY, ESTABLISH, or ADJUST rates to the extent that it may find necessary in the full performance of the foregoing DUTY."

The Commission's recommendations to Congress on this subject of repeal of or amendment to section 15a were consistently renewed through 1930, 1931 and 1932 and up until the time that the Act was amended in the spring of 1933.

It will be noted that the Commission's proposed amendment to former Section 15a made no substantial change with respect to its affirmative duty to adjust the rates as a whole or in the several rate groups, and to provide full profit on investment and maintain railroad credit. It will be noted farther that the amendment enacted by Congress differs substantially from the bill recommended to Congress by the Commission. The amended section does not set up the elaborate rate-base recommended by the Commission, does not include "railroad credit", among the factors to be considered, and does not place the affirmative duty upon the Commission to fix the general level of rates of the carriers as a whole or in rate-groups.

Respectfully submitted,

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APPENDIX E.

Estimated cost of transporting logs in Florida for average distance of 81.36 miles, based on A. C. L. average costs per unit for calendar year 1929 applied to the average units involved in hauling logs in that State

BASIC DATA

Operating expenses:			
1. Total freight service operating expenses			$36,308,813
Expenses not involved in handling log traffic:			
Maintenance of way and structures:			
2. No. 241. Wharves and docks		$135,980	
3. No. 201. Superintendence (proportion), 5.334 per cent × $135,980		7,253	
Maintenance of equipment:			
4. Nos. 323 and 324. Floating equipment—Repairs and depreciation		33,481	
5. No. 301. Superintendence (proportion), 3.845 per cent × $33,481		1,287	
Traffic:			
6. No. 352. Outside agencies	488,740		
7. No. 353. Advertising	4,579		
8. No. 354. Traffic associations	46,802		
9. No. 356. Industrial and immigration bureaus	16,637		
		556,758	
10. No. 351. Superintendence (proportion), 81.94 per cent × $556,758		456,246	
Transportation—Rail line:			
11. No. 408. Operating floating equipment		33,543	
12. No. 371. Superintendence (proportion), 4.392 per cent × $33,543		1,473	
13. Total		1,226,021	
General expenses:			
14. Proportion applicable to above items—4.490 per cent × $1,226,021		55,048	
15. Total expenses not involved			1,281,069
16. Net freight-service operating expenses			35,027,744

Apportionment between haulage and nonhaulage expenses	Haulage expenses	Nonhaulage expenses
17. Net freight service operating expenses, apportioned 76.3539 per cent to haulage and 29.6461 per cent to nonhaulage, based on proportions obtained from those of "Maintenance of way and structures" and "Transportation Rail line" accounts, which are segregated between road or haulage and yard or nonhaulage expenses (*see* testimony, Witness Pettijohn, R. 1465)	$24,643,384	$10,384,360
18. Deduction for excess terminal expense (platform and clerical) incurred for less-than-carload over that incurred for carload freight, estimated at 75 per cent of accounts 373, "Station employees," and 376, "Station supplies and expenses" ($3,407,704 x 75 per cent)		2,555,778
19. Net amounts applicable to carload traffic	24,643,384	7,828,582

20.	Gross ton-miles	11,600,829,000
21.	Average haulage expense per gross ton-mile	$0.0021243
22.	Revenue ton-miles	3,281,770,000
23.	Loaded-car miles (revenue and nonrevenue)	209,835,784
24.	Revenue tons per loaded-car mile (revenue and nonrevenue)	15.6397
25.	Total revenue tons carried	18,951,802
26.	Total loaded cars carried (revenue and nonrevenue)	1,211,775
27.	Average nonhaulage expense per loaded car	$6.46
	Taxes:	
28.	U. S. Government (corporation income)	$370,076
29.	Other than U. S. Government (State taxes)	$5,669,924
30.	Total taxes	6,240,000
31.	Total operating expenses (freight and passenger)	53,431,589
32.	Taxes per dollar of operating expense	$0.11678
	Interest on investment at 5.75 per cent:	
33.	Property investment as of December 31, 1929	$306,439,250
34.	5.75 per cent interest on investment	$17,620,257
35.	Interest on investment per dollar of operating expense	$0.32977
	Statistical data for log traffic in Florida:	
36.	Average revenue per car under so-called Cummer scale	$15.12
37.	Average distance hauled (miles)	81.36
38.	Average billing weight (pounds)	56,754.
39.	Average tare weight of car (pounds)	33,000.
40.	Average tare weight of car, empty haul (pounds)	33,000.
41.	Gross weight (pounds)	122,754.
42.	Gross weight (tons)	61.377
43.	Gross ton-miles per car (61.377 gross tons x 81.36 miles)	4,994.

COMPUTATION OF COSTS

Estimated cost per car of hauling logs in Florida based on A. C. L. average costs per unit:

	Operating expenses:		
44.	Haulage expenses: 4,994 gross ton-miles x $0.0021243 per gross ton-mile	$10.61	
45.	Nonhaulage expenses: Average per loaded car	6.46	
46.	Total operating expenses		$17.07
47.	Taxes: $17.07 (operating expenses) x $0.11678 (taxes per dollar of operating expenses)		1.99
48.	Interest on investment at 5.75 per cent: $17.07 (operating expenses) x $0.32977 (interest per dollar of operating expenses)		5.63
49.	Total cost per car		24.69
50.	Cost per 100 pounds		4.37 cents
51.	Average revenue (Cummer scale) per car of logs for average haul of 81.36 miles		15.12

(186 I. C. C. 197.)

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 342

STATE OF FLORIDA, EUGENE S. MATTHEWS, MAMIE EATON-GREEN, AND W. B. DOUGLASS, ETC., ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, GEORGIA PUBLIC SERVICE COMMISSION, AND ATLANTIC COAST LINE RAILROAD COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.

STATEMENT OF THE ATLANTIC COAST LINE RAILROAD COMPANY OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1933

No. 342

STATE OF FLORIDA, EUGENE S. MATTHEWS, MAMIE EATON-GREEN, AND W. B. DOUGLASS, ETC., ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, GEORGIA PUBLIC SERVICE COMMISSION, AND ATLANTIC COAST LINE RAILROAD COMPANY.

STATEMENT OF THE ATLANTIC COAST LINE RAILROAD COMPANY OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM.

To the Honorable the Chief Justice of the United States and the Associate Justices:

Now comes the Atlantic Coast Line Railroad Company, one of the appellees in the above stated appeal, and, in pursuance of Rule 12(3) of this Court, files this, its statement against the jurisdiction of this Court asserted by the appellants; and, acting under Rule 7 (3) (4) of this Court,

moves the Court to dismiss the appeal in said cause, or affirm the decision of the lower court.

The motion against the jurisdiction of this Court is made on the ground that this controversy has been heretofore passed upon by this Court (282 U. S. 194—*Florida v. United States*) and the law of the case was there settled; and that the subsequent proceedings before the Interstate Commerce Commission were in thorough conformity with the law as thus settled by this Court.

That the Interstate Commission, in the further proceedings had before it, made ample intermediate findings to justify its conclusion that the Florida intrastate rates over the Atlantic Coast Line Railroad for the haulage of certain kinds of logs were unjustly discriminatory against interstate commerce, and that non-discriminatory rates should be prescribed by it for such intrastate transportation.

That these findings were fully supported by the evidence adduced before the Commission.

That the United States District Court, constituted as required by law, properly refused to restrain the Commission's order fixing intrastate rates in Florida for the transportation of such logs.

That the law applicable to the conditions thus presented has been settled by many decisions of this Court and, as well, in this particular controversy; so the controversies are so unsubstantial as not to present a Federal question.

The motion to dismiss the appeal or to affirm the judgment of the court below, is based upon the same grounds and upon the further ground that the questions on which the decisions of the cause depend are so unsubstantial as not to need further argument.

Attention is called to the following notes:

Notes.

(1) The record is not yet prepared or printed and it is impracticable to cite its pages.

(2) This controversy has been passed upon by the Interstate Commerce Commission in reports and orders, reported as follows:

Georgia Public Service Commission v. *Atlantic Coast line Railroad Company,*
I. C. C. Docket No. 18364, 146 I. C. C. 717;
I. C. C. Docket No. 18364, 186 I. C. C. 157;
I. C. C. Docket No. 18364, 190 I. C. C. 588.

(Copies of these reports are filed as appendices hereto.)

It has been passed upon by the United States District Court for the Northern District of Georgia, in opinions reported in

Florida v. *United States,* 30 Fed. (2) 116;
Florida v. *United States,* 31 Fed. (2) 580;
Florida v. *United States* (rendered February 24, 1933, not yet reported).

(Copy of the opinion and decree rendered February 24, 1933, is filed as an appendix hereto.)

It has been passed upon by the Supreme Court of the United States in

Florida v. *United States,* 282 U. S. 194.

Statement of the Case.

The subject matter of this case is a continuation of that involved in the case of *Florida, et al.* v. *United States,* 282 U. S. 194. The latter case came to this Court from

the United States District Court for the Northern District of Georgia, which court had rendered two decisions, reported as follows:

State of Florida v. *United States et al.*;
Wilson Lumber Co. v. *Same*;
Brooks-Scanlon Corporation et al. v. *Same*;
30 Fed. (2) 116, and
State of Florida et al. v. *United States et al.*;
Brooks-Scanlon Corporation et al. v. *Same*;
Wilson Lumber Co. of Florida v. *Same*;
31 Fed. (2) 580.

Those cases made attacks upon the order of the Interstate Commerce Commission entered August 2, 1928, in the case of *Georgia Public Service Commission* v. *Atlantic Coast Line Railroad Company*, 146 I. C. C. 717.

The Interstate Commission in that proceeding fixed interstate rates on logs, except walnut, cherry, and cedar, in carloads from points north of and including Jacksonville, Burnetts Lake and High Springs, Florida, to destinations in Georgia, for distances not exceeding 170 miles. There has been no controversy over those interstate rates. They have been continually in effect since February 8, 1929.

In the same proceeding the Interstate Commission fixed *intra*state rates on the same kinds of logs moving in Florida over the Atlantic Coast Line Railroad Company's lines for distances up to 170 miles. The Commission found that the Florida intrastate rates on those logs, which it displaced, were unduly preferential of shippers and of intrastate commerce, and unjustly discriminatory against interstate commerce (146 I. C. C. 724).

In the above-mentioned case this Court fully sustained the power of the Interstate Commerce Commission to establish intrastate rates in order to remove an unjust discrimination against interstate commerce (282 U. S. 210).

This Court reversed the lower court, and, in its opinion stated, among other things, as follows:

> "The question is not merely one of the absence of elaboration or of a suitably complete statement of the grounds of the Commission's determination, to the importance of which this Court has recently adverted (*The Beaumont, Sour Lake & Western Railway Company* v. *United States, ante*, p. 74), but the lack of the basic or essential findings required to support the Commission's order. In the absence of such findings, we are not called upon to examine the evidence in order to resolve opposing contentions as to what it shows or to spell out and state such conclusions of fact as it may permit. The Commission is the fact-finding body and the Court examines the evidence not to make findings for the Commission but to ascertain whether its findings are properly supported. If the facts as to intrastate transportation of logs in Florida are such as to justify an order as to intrastate rates in order to end an unjust discrimination as against interstate commerce either as between persons and localities, or because of an undue burden upon the revenues of the carrier, the Interstate Commerce Commission is still at liberty, acting in accordance with the authority conferred by the statute, to make such determinations as the situation may require."

In due course the mandate of this Court was duly entered in the United States District Court for the Northern District of Georgia, and the judgment of this Court was made the judgment of that court.

In the meantime the Atlantic Coast Line Railroad Company had filed its petition with the Interstate Commerce Commission to reopen the proceedings, praying, among other things, that the "Commission proceed to make such further findings and issue such further reports and orders in this cause as it may deem to be requisite or necessary"; and that "the Commission prescribe such intrastate rates

in Florida for the transportation of logs over the lines of this movant, for distances up to 170 miles and for distances beyond 170 miles, as may be lawful." The said motion contained a general prayer that the Commission issue such other and further reports, findings and orders as the Commission might deem proper.

The Georgia Public Service Commission also filed its motion with the Interstate Commerce Commission to like effect.

The said cause before the Interstate Commerce Commission was reopened by the Commission, and extensive new evidence was taken before the Commission's examiners, and briefs were filed by all of the parties to the cause. A tentative report was filed by the examiners. Exceptions were filed to that report and arguments were had before the full Commission. The full Commission, on the 5th day of July, 1932, made its report and entered its order on further hearing (*Georgia Public Service Commission* v. *Atlantic Coast Line Railroad Company*, 186 I. C. C. 157).

The Commission, in its report on the further hearing, found:

> "Finding in the original report, 146 I. C. C. 717, that rates on logs over six feet in length, except walnut, cherry and cedar, in carloads from points in north Florida to destinations in Georgia for distances up to 170 miles were unreasonable, affirmed. Present rates found reasonable" (186 I. C. C. 157).

The rates referred to as "present rates" are those which were fixed by the Commission for interstate application in its report dated August 2, 1928. The same rates were also fixed for intrastate application in said proceeding of August, 1928. The Commission's report of July 5, 1932, also found:

> "Rates on logs over 6 feet in length, except walnut, cherry, and cedar, in carloads, applying on shipments

> between points on the Atlantic Coast Line Railroad Company in Florida for distances 170 miles and less, found unjustly discriminatory against interstate commerce" (186 I. C. C. 157).

Rates were prescribed which the Commission deemed to be "on a nondiscriminatory basis." The rates which were thus prescribed by the Commission in this last order were the same as those which had been prescribed by it in its order of August 2, 1928, for both state and interstate application. The rates thus fixed by the Commission in its order of July 5, 1932, were, by amendment, to have gone into effect on September 14, 1932.

Bills were filed in the United States District Court for the Northern District of Georgia, Atlanta Division, by appellants undertaking to enjoin that order, and the rates fixed therein. The bills were filed on the 9th day of September, 1932, and were set for hearing on the 14th of that month, and were heard on that date. The court exercised its statutory authority and granted a suspension of the Commission's order for not exceeding sixty days.

Motions were then made to the Interstate Commission by the appellants herein to reopen the case before the Commission in order that tariffs then recently filed by certain railroads might be considered by the Commission.

By order of October 21, 1932, the Commission did reopen said proceeding

> "for further hearing for the sole purpose of receiving evidence respecting any change in the rates on logs since the close of the last hearing herein, the circumstances connected with and the conditions which occasioned such changes, and whether such circumstances and conditions, or any of them, are present with respect to the Florida intrastate log rates of defendant."

Further hearing was had in that proceeding, and a substantial amount of additional evidence taken therein, on the 21st and 22nd of November, 1932.

On January 9, 1933, the Interstate Commerce Commission rendered its further report and vacated its said order of suspension of its order of July 5, 1932, as amended, and reaffirmed all of its findings in the prior report on further hearing; that is, the report and order dated July 5, 1932.

Its findings in the supplemental report and in the prior report were stated by the Commission to be

> "without prejudice to the right of the authorities of the State of Florida or of any other interested party to apply in the proper manner for a modification of our findings and order as to any specified intrastate rate on the ground that it is not related to interstate rates in such a way as to contravene the provisions of the interstate commerce act."

Thereupon supplemental bills of complaint were filed by the appellants in the United States District Court for the Northern District of Georgia, seeking to enjoin the orders of the Commission.

These causes were heard on February 24, 1933, by the same court constituted as it was in the hearing had in September, 1932, and above referred to. The constituency of the court was Mr. Circuit Judge Sibley, Mr. District Judge Strum and Mr. District Judge Underwood.

After said hearing the court issued its final decree from which this appeal is taken. The court refused to enjoin the orders of the Interstate Commerce Commission.

The Law of the Case Has Been Settled.

Movant contends that the decision of this Court in the case of *Florida* v. *United States,* 282 U. S. 194, settled the law of this case. It also contends that the findings of the

Commission in its reports and supplemental report, referred to, are adequate to sustain its conclusions and are supported by ample evidence.

In the prior case this Court said:

> "If the Commission had made adequate findings supported by evidence upon the point under consideration, we should not be disposed to conclude that the order must be upset because of the manner in which the proceeding was initiated or of the generality of the allegations of the complaint" (282 U. S. 209).

Movant believes that the findings of the Commission fully comply with the requirements of that decision and of the cases on which it is based.

Reports of the Commission and the Findings of Fact Therein Contained.

The first report of the Commission (*Georgia Public Service Commission* v. *Atlantic Coast Line Railroad Co.*, 146 I. C. C. 717—August 2, 1928) showed that the volume of log transportation affected by the Florida intrastate rates under discussion (frequently called the "Cummer" scale of rates) was very great. From 1915 to 1926, both inclusive, 128,163 carloads containing approximately 700,000,000 feet of timber were transported under one contract (146 I. C. C. 720); that one of the intervenors owned on August 31, 1926, 1,207,432,000 feet of timber in Florida in the territory affected (146 I. C. C. 720); that during September, 1926, one shipper shipped from Perry and Carbur to Eastport (all in Florida), 166 and 144 miles, respectively, 1,371 loaded cars of logs (146 I. C. C. 722); that the gross earnings under the Florida intrastate rates are materially lower than the earnings under the interstate rates from Florida to Georgia on brick, sand, lime, and cement (146 I. C. C. 723).

It also found that the interstate rates which movant proposed and the Commission fixed were reasonable; that they are the same as those prescribed by the Alabama Commission for intrastate application within that State, and by the Interstate Commerce Commission for interstate application in other sections of the southeast; and that all of the Florida points from which

> "they will apply appear to be located south of the line of the Seaboard Air Line extending from Jacksonville to River Junction, from and to which we invariably prescribe maximum reasonable rates that are higher than from and to other points in southern territory" (146 I. C. C. 723).

The Commission also found in that report:

> "It is manifest, we believe, that the intrastate rates assailed, which on the average are less than half of the proposed interstate rates, are less than reasonably compensatory * * *
>
> "They are approximately one-half of the rates prescribed in *Rates on Chert, Clay, Sand, and Gravel*, 122 I. C. C. 133, on sand and gravel in the Southeast and less than one-half of the rates prescribed in the supplemental report in that case, 140 I. C. C. 85, to points in Florida south of the Jacksonville-River Junction line of the Seaboard Air Line" (146 I. C. C. 724).

The Commission also found:

> "The Florida intrastate rates assailed, which are lower than the interstate rates herein found reasonable for corresponding distances, result, and will result, in undue preference and advantage of shippers of intrastate traffic within the State of Florida, in undue prejudice to shippers of interstate traffic from points in the State of Florida to points in the State of Georgia, and in unjust discrimination against interstate commerce" (146 I. C. C. 724).

The Commission found that said undue preference, advantage, undue prejudice, and unjust discrimination could and should be removed by the establishment of rates for intrastate application within Florida which corresponded with the rates therein found reasonable for interstate application from Florida to Georgia.

The rates then established by the Commission for intrastate transportation in Florida are the same as those reestablished in the Commission's later reports and orders herein referred to.

Second Report of the Commission.

The second report of the Commission is dated July 5, 1932 (186 I. C. C. 157), and was rendered by the full Commission acting through Mr. Commissioner Meyer. Some of the important findings in this report are:

> "The interstate rates have since (from February 8, 1929) remained continuously in force. No further evidence was introduced with respect to their reasonableness and they are apparently satisfactory to all interested parties" (186 I. C. C. 160).

In appendix B to the report (186 I. C. C. 193) varying scales applying on logs on the most important railroads in the southern territory are set out as a means of comparison. The Cummer scale begins at 1.71 cents (per 100 pounds) for 5 miles and goes to 3.70 cents for 170 miles. The Class P rates then take effect and for 171 miles the rate is 8.33 cents, or more than twice as high as the Cummer scale of rates (186 I. C. C. 161).

The scale of rates fixed in the original report (the same as the one reaffirmed in the second report—July 5, 1932) is shown in column 5 of Appendix B. It had its origin in *Pierpont Mfg. Co.* v. *Southern Ry. Co.*, 50 I. C. C. 81 and was reviewed in three subsequent cases, and, as subjected

to the general rate changes, was either prescribed or approved for application on logs between various points in the south. The Alabama Commission adopted the same scale and it was on the date of the report in effect on the Atlantic Coast Line's lines in Alabama. The Georgia Commission likewise adopted it for application in Georgia but suspended its application because of the existence of the Cummer scale in Florida (186 I. C. C. 162).

The rates applied intrastate in Florida over the Seaboard Air Line and the Georgia Southern and Florida railroads respectively, "are approximately twice as high as the Cummer scale" (186 I. C. C. 162).

The scale of rates adopted by the Interstate Commission or one that compares favorably with it applies interstate over the lines of the most important carriers in the South (186 I. C. C. 163).

> "Transportation conditions in Florida are not such as warrant a lower basis of rates on logs in that State than elsewhere on defendant's system. Transportation conditions on defendant's lines in Florida are not more favorable but on the contrary are less favorable than on defendant's system outside of Florida. The cost of the service in Florida is higher than on the remainder of the system. * * * Density of traffic in Florida is much lighter than on defendant's lines elsewhere" (186 I. C. C. 163-164).

The Commission found over a period of years the ton miles of the Atlantic Coast Line's system and the ton miles in Florida and the ton miles of the system excluding Florida, and invariably the ton miles in Florida were very much less than for the system and this is accentuated when compared with the ton miles of the system excluding Florida (186 I. C. C. 164).

> "The less favorable operating conditions in Florida south of that line have given rise to the general prac-

> tice of permitting the addition of arbitraries to the rates on interstate traffic to and from points in that territory" (186 I. C. C. 164).

The percentage of the log traffic of the Atlantic Coast Line for May, 1926, of all tonnage was 7.26 and the percentage of the freight revenue on logs as compared with all traffic revenue for the same period, was only 2.5 (186 I. C. C. 165).

The Commission reaffirmed the finding made in its original report that the Cummer scale of rates is abnormally low and that the rates under that scale "are less than reasonably compensatory" (186 I. C. C. 165).

The Commission found that the intrastate rates on the logs in question, applicable between points on the Atlantic Coast Line in Florida for distances of 170 miles and less

> "are and for the future will be, unjustly discriminatory against interstate commerce, and that such unjust discrimination can be and should be removed by the establishment between all points on the Atlantic Coast Line in Florida for distances of 170 miles or less,"

of rates prescribed, which are the rates found reasonable for interstate application from northern Florida to Georgia (186 I. C. C. 189).

The Commission made appropriate findings showing that it is necessary to increase the Florida intrastate rates to avoid an undue burden on interstate rates from a revenue standpoint. Its findings in this respect begin at page 166 of its second report (186 I. C. C., July 5, 1932).

The value of the investment of the Atlantic Coast Line Railroad Company was found for the years 1926, 1929 and 1930 and the return upon investment was shown to have decreased from 6.11 per cent in 1926 to 4.20 per cent in 1929 and 2.37 per cent in 1930. During the five year period, 1926-1930, system log traffic averaged 7 per cent of the total

system traffic. Nearly fifty per cent of the system log traffic was in Florida. In 1928, the Atlantic Coast Line transported a total of 51,801 cars of logs on its system, of which 27,119 cars were in Florida. While the log traffic to the system in 1928 was 7 per cent of the total traffic, the log revenue was 1.9 per cent of the total revenue; in 1929 the log traffic was 5.0 per cent of the total traffic, while the log revenue was 1.5 per cent of the total revenue; and in 1930 the log traffic was 4.0 per cent of the total traffic while the log revenue was 1.3 per cent of the total revenue. The percentages of the log traffic in Florida to the total traffic in that State were 9.4 in 1928; 4.3 in 1929 and 3.6 in 1930. The Commission states:

> "The above figures reflect the small revenue burden borne by the log traffic" (186 I. C. C. 166).

The rates fixed by the Interstate Commission in its report of August 2, 1928, were in actual operation intrastate in Florida from February 8, 1929, into 1931, and a statement showing all shipments of the kinds of logs in question which moved over the lines of the Atlantic Coast Line intrastate in Florida during the period from February 8, 1929, to January 31, 1931, was submitted. That traffic, of course, moved under the scale of rates fixed by the Interstate Commission.

> "This statement shows a total movement of 18,602 carloads in that period on which gross freight revenues of $571,508.94 were collected. If the Cummer scale had applied, this movement would have produced gross freight revenues of only $281,225.75, or $290,283.19 less than those actually collected" (186 I. C. C. 167).

If the Cummer scale had been in effect during the years 1929 and 1930 uniformly on interstate and intrastate traffic throughout its system, the Atlantic Coast Line's reduc-

tion in revenues would have been approximately $675,381.21 based on the facts that the movement of logs on its system, including the long but not the short length logs in Florida, consisted of 3,450,765,300 pounds, of which the interstate movement was 456,134,800 pounds, and the intrastate movement 2,994,630,500 pounds. The revenues from all of those logs amounted to $1,483,424.87 of which the revenue on interstate movements amounted to $26,654.12, and on intrastate to $1,216,770.75 (186 I. C. C. 168).

The Commission in its report of July 5, 1932 (186 I. C. C. 183), found:

> "There appears to be no doubt that the operating costs per unit are generally higher in Florida than the average for the defendant's system as a whole either including or excluding Florida. This is clearly indicated by various things."

This was repeated in the Commission's report dated January 9, 1933 (note 190 I. C. C. 599).

The quantity of timber in Florida is shown by the Commission's report (186 I. C. C.) beginning at page 173. In July, 1931, the standing pine timber in Florida was 21,913 billion feet (186 I. C. C. 173). That did not include hardwood. The annual production of cypress in Florida is around 200,000,000 feet (186 I. C. C. 173). The Commission states:

> "The defendant's freight-traffic manager testified: 'Not less than one-half of the timber in Florida that is now reasonably adjacent to railroads is reasonably adjacent to the Atlantic Coast Line. Pine timber along the south Atlantic seaboard has been characterized by the United States Forestry Department as one of the fastest reproducing kinds of trees in the world, and the total amount of timber in Florida will be large as a result of regrowth. However, if the Atlantic Coast Line can be assumed to transport 40 per cent of the

logs to be produced in Florida from timber now standing, it will handle approximately 9 billion feet, or approximately 128,570 cars of logs. If the average length of haul should be 81 miles, as was the case in 1929-1930, which average haul may be expected to be increased as the timber becomes more scarce, our revenues under the Cummer scale, at an average revenue of $16.10 per car, would be equivalent to gross revenue of $2,169,977. If the same transportation should be performed at the rates prescribed by the Interstate Commerce Commission, which for the average haul of 81 miles is 5.5 cents per 100 pounds, or $38.50 per car, the gross revenue would be 4,949,945. The difference in the gross revenue under the two scales of rates would be $2,779,968' " (186 I. C. C. 174).

Substantial accounting evidence was given and is discussed by the Commission, beginning at page 176 of 186 I. C. C. The Atlantic Coast Line claimed that the Cummer scale of rates did not pay the cost of handling the traffic. This cost accounting sustained the position of the Atlantic Coast Line that the revenue from this traffic did not pay its costs; notwithstanding the fact that the Commission determined that the operating expenses attributed to Florida had been "understated to an unknown extent" (186 I. C. C. 184).

The Commission then made its own calculations, using system figures, saying:

> *"Ordinarily it would be unsound to use a system unit cost to determine the cost in a particular State, but since it is indisputable that unit costs are higher in Florida than elsewhere on the system, it seems clear that system unit costs may be used to find a cost that may be said to be less than the cost in Florida"* (186 I. C. C. 184). (Italics added.)

Under the Commission's own calculations, for the average haul of 81.36 miles the total cost per car was $24.69,

against a gross revenue per car of $15.12, or a loss of $9.57 per car. After making this finding the Commission states:

> "The above figures undoubtedly understate the cost of transporting logs in Florida for several reasons. One of these is that costs per unit in Florida are higher than the average for the entire road or system including Florida. Another reason why the computation on the basis of average costs per unit for the system understates the cost of transporting logs in Florida is that these average costs per unit do not include anything for joint-facility and equipment rents. As heretofore indicated the cost is also understated because it does not include the cost of transporting nonrevenue or company freight" (186 I. C. C. 187).

At page 187 of 186 I. C. C., the Commission makes something of a summation of its findings, stating:

> "The record shows the low earnings of defendant; the low earnings on its log traffic as compared with its earnings on other low-grade commodities; the much lower earnings on its Florida log traffic than on its interstate log traffic; and the much lower level of the Cummer scale than of other scales applicable interstate and intrastate throughout the south. These facts and the cost evidence clearly warrant the conclusion that the traffic moving under the Cummer scale does not pay its '*fair proportionate share*' of operation and maintenance alone." (Italics added.)

The Commission found that during the period when the interstate scale of rates was in effect (February 8, 1929—April 10, 1931), there was a depressed condition of the lumber industry, and that it materially affected the log traffic since the latter part of 1930. It found that during the period from February 8, 1929, to January 31, 1931, which was within the time when the increased rates were in effect, the total movement over the Atlantic Coast Line's lines amounted to 18,602 cars. It estimated that in a nor-

mal period the log movement would not be less than the average for that two year period minus the number of cars included in the discontinued trainload movements. Those discontinued trainload movements amounted to 3,740 cars, so the average was 7,431 cars. The Commission then finds:

> "The freight charges collected on the 18,602 cars above referred to aggregated $571,508.94, and if the Cummer scale had applied the charges would have been $281,225.75. The freight charges collected on the 3,740 cars referred to were $100,439.06, and if the Cummer scale had applied they would have been $48,286.75. On the 14,862 cars remaining after deducting the 3,740 cars from the total movement of 18,602, the freight charges collected were $471,069.88 ($571,508.94 minus $100,439.06), and if the Cummer scale had been applicable they would have been $232,939 ($281,225.75 minus $48,286.75), or $238,130.88 less than those actually collected. Accordingly, on the basis of an average of 7,431 cars a year under normal economic conditions, which basis we believe conservative, the gross revenues under the rates prescribed by the previous order herein would be more than $100,000 a year greater than under the Cummer scale, now in effect. The application of the Cummer scale, therefore, places a substantial burden upon defendant's interstate revenues. If the revenues yielded by the Cummer scale are not sufficient to cover the cost of the service, as the cost evidence indicates, it would follow that part of the above-stated amount would constitute a dead loss in net revenue" (186 I. C. C. 188-189).

Third Report of the Commission.

The third report of the Commission was rendered January 9, 1933 (190 I. C. C. 588). The proceeding was reopened before the Commission in order that it might consider tariffs which had then been recently filed by a number of railroads, especially in the southwestern portion of

the southeastern part of the country. Those tariffs were first established by certain railroad operating west of the Mississippi following a meeting held March 29, 1932. They usually apply for distances of from twenty up to one hundred miles, and were put in experimentally (190 I. C. C. 589).

Those rates are based on a per car movement without regard to the capacity of the car or the amount of the load. They are not established between all points of any of the systems, with a few exceptions. For instance, the Illinois Central System applies those rates to approximately thirty manufacturing points east of the Mississippi River, two of which are in Tennessee, two in southern Louisiana, and the remainder in Mississippi (190 I. C. C. 590).

> "The per car rates of these southern lines, like those of the southwestern lines, were established primarily as an experiment to meet actual truck competition which the carriers' investigations showed to exist." (190 I. C. C. 591).

The Commission's report is a very keen analysis of the testimony and shows that the experimental rates are for the most part unsatisfactory to the roads which have put them into effect; that they have not recaptured any material part of the transportation of logs done by trucks for distances above fifty miles; that there are eleven mills located on the lines of the Atlantic Coast Line cutting a total of approximately 87,500 feet a day, and the maximum haul by truck was 10 miles to two of the mills, between ten and fifteen miles to two, between fifteen and twenty miles to two, between twenty and twenty-five miles to three, and between twenty-five and thirty miles to one (190 I. C. C. 594).

The Commission also found:

> "The record warrants the conclusion that truck competition and, to a lesser degree, carrier competition, has been sufficiently compelling in the judgment of the responsible traffic officials of the various railroads operating in the western portion of southern territory to warrant the establishment experimentally of the low per car rates on logs hereinbefore referred to; that these reduced rates have not as yet succeeded in regaining for the railroads which established them any great amount of log traffic; that it is doubtful if the log traffic now moving by truck for the shorter distances, particularly 25 miles and under, can be regained by these or any other rates that the carriers could make; that there is but little competition between defendant and trucks for the movement of logs intrastate in Florida for distances over 25 miles and, in the judgment of defendant's responsible traffic official, it is not of sufficient importance to warrant the establishment or maintenance of subnormal rates in an effort to regain it; and that the circumstances and conditions which occasioned the establishment of the experimental reduced per car rates on logs by other railroads in a section of southern territory quite widely separated from that in which defendant operates are not present with respect to the intr-state log traffic over defendant's lines in Florida" (190 I. C. C. 598).

The Commission again states that transportation conditions are not substantially similar throughout southern territory, and that the circumstances and conditions surrounding the transportation of logs intrastate in Florida are not on the whole as favorable as the circumstances and conditions surrounding the interstate movement of logs over the Atlantic Coast Line's lines; and that the less favorable operating conditions in the Florida peninsula than in the remainder of southern territory have given rise to the general practice of permitting the addition of arbitraries to

the rates on interstate traffic to and from points in that territory (190 I. C. S. 599). The Commission then found:

> "Even if transportation conditions were similar in Florida as on the lines of the carriers that have established the per car rates, competitive conditions are not similar, as has been pointed out. The carriers that have established the per car rates have done so voluntarily as an experiment in an endeavor to regain traffic that was moving by truck and thereby increase their revenues, not only on the logs to the mills, but on the outbound manufactured products from the mills, their per car rates being conditioned upon an outbound movement of the manufactured products in nearly all instances" (190 I. C. C. 599).

The experimental rates which were put into effect are, in nearly all instances, transit rates; that is, the shipper does not get the benefit of the reduced rates unless he ships the products manufactured from the logs over the lines of the carrier which takes the logs to the manufacturing point.

The Commission further condemned those per car rates, saying:

> "Generally we do not approve of rates published in amounts per car regardless of weight and nothing herein contained should be considered as an approval of rates so published on logs" (190 I. C. C. 600).

The Commission affirmed all its findings in its report on further hearing (that is, its report of July 5, 1932), and vacated its order suspending the operation of its order of July 5, 1932, as amended (190 I. C. C. 600).

The Facts Have Been Settled.

It is respectfully and earnestly submitted that the Interstate Commission intended to give, and did give, full force

and effect to the decision of this Court rendered in the case of *Florida* v. *United States*, 282 U. S. 194; and the findings of the Commission have fully complied with each requirement of the decision of this Court in that case. The basic facts essential to support the Commission's orders have been made, and are supported by ample evidence.

Decision of the United States District Court of February 24, 1933.

The court below filed its findings of fact and conclusions of law on February 24, 1933. It had been contended by some of the complainants that the decision of this Court in *Crowell* v. *Benson*, 285 U. S. 22, required the court below to have an entirely *de novo* trial on a record made before that court. One other of the complainants contended that it was entitled to a trial *de novo*, but on the record made before the Interstate Commerce Commission.

These contentions were based on the theory that, as the existence of unjust discrimination against interstate commerce is essential to the exercise of jurisdiction by the Interstate Commission over intrastate rates, the Commission's findings of such discrimination should be reviewed *de novo;* and that the decision in the Crowell case so requires.

The court disagreed with both contentions; but none the less gave *de novo* consideration to the record, and did not confine its findings of fact to the proposition that the Interstate Commerce Commission's reports and orders were sustained by the evidence, but went further and found that the Commission's conclusions of fact, besides being "well supported by the evidence," were "such as we would ourselves make therefrom." In its conclusions of law, the court came to the same result, saying:

"We need not decide whether in this case the Commission's finding of unjust discrimination is entitled to any less weight because it is a pre-requisite of its jurisdiction as well as the meritorious basis for its exercise, because we have examined the evidence independently and are led to the same conclusion that the unjust discrimination exists."

The full opinion of the court below is set out as an appendix hereto, but for convenience, we quote from the findings of fact in that opinion, as follows:

"We find the conclusions of fact in the Commission's report to be well supported by the evidence, and such as we would ourselves make therefrom. Referring to that report for details we summarize the ultimate facts most material to the present issues. The State rates known as the Cummer scale were voluntarily established in substance in 1903 and 1904 by Jacksonville & Southwestern R. R. Co., when railroad and timber to be transported were owned by the same interests. The rates were inherited by the Atlantic Coast Line R. R. Co., on purchasing the railroad involved, and were by it applied as carload rates over all its lines in Florida in 1914. The Florida Railroad Commission at the time asserted that it did not approve the rates though perforce it allowed them, considering them too low and even confiscatory if involuntarily enforced. They apply on no other railroad in Florida. In 1928 and in 1932 comparisons of these rates with other rates on logs and on similar traffic in the same and neighboring territories showed them to average less than half of most other comparable interstate and intrastate rates, and to be much the lowest of any of them. They are about one-half the rates fixed by the Interstate Commerce Commission for interstate traffic in the same logs in substantially the same territory. On the question of the cost of the service figures were considered which showed the average cost of hauling logs over the Coast Line system, exact figures for the par-

ticular traffic in Florida not being available. But it appeared that the cost of the service in Florida was probably higher than elsewhere. It was found that there was no profit but an out-of-pocket loss to the carrier in the log traffic under these rates, not considering taxes and return on the investment, and that consequently there was no contribution to the maintenance of the carrier as an efficient instrumentality of commerce, but a drain upon it. The total amount of this drain before 1929 was not found, nor could it be approximated from the evidence. But for the two years, 1929 and 1930, when the interstate rates fixed by the Interstate Commerce Commission were enforced, the log traffic under them was 18,602 cars, and the gross revenue from this intrastate traffic was $571,508.94, whereas if the Cummer scale had been applied it would have been $281,225.75. Although the traffic fell off greatly during this period it is found to be more due to the universal depression in business and to the moving of mills to the timber than to the raise in rates, because there was no substantial increase after the Cummer rates were restored following the division of the Supreme Court above referred to. Abundant available timber still exists in Florida, and is being rapidly reproduced, so that the future traffic will likely amount to at least 7,431 cars per year, and the average gross revenue on it under the new rates will be more than $100,000.00 per year greater than the Cummer scale would yield, thus converting a loss on the business into a profit of that approximate amount. As showing that the carrier as an instrumentality of interstate commerce cannot afford to absorb the loss under the Cummer scale, or to forego the support to be derived from the new scale, it is found that the carrier's net return on its investment is steadily falling from year to year, and in 1930 was only 2.54%. On these findings the general finding was made that the Cummer rates are and in future will be unjustly discriminatory against interstate commerce, and that such unjust dis-

crimination can and should be removed by rates not less than the scale prescribed for interstate commerce. Pending this litigation, in October, 1932, the Commission reopened its order and took further evidence which showed that many voluntarily reduced rates had been established since the order by other carriers on low-grade traffic in raw materials comparable to the log rates in dispute, in the western part of the southern territory and in southwestern territory. If found, and the evidence well warranted the finding, that the reductions were a temporary experiment made in the effort to recapture traffic which had been taken away by trucks, and generally the lowered rates carried an obligation that the manufactured article should also be moved by the carrier making the rate. The experiment has met with but little success. No such rates exist in the Florida territory here involved, nor is truck competition there such as to make unremunerative rates judicious as likely to improve net revenues. On January 9th, 1933, the Commission reaffirmed its order of July 5, 1932."

BRIEF OF THE LAW.

1. There can be no question but that the Congress has the power to authorize the Interstate Commerce Commission to establish intrastate rates in order to remove unjust discrimination against interstate commerce.

This has been specifically settled in this particular controversy in *Florida* v. *United States*, 282 U. S. 194, at 210, and authorities cited.

2. Congress has exercised its power and has authorized the Interstate Commerce Commission to exercise this authority. *Interstate Commerce Act*, §§3, 13 (3) (4) and 15(*a*). There is a "dovetail" relation between sections 13 and 15(*a*) of the Act to regulate commerce to the end that

"intrastate traffic should pay a fair proportionate share of the cost of maintaining an adequate railway system."

Wisconsin R. R. Comm. v. *C., B. & Q. R. R. Co.*, 257 U. S. 563.

If intrastate commerce does not bear that proportionate share, it thereby places a burden upon interstate commerce.

"If the rates, on which such receipts, (intrastate shipments) are based, are to be fixed at a substantially lower level than in interstate traffic, the share which the intrastate traffic will contribute will be proportionately less. If the railways are to earn a fixed net percentage of income, the lower the intrastate rates, the higher the interstate rates may have to be."

Wisconsin R. R. Comm. v. *C., B. & Q. R. R. Co.*, *supra.*

(3) "Whether a rate is unjustly discriminatory is a question on which the finding of the Commission, supported by substantial evidence, is conclusive, unless there was some irregularity in the proceeding or some error in the application of rules of law."

Virginia Railway Company v. *United States*, 272 U. S. 658;

Western Paper Makers' Chemical Co. v. *United States*, 271 U. S. 268;

Tagg Brothers & Moorehead v. *United States*, 280 U. S. 420;

Houston & Texas Railway Co. v. *United States*, (Shreveport case) 234 U. S. 342;

Skinner & Eddy Corporation v. *United States*, 249 U. S. 557-562;

Georgia Public Service Commission v. *United States*, 283 U. S. 765;

Manufacturers Railway Co. v. *United States*, 246 U. S. 457-481;

Louisiana Public Service Commission v. *New Orleans & Texas Railroad*, 284 U. S. 125.

The decision of this Court in *Florida* v. *United States*, *supra*, involving the same controversy as is involved in appeal, makes no different ruling.

From *Manufacturers Railway Company* v. *United States*, *supra*, we quote as follows:

> "Whether a preference or advantage or discrimination is undue or unreasonable or unjust is one of those questions of fact that have been confided by Congress to the judgment and discretion of the Commission, (*Interstate Commerce Commission* v. *Alabama Midland Ry. Co.* 168 U. S. 144, 170), and upon which its decisions, made the basis of administrative orders operating *in futuro*, are not to be disturbed by the courts except upon a showing that they are unsupported by evidence, were made without a hearing, exceed constitutional limits, or for some other reason amount to an abuse of power. This results from the provisions of §§ 13 and 16 of the Commerce Act as amended in 1906 and 1910, expounded in familiar decisions."

Discussion of Case of Crowell v. Benson.

In the court below it was argued by the appellants that the case of *Crowell* v. *Benson*, 285 U. S. 22, decided by this Court on February 23, 1932, changed the effect of the decisions above noted, and others of like kind; and that inasmuch as the existence of unjust discrimination against interstate commerce by an intrastate rate was essential to the arising of the Interstate Commission's power to fix intrastate rates, the question of the existence of such unjust discrimination was subject to a *de novo* review by the Court. Some of the appellants contended, as we have pointed out, that the *de novo* review of the court should be on an independent record, while one appellant contended that it should be on the record made before the Commission.

We respectfully submit that neither contention is correct and the lower court was correct in so ordering.

This Court, in the *Crowell* v. *Benson case*, drew a distinction between "cases of private right" and "those which arise between the Government and persons subject to its authority in connection with the performance of the constitutional functions of the executive or legislative departments." The Court treats those two divisions of the subject as "categories," and at page 51 the Court says:

> "'Familiar illustrations of administrative agencies created for the determination of such matters are found in connection with the exercise of the Congressional power as to interstate and foreign commerce, taxation, immigration, the public lands, public health, the facilities of the post office, pensions, and payments to veterans.'"

In Note 13, on page 51, the Court cites a number of cases including some of those hereinbefore cited.

The Court declared:

> "The present case (the Benson case) does not fall within the categories just described but is one of private right, that is, of the liability of one individual to another under the law as defined" (285 U. S. at 51).

Of course, the making of rates for future application is a legislative process. It has been so held by this Court many times. Note—

L. & N. R. R. Co. v. *Garrett*, 231 U. S. 298, at 305;
Manufacturers Railway Co. v. *U. S.*, 246 U. S. 457,

heretofore referred to.

In the case of *Interstate Commerce Commission* v. *Louisville & Nashville Rd. Co.*, 227 U. S. 88, at page 92, the Court held:

> "Under the statute (to regulate commerce) the carrier retains the primary right to make rates, but if, after hearing, they are shown to be unreasonable, the Commission may set them aside and require the sub-

> stitution of just for unjust charges. The Commission's right to act depends upon the existence of this fact, and if there was no evidence to show that the rates were unreasonable, there was no jurisdiction to make the order. *Int. Com. Comm.* v. *Northern Pacific Ry.*, 216 U. S. 538, 544. In a case like the present the courts will not review the Commission's conclusions of fact, (*Int. Com. Comm.* v. *Delaware, etc. Ry.*, 220 U. S. 235, 251), by passing upon the credibility of witnesses, or conflicts in the testimony. But the legal effect of evidence is a question of law."

In the case at bar the finding of unjust discrimination against interstate commerce is no more of a jurisdictional pre-requisite to the action of the Interstate Commerce Commission than was the finding of unreasonableness in the Louisville & Nashville case. The finding in that case was essential to the arising of the power in the Commission to take from the railroad company "its primary right to make rates." The finding of undue discrimination against interstate commerce in the present case was likewise essential to the arising of the power in the Commission to tear down the Florida intrastate rates (the Cummer scale). Like finding was necessary in the *Shreveport case*, 234 U. S. 342, at pages 357 and 358.

This is also true in the rulings of this Court in the cases heretofore cited of

Virginian Railway Co. v. *United States*, 272 U. S. 658;

Western Papermakers' Chemical Co. v. *U. S.*, 271 U. S. 268;

Skinner & Eddy Corp. v. *United States*, 249 U. S. 557-562;

Georgia Public Service Commission v. *U. S.*, 283 U. S. 765;

Manufacturers Railway Co. v. *United States*, 246 U. S. 457-481.

In all of these cases the Commission's findings, supported by substantial evidence, were held to be conclusive though the question of discrimination or unreasonableness was the basis of the Commission's jurisdiction.

We have pointed out that the court below did not rely, either in its findings of fact or conclusions of law, upon the finding that the Commission's conclusions were supported by evidence, but it has, in this case, found that the findings of both fact and law are the same as they themselves would have found.

It would seem, therefore, that the claim that the case of *Crowell* v. *Benson* has worked any change in the jurisprudence of this subject is wholly without merit.

The Effect Given by the Commission and the Court Below to the Rates Experimentally Established in Certain Parts of the Southeastern Territory for the Transportation of Logs.

We have shown that the Interstate Commission found, in its report of January 9, 1933, on the reopened hearing, that these rates are, for the most part, transit rates; that is, the shipper is not entitled to the reduced rate until he ships over the same railroad which brought the logs to the manufacturing point, the products which are manufactured from those logs; that the rates are experimental and were put into effect to meet truck competition, and rail and truck competition. Those rates apply to limited distances and are based upon carloads, regardless of the capacity of the car or the amount loaded. To illustrate: a car with 60,000 pounds capacity brings no more revenue than a car of 120,000 pounds capacity, both being fully loaded.

The Interstate Commission, as we have shown, in its report of January 9, 1933, expressed its displeasure at this form of rates, stating:

> "Generally we do not approve of rates published in amounts per car regardless of weight and nothing herein contained should be considered as an approval of rates so published on logs." (190 I. C. C. 600).

This method of fixing rates has been criticized in the cases of *S. A. L. Ry. Co.* v. *Lumberman's Co.*, 168 Ga. 851; *L. & N. Rd. Co.* v. *Speed-Parker, Inc.*, 137 South. 724 (from the Supreme Court of Florida), and *Leonard* v. *Railroad*, 2 I. C. C. 602. This form of rates makes room for discrimination and favoritism, and gives the carrier no control whatsoever over its tonnage rates.

Comparison of rates is a method often used in proceedings to establish the reasonableness or unreasonableness of a rate which is under attack. This method was used in this cause. The Commission had the right

> "to compare the rates assailed with other rates which *in its judgment* formed a proper basis of comparison." *Northern Pac. Ry. Co.* v. *United States*, 60 Fed. (2d) 302, at 308. (Italics added.)

The court meant by that decision to hold that the very fact of determining what rates are proper for such use is the prerogative of the Commission and involves the exercise of the Commission's judgment and experience.

This Court has recognized that

> "competition by rail as well as by water may compel such a reduction in rates as altogether to destroy their value for purposes of comparison." *Louisville & Nashville Railroad* v. *United States*, 238 U. S. 1, 13.

Of course, if water competition or rail competition can have that result, competition by trucks can also have it. That is, a rate forced upon a carrier by competition can be so low as to make the rate thus fixed an improper standard of comparison for the movement of the same or like commodities for similar distances over the same lines.

The Commission found truck competition, and to a lesser degree carrier competition, had caused the responsible traffic officials of the various railroads operating in the western portion of southern territory to establish experimentally the new rates referred to. It also found that neither the transportation nor competitive conditions in Florida were similar to those elsewhere (190 I. C. C. 598 and 599).

The findings of the Commission as to the value of those newly established rates for purposes of comparison should, we respectfully submit, fall under the same rules which apply to other findings of fact by the Commission, when those findings are sufficiently supported by evidence; namely, they should be treated by the Court as conclusive.

WHEREFORE Atlantic Coast Line Railroad Company respectfully prays that this Court determine that the questions raised in this appeal, having been so fully settled in the previous adjudications in this cause, and by the rules well established in such matters, the Federal question is not substantial. It also prays that this, its motion to dismiss the appeal or affirm the judgment of the lower court, be granted.

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ALSTON, ALSTON, FOSTER & MOISE,
Of Counsel.

May 2, 1933.

(Copy.)

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION.

In Equity.

Nos. 690, 691 and 695.

STATE OF FLORIDA ET AL., *Complainants*,

versus

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, ATLANTIC COAST LINE RAILROAD COMPANY, Intervenor, *Respondents*.

Consolidated Petitions for Injunction.

This consolidated cause came on for hearing for a final decree on Feb. 24, 1933, and was submitted upon the pleadings and evidence introduced then and theretofore to a special court composed of Honorable Samuel H. Sibley, Circuit Judge, Honorable E. Marvin Underwood, District Judge, and Honorable Louie W. Strum, District Judge.

Pursuant to the findings of fact and conclusions of law filed herewith, it is now considered, ordered and decreed that the orders of the Interstate Commerce Commission, made July 5, 1932, and the order of the Interstate Commerce Commission confirming the same made Jan. 9, 1933, as set forth in the pleading, be and are hereby sustained, and the prayer to annul and set aside and enjoin the same is refused, and that the respondents recover of the complainants their costs in this behalf to be taxed by the Clerk.

This February 24, 1933.

SAM'L H. SIBLEY,
Circuit Judge.
E. MARVIN UNDERWOOD,
District Judge.
LOUIE W. STRUM,
District Judge.

(Copy.)

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UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, ATLANTIC COAST LINE RAILROAD COMPANY, Intervenor, *Respondents*.

Consolidated Petitions for Injunction.

Three bills were filed against the United States and Interstate Commerce Commission, one by the State of Florida and the Florida Railroad Commission, another by Wilson Cypress Company and Wilson Lumber Company, and the third by F. S. Buffum & Co., Inc. Each upon similar allegations seeks to set aside and enjoin an order of the Interstate Commerce Commission made July 5, 1932, and amended July 28, 1932, whereby rates were prescribed for intrastate carload shipments in Florida of logs of certain classes conforming to rates established as reasonable for like shipments in interstate commerce between Florida and Georgia. The Atlantic Coast Line R. R. Co., the carrier whose rates were involved, intervened. After the grant of an order suspending the operation of the rates the bills were by consent consolidated and heard before a court of three judges on the pleadings and on the evidence submitted.

Findings of Fact.

The attacked order of the Commission is its final judgment on a proceeding instituted in 1926 by the Georgia Public Service Commission to which the complainant and intervenor in the present bills became parties. The then existing interstate rates on logs between Florida and Georgia were complained of, and the Florida intrastate rates referred to as the Cummer scale were attacked as

causing undue prejudice to persons and places in Georgia in their commerce with Florida, and unjust discrimination against interstate commerce under § 13 of the Interstate Commerce Act. After lengthy hearings, on Aug. 2, 1928, reasonable interstate rates were fixed, and upon a general finding that the intrastate rates in question caused discrimination against interstate commerce an intrastate rate was prescribed to conform to the new interstate rates. 146 I. C. C. 717. On attack in this court against that part of the order fixing the intrastate rate it was upheld as justified for the removal of discrimination against persons and places in Georgia by confining its application to north Florida. 30 Fed. (2d) 116. The order was, however, clarified by the Commission so as to require its application to the entire State, and upon further attack it was upheld as proper to remove a discrimination against the general interstate commerce of the carrier in that the State rates were so low as to be unremunerative and to burden the revenues of the carrier. 31 Fed. (2d) 580. On appeal the Supreme Court declined to consider the evidence but reversed the judgment because there were not distinct findings by the Commission of the facts going to show such discrimination by a burden on revenues, the Court holding that the general finding that there existed a discrimination against interstate commerce in the language of § 13 (4) of the Act was insufficient to authorize the Commission to exercise its powers under that section; but it was suggested that such findings might yet be made upon proper evidence. 282 U. S. 194. This Court accordingly entered its decree setting aside and annulling the portion of the order complained of. Thereupon the Georgia Public Service Commission and the Atlantic Coast Line R. R. Company on due notice to all parties, including the present complainants, moved the Interstate Commerce Commission to reopen the case before it, which over objection was done, and much new evidence was added to that previously taken. A motion was made by the present complainants at the beginning of the hearing to dismiss the proceedings as respects any issue of burden on the revenues of the carrier, and to exclude all evidence directed to that contention. The motions were overruled by the examiner, and again by the full

Commission, which after argument made an elaborate and lengthy report of its findings, put aside the question of undue prejudice by the State rates to persons and places in Georgia as unnecessary to be decided, but held the rates to be burdensome on the interstate carrier's revenues and thus a discrimination against interstate commerce, which it removed by again prescribing under § 13 (4) of the Act future State rates to conform to the interstate rates which it had established as reasonable. 186 I. C. C. 157.

We find the conclusions of fact in the Commission's report to be well supported by the evidence, and such as we would ourselves make therefrom. Referring to that report for details we summarize the ultimate facts most material to the present issues. The State rates known as the Cummer scale were voluntarily established in substance in 1903 and 1904 by Jacksonville & Southwestern R. R. Co., when railroad and timber to be transported were owned by the same interests. The rates were inherited by the Atlantic Coast Line R. R. Co., on purchasing the railroad involved, and were by it applied as carload rates over all its lines in Florida in 1914. The Florida Railroad Commission at the time asserted that it did not approve the rates though perforce it allowed them, considering them too low and even confiscatory if involuntarily enforced. They apply on no other railroad in Florida. In 1928 and in 1932 comparisons of these rates with other rates on logs and on similar traffic in the same and neighboring territories showed them to average less than half of most other comparable interstate and intrastate rates, and to be much the lowest of any of them. They are about one-half the rates fixed by the Interstate Commerce Commission for interstate traffic in the same logs in substantially the same territory. On the question of the cost of the service figures were considered which showed the average cost of hauling logs over the Coast Line system, exact figures for the particular traffic in Florida not being available. But it appeared that the cost of the service in Florida was probably higher than elsewhere. It was found that there was no profit but an out-of-pocket loss to the carrier in the log traffic under these rates, not considering taxes and return on the investment, and that consequently there was no contribution to the

maintenance of the carrier as an efficient instrumentality of commerce, but a drain upon it. The total amount of this drain before 1929 was not found, nor could it be approximated from the evidence. But for the two years, 1929 and 1930, when the interstate rates fixed by the Interstate Commerce Commission were enforced, the log traffic under them was 18,602 cars and the gross revenue from this intrastate traffic was $571,508.94, whereas if the Cummer Scale had been applied it would have been $281,225.75. Although the traffic fell off greatly during this period it is found to be more due to the universal depression in business and to the moving of mills to the timber than to the raise in rates, because there was no substantial increase after the Cummer rates were restored following the decision of the Supreme Court above referred to. Abundant available timber still exists in Florida, and is being rapidly reproduced, so that the future traffic will likely amount to at least 7,431 cars per year, and the average gross revenue on it under the new rates will be more than $100,000.00 per year greater than the Cummer scale would yield, thus converting a loss on the business into a profit of that approximate amount. As showing that the carrier was an instrumentality of interstate commerce cannot afford to absorb the loss under the Cummer Scale, or to forego the support to be derived from the new scale, it is found that the carrier's net return on its investment is steadily falling from year to year, and in 1930 was only 2.54%. On these findings the general finding was made that the Cummer rates are and in future will be unjustly discriminatory against interstate commerce, and that such unjust discrimination can and should be removed by rates not less than the scale prescribed for interstate commerce. Pending this litigation in October, 1932, the Commission reopened its order and took further evidence which showed that many voluntarily reduced rates had been established since the order by other carriers on low-grade traffic in raw materials comparable to the log rates in dispute, in the western part of the southern territory and in southwestern territory. It found, and the evidence well warranted the finding, that the reductions were a temporary experiment made in the effort to recapture traffic which had been taken away by trucks, and gen-

erally the lowered rates carried an obligation that the manufactured article should also be moved by the carrier making the rate. The experiment has met with but little success. No such rates exist in the Florida territory here involved, nor is truck competition there such as to make unremunerative rates judicious as likely to improve net revenues. On January 9th, 1933, the Commission reaffirmed its order of July 5, 1932.

Conclusions of Law.

We are of opinion that the particular findings are sufficient to support the general finding of unjust discrimination by the State rates against interstate commerce by undue burden on the interstate carrier's revenues, and to justify an order removing the discrimination by establishing the new rate prescribed.

The contention is vigorously renewed that the proceeding before the Commission never was one in which a burden by the State rates on the revenues of the carrier was made an issue, so that the Commission could properly so find and on that ground prescribe a State rate under § 13 (4) of the Act. We adhere to the views expressed in our former decisions, 30 Fed. (2), 116; 31 Fed. (2d) 580. It is true that the Georgia Public Service Commission in its original complaint did not ask that the Florida State rates be raised, and it rather preferred that interstate rates should be lowered, but the complainant directly challenged the State rates, alleged that they caused a discrimination against interstate commerce within § 13 of the Act, and prayed for its removal. The State of Florida was duly notified as required by that section, and on full hearing discrimination was found to exist and sought to be removed by prescribing a new State rate by virtue of § 13 (4). This Court held that discrimination by revenue burden was within the case before the Commission, and upheld the order on that ground only. The Supreme Court, 282 U. S. at p. 209, so far from disagreeing said: "As the Florida Railroad Commission appeared in defense of the intrastate rates, and the Railroad Company the rates of which were in question and other parties in interest, both shippers and carriers, were heard, the

question now presented relates to the substance of the determination of the Commission and its support in the evidence, rather than to mere matters of pleading and procedure. In making its order the Commission could exercise all the authority conferred by the Interstate Commerce Act for the purpose of removing such unjust discrimination as it found to exist. If the Commission had made adequate findings, supported by evidence, upon the point under consideration we should not be disposed to conclude that the order must be upset because of the manner in which the proceeding was initiated or because of the generality of the allegations of the complaint." Much more forcibly do these words apply, now that the parties have had another full hearing upon this precise issue, with full knowledge that courts and commission regarded that issue not only as present but as controlling. The Commission having in due form found that the State rates do cause an unjust discrimination against interstate commerce by the very words of § 13 (4): "It shall prescribe the rate * * * thereafter to be charged * * * in such manner as in its judgment will remove such discrimination." It is the judgment of the Commission and not the wish or the prayers of the Georgia State Commission that is to determine what shall be done about the discriminatory State rate.

Early in the reopened proceedings before the Commission the complainants made a written demand on Atlantic Coast Line R. R. Company that it produce a statement supported by individual car record movements, showing certain details as to cars of logs moving on its lines between points in [illegible] and Georgia for each of the years 1926, 1927, 19[illegible] moving [illegible] and a [illegible] terstate [illegible] those y[illegible] it exp[illegible] log tra[illegible] lack of [illegible] tinctio[illegible] did pr[illegible] fore.

ance. It will be noted that no specified books or papers were asked to be produced, nor any specified witness called on to tell what he might know. We are aware of no rule of law or practice which would require a litigent laboriously to compile information for his adversary, even if it were in his power to do so. Certainly it would lie in the discretion of the tribunal to decline to compel it. We find in such refusal no cause to upset an order founded on evidence which was duly produced before that tribunal.

But it is said that the information demanded was essential to a finding of unjust discrimination, the revenue before 1929 under the State rates being one of the things mentioned by the Supreme Court as necessary to be established. We do not understand that the revenue, either gross or net, produced by the State rates must be exactly established, but only that the operation of those rates and their effect upon the carrier must be investigated and found. It was here established that the State rates produced a loss, and were a drain on the carrier. It might have been desirable to show the extent of the loss, but if that be impracticable, and if it appear that the loss will be in the future substantial and the carrier is not in position to absorb it without detriment to his service and support as an interstate carrier, a sufficient case is made to find an unjust discrimination against interstate commerce, and to require its correction.

The ascertainment of the general fact of loss is said to be unlawful because the witnesses and the Commission dealt in part with the average costs of similar service over the Coast Line System and the general cost of hauling freight in the division which substantially embraces the State of Florida, rather than the actual cost of hauling logs in Florida. But it was shown that the latter information could not be gotten; that the cost of service in Florida for reasons given was greater than elsewhere in the System, so that average costs for the System really showed a loss cost than the Florida costs if they could have been separately ascertained. The difference in cost between hauling logs and other carload freight was also given attention. Not infrequently the best evidence obtainable has to be used as a basis for inferences, and conclusions of fact made there-

from with due allowance for possible inaccuracies are not invalidated because the best evidence logically possible was not at hand.

Appendix E of the Report entitled "Estimated Costs of Transporting Logs in Florida for the Average Distance of 81.36 Miles Based on A. C. L. Average Costs Per Unit for Calendar Year 1929 Applied to the Average Units Involved in Hauling Logs in that State", is attacked as being evidence considered by the Commission which was not introduced in the proceeding so that opportunity should be given to the parties to meet it, contrary to *Interstate Commerce Commission* v. *Louisville & Nashville R. R.*, 227 U. S. 88. We do not understand the appendix to be evidence considered by the Commission. It is rather the Commission's conclusion as to the cost of hauling logs in Florida for the distance shown to be the average under the Cummer scale, based on the evidence which had been produced to it as tending to show such cost. So far from vitiating the order made it rather tends to show the care and discrimination with which the inexact evidence of cost was examined and considered.

A contention strongly urged is that the direct prescription by the Interstate Commerce Commission of an intrastate rate is prima facie an unconstitutional invasion of the province of the state, so that the burden is on the defendants here to justify it before the court, and that in order to justify it the facts of justification, to-wit, those showing the state rate to be an unjust discrimination against interstate commerce, must clearly appear to this Court, the findings of the Commission not being conclusive, nor in themselves weighty on the very point of the Commission's jurisdiction. It is not doubted that the power of the Commission to make an order is a judicial question, and that the court may examine it independently. When, however, the very fact upon the existence of which the power to act depends has been contradictorily tried before the Commission itself, its conclusion fully expressed upon its record affirming the existence of the fact is certainly sufficient to put the burden upon those who deny it. While at one time all findings of the Commission were declared

by the statute to be only *prima facie* evidence of their correctness, that language has now been retained only with reference to money awards and to valuations of property by the Commission, and it is well established that under the enlarged and positive powers with which the Commission is now vested its findings of fact *within the scope of its powers* will not be reviewed by the courts if supported by evidence. *Merchants Warehouse Co.* v. *United States*, 283 U. S. 501. Where the matter examined relates to its power to act at all the decisions are perhaps not so explicit, but we may refer to the following expressions of the court as bearing directly upon it: In *I. C. C.* v. *Northern Pacific R. R. Co.*, 216 U. S. 538, 544, it was said: "We are of opinion that the Commission had no power to make the order if a reasonable and satisfactory through route already existed, and that the existence of such a route may be inquired into by the courts. How far the courts should go in that inquiry we need not now decide. No doubt in complex and delicate cases, great weight should be attached to the judgment of the Commission." In *Interstate Commerce Commission* v. *Union Pacific R. R. Co.*, 222 U. S. 541, 547, in discussing fundamental questions of the constitutional and statutory power of the Commission it was said: "In determining these mixed questions of law and fact the court confines itself to the ultimate question whether the Commission acted within its power * * * Its conclusion, of course, is subject to review, but when supported by evidence is accepted as final; not that its decision, involving as it does so many and such vast public interests, can be supported by a mere scintilla of proof, but the courts will not examine the facts further than to determine whether there was substantial evidence to sustain the order." In *Interstate Commerce Commission* v. *L. & N. R. R. Co.*, 227 U. S. 88, the court held that the power of the Commission to alter rates depended upon the fact of their unreasonableness, but that the Commission having found no evidence that they were excessive, its order was not to be disturbed. In *United States* v. *L. & N. R. R. Co.*, 235 U. S. 314, 320, the language held is: "It is not disputable that from the beginning the very purpose for which the

Commission was created was to bring into existence a body which from its peculiar character would be most fitted to primarily decide whether, from facts disputed or undisputed, in a given case preference or discrimination existed, and the amendments by which it came to pass that the findings of the Commission were made not merely *prima facie* but conclusively correct in case of judicial review, except to the extent pointed out in the Illinois Central and other cases *supra*, show the progressive evolution of the legislative purpose and the inevitable conflict which exists between giving that purpose effect and upholding the view of the statute taken by the court below. It cannot be otherwise since if the view of the statute upheld below be sustained the Commission would become but a mere instrument for the purpose of taking testimony to be submitted to the courts for their ultimate action." We need not decide whether in this case the Commission's finding of unjust discrimination is entitled to any less weight because it is a prerequisite of its jurisdiction as well as the meritorious basis for its exercise, because we have examined the evidence independently and are led to the same conclusion that the unjust discrimination exists.

In the evidence of lower voluntary rates recently made by other carriers in other territory we find nothing to require a different conclusion. A situation may thereby arise requiring inquiry as to other discriminations, but it throws little light on the revenue problem of the Atlantic Coast Line Railroad Company as an interstate carrier. If log traffic done in Florida on the Cummer scale is at an out-of-pocket loss, the less of it done the better. The destruction of it would help by stopping a loss. If but a little business be done on remunerative rates so much profit would be substituted. The Commission has given full and expert attention to the situation, and has found that adherence to the level of log rates it has previously established as reasonable in interstate commerce and has applied as a minimum in intrastate commerce in Florida should be continued. We find no such plain case to the contrary as to warrant court interference. The findings and the evidence show the Cummer scale of rates to constitute

such a substantial revenue burden on the Interstate carrier and on interstate commerce as to cause a discrimination against the latter and to give the Commission power to remove it under Interstate Commerce Act, § 13 (4). The action to be taken in removing it is left by the section to the judgment of the Commission. It having power in this case to prescribe a proper intrastate rate, its judgment as to the level of the rate to be established in order to accomplish the desired revenue result ought not to be overridden when sustained by evidence and violative of no law. We uphold the orders of the Commission.

SAM'L. H. SIBLEY,
Circuit Judge.

E. MARVIS UNDERWOOD,
District Judge.

LOUIE W. STRUM,
District Judge.

Filed by the Court at New Orleans, La., Feb. 24, 1933.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1933.

No. 342.

STATE OF FLORIDA *et al.*, *Appellants*,

versus

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, ATLANTIC COAST LINE RAILROAD COMPANY, *Intervenor*, *Appellees*.

Reports and Orders of the Interstate Commerce Commission.

146 I. C. C. 717.
186 I. C. C. 157.
190 I. C. C. 588.

Appendices to Motion of Atlantic Coast Line Railroad Company.

INTERSTATE COMMERCE COMMISSION

No. 18364

GEORGIA PUBLIC SERVICE COMMISSION *v.* ATLANTIC COAST LINE RAILROAD COMPANY

Submitted December 16, 1927. Decided August 2, 1928

1. Interstate rates on logs, except walnut, cherry, and cedar, in carloads, from Florida points north of and including Jacksonville, Gainesville, Burnett's Lake, and High Springs, Fla., to destinations in Georgia found unreasonable. Reasonable rates prescribed.
2. Florida intrastate rates on logs, except cedar, in carloads, found to be unduly preferential of shippers in intrastate commerce, unduly prejudicial to shippers in interstate commerce, and unjustly discriminatory against interstate commerce. Rates prescribed which will remove such preference, prejudice, and discrimination.

James A. Perry, W. R. McDonald, O. R. Bennett, Albert J. Woodruff, and *E. M. Price* for complainant.

J. M. Simmons for Elberta Crate Company, intervener, and Champion Box Company; *J. C. Jackson* and *H. A. Jackson* for Jackson Brothers Lumber Company; *J. E. Davies* for himself; and *C. C. Giddens* for J. N. Bray & Company.

Carl H. Davis, Robert C. Alston, and *W. E. Kay* for defendant.

Frank W. Gwathmey and *Henry Thurtell* for Seaboard Air Line Railway Company, Central of Georgia Railway Company, Southern Railway Company, and Georgia Southern & Florida Railway Company; and *J. A. Strieyer* for American Short Line Railroad Association, interveners.

A. S. Wells, E. S. Matthews, Mamie G. Eaton, R. Hudson Burr, Fred H. Davis, J. H. Teuch, and *Fred Pettijohn* for Florida Railroad Commission.

T. J. McGinn for Board of Trade and city of Savannah.

Charles E. Cotterill for Cummer Cypress Company, Wilson Cypress Company, and Putnam Lumber Company; *Edward P. Saulsbury* and *George L. Rutherford* for Brooks-Scanlon Corporation; *H. P. Adair* for Putnam Lumber Company, *H. P. Osborne* for Wilson Cypress Company; *E. W. Mitchell* for Cummer Cypress Company; *J. S. Farish* for Southeastern Forest Products Association; *J. O. Cassidy* and *E. C. Green* for Jacksonville Traffic Bureau; *R. E. Mich* for Southern Cypress Manufacturers' Association; and *A. G. T. Moore* for Southern Pine Association, interveners.

BY THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND WOODLOCK

BY DIVISION 4:

Exceptions were filed by complainant and by interveners Seaboard Air Line, Central of Georgia, Southern, and Georgia Southern & Florida to the report proposed by the examiner, to which the Florida Railroad Commission and interveners Jacksonville Traffic Bureau, Southeastern Forest Products Association, Brooks-Scanlon Corporation, Putnam Lumber Company, Wilson Cypress Company, and Cummer Cypress Company replied. The case has been orally argued. Our conclusions differ from those recommended by the examiner.

By complaint filed May 3, 1926, complainant alleges on behalf of Georgia log shippers that the rates on logs in carloads from points in Florida on defendant's lines to destinations in Georgia on defendant's lines are unjust and unreasonable and, as compared with the rates applicable intrastate within Florida, unjustly discriminatory and unduly prejudicial, and that defendant's Florida intrastate rates are unduly preferential of intrastate shippers in Florida, unduly prejudicial to interstate shippers from Florida to Georgia, and unjustly discriminatory against interstate commerce. Reasonable, nonprejudicial, and nondiscriminatory rates for the future are sought.

The Florida Railroad Commission filed no formal petition of intervention but appeared in defense of the Florida intrastate rates. The Elberta Crate Company of Bainbridge, Ga., intervened in support of the complaint. The Seaboard Air Line, Central of Georgia, Southern, Georgia Southern & Florida, and the American Short Line Railroad Association intervened in opposition to the continuance of the present Florida intrastate rates and to the extension of such rates intrastate to Georgia. The Jacksonville Traffic Bureau, Brooks-Scanlon Corporation, Putnam Lumber Company, Wilson Cypress Company, and Cummer Cypress Company, hereinafter referred to as the Florida interveners, intervened in support of the Florida rates. The Georgia-Florida Sawmill Association, now the Southeastern Forest Products Association, the Southern Pine Association, and the Southern Cypress Manufacturers' Association also intervened in opposition to the complaint.

At the hearing the Florida Railroad Commission and the Florida interveners moved that the complaint be dismissed on the grounds that evidence sufficient to constitute a cause of action within the power of this commission to remedy had not been submitted and that the allegations of the complaint had not been sustained. The evidence justifies consideration of the case on its merits and the motion is denied.

While complainant assails the rates from all points on defendant's lines in Florida to all points on its lines in Georgia, the record shows that in so far as the interstate rates are concerned relief is desired only with respect to rates on logs, except walnut, cherry, and cedar, from that portion of Florida lying north of and including Jacksonville, Gainesville, Burnett's Lake, and High Springs, hereinafter referred to as north Florida, to destinations in Georgia for distances not exceeding 170 miles.

The interstate rates from north Florida to Georgia are published in cents per 100 pounds, minimum 40,000 pounds, and apply between north Florida and points south of Charleston, S. C. They became effective August 15, 1925, as a part of a general revision of defendant's log rates. From points south of Jacksonville, Gainesville, Burnett's Lake, and High Springs higher interstate rates apply. The Florida intrastate rates assailed are published in amounts per car, minimum 50,000 pounds, excess in proportion, and apply on logs, except cedar, for 170 miles and under. There follows a brief history of the latter rates.

On June 29, 1903, a contract was entered into between the Jacksonville & Southwestern Railroad and the Cummer Lumber Company, controlled by the same interests, under which the former agreed to transport logs for the latter at certain specified rates for a period of 15 years. The Jacksonville & Southwestern extended from Jacksonville southwesterly to Newberry, Fla., approximately 85 miles. The mills of the Cummer Lumber Company were at Mildale, near Jacksonville. Under this contract the rates per car of 50,000 pounds were $4 for distances under 40 miles, $7 for distances from 40 to 60 miles, and $8 for distances from 60 to 90 miles, with $1 per car additional for each 10 miles over 90, the rate from the Suwannee River not to exceed $10 per car. These rates are generally referred to as the Cummer scale. Defendant acquired the properties of the Jacksonville & Southwestern in 1904 and had to assume the obligations of that company under the contract referred to. Upon its expiration in 1918 the contract was not renewed. In the meantime, on January 26, 1914, defendant entered into a similar contract with the Carpenter-O'Brien Company, the predecessor of intervener Brooks-Scanlon Corporation, which was to continue in effect until such time as the timber in Lafayette and Perry Counties, Fla., then owned by the Carpenter-O'Brien Company, consisting of approximately 1,000,000,000 feet of pine, largely tributary to defendant's line extending from Newberry to Perry, Fla., had been transported. The contract provided for movement from points between Clara, and Perry, inclusive, to the plant of the lumber company at Eastport near Jacksonville, 142 to 166 miles, in trainloads of not less than 30 cars per day, or 60 cars

every other day, Sundays and legal holidays excepted, at a rate of $12 per car, minimum 50,000 pounds, excess in proportion. It was stipulated that the contract should be subject to Federal and Florida laws and to the order of any court or commission of competent jurisdiction. Pursuant to this contract defendant filed schedules with the Florida commission extending the Cummer scale to $11 per car for distances from 110 to 130 miles, and $12 per car for distances from 130 to 150 miles. That commission refused to permit the proposed rates to become effective because they were published to apply only on trainloads and were not available to all shippers. It further advised defendant that the rates themselves were too low and such as might be deemed confiscatory. The rates were republished to apply on carloads over all of defendant's Florida lines and became effective October 30, 1914. On July 5, 1916, the scale was extended so as to apply the $12 rate for distances to 160 miles. On April 30, 1919, the scale was further extended by establishing a rate of $16.50 for distances to 170 miles, the latter rate including the 25 per cent general increase of June 25, 1918. These rates were established and, as modified by the subsequent general increases and reduction, have been continued by defendant for the purpose of complying with its contractual obligations and not because it considers the scale proper for general application on intrastate traffic within Florida. The record shows 128,163 carloads containing approximately 700,000,000 feet of timber transported under the Carpenter-O'Brien contract from 1915 to 1926, both inclusive, and on argument defendant estimated that at the rate of movement at that time the contract would have from two to three years more to run. The record also shows that intervener Brooks-Scanlon Corporation on August 31, 1926, owned timber in Wakulla, Jefferson, Madison, Taylor, Lafayette, and Dixie Counties, Fla., estimated to contain 1,207,432,000 feet.

The Florida commission and the Florida interveners contend that the Florida intrastate rates are remunerative to defendant and should not be changed. They neither advocate nor oppose the extension of such rates interstate to Georgia. The intervening carriers contend that defendant's Florida intrastate rates are unreasonably low and are opposed to their continuance and to any reduction in defendant's interstate rates, contending that if the latter are reduced competition will necessitate corresponding reductions in their rates. Defendant does not consider the intrastate rates reasonably compensatory for general application throughout Florida but proposes to continue them, if permitted to do so, until the logs referred to in the Carpenter-O'Brien contract have been transported. It strongly opposes the use of such rates as a measure

of reasonable interstate rates from Florida to Georgia. While not admitting that the interstate rates are unreasonable, defendant submitted a proposal to revise such rates down to the level of the Alabama intrastate log rates which became effective June 1, 1927, pursuant to an order of the Alabama Public Service Commission. The scale proposed covers distances up to 450 miles and would apply on logs, except walnut, cherry, and cedar, in carloads, minimum 40,000 pounds. The proposed rates are on substantially the same basis as the present rates under the scales prescribed in *Pierpont Mfg. Co. v. S. Ry. Co.*, 50 I. C. C. 81, from points in South Carolina south of Columbia to Savannah, Ga., and in *Southern Veneer Asso. v. A. C. L. R. R. Co.*, 62 I. C. C. 669, on poplar and gum logs from points in South Carolina to destinations in North Carolina. They are on the same basis as those prescribed in *Southern Cotton Oil Co. v. A. C. L. R. R. Co.*, 120 I. C. C. 190, on logs, except walnut, cherry, and cedar, from points on defendant's line south of Charleston to Savannah. Defendant expresses a willingness to establish these rates for interstate application over its entire system except south Florida, and would apply them intrastate in North Carolina, South Carolina, and Georgia if permitted by State authorities. From south Florida defendant would establish interstate rates approximately 15 per cent higher than from north Florida.

The present interstate and intrastate rates and the proposed interstate rates from north Florida in cents per 100 pounds, and the earnings thereunder per car of 50,000 pounds for distances to 170 miles, follow:

Distance	Florida-Georgia interstate		Florida intrastate		Proposed interstate	
	Rate	Earnings	Rate	Earnings	Rate	Earnings
	Cents	Dollars	Cents	Dollars	Cents	Dollars
5 miles	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
10 miles	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
15 miles	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
20 miles	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
25 miles	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
30 miles	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
35 miles	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
40 miles	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
45 miles	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
50 miles	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
55 miles	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
60 miles	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
65 miles	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
70 miles	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
75 miles	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
80 miles	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
85 miles	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
90 miles	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
95 miles	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
100 miles	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
110 miles	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
120 miles	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
130 miles	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
140 miles	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
150 miles	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
160 miles	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
170 miles	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

Complainant introduced exhibits showing that defendant's pr posed interstate rates are higher than its intrastate log rates i various of the southeastern States, than the average of such intr state rates, and than the combined average of its intrastate an interstate rates. Rates substantially the same as those proposed b defendant were, however, prescribed by complainant in 1925 fo application within Georgia, and while complainant's order wa later rescinded, its rate expert testified that the rates then pre scribed were in his opinion on a reasonably low basis.

Complainant also submitted numerous comparisons between th Florida intrastate rates and the interstate rates to show undu prejudice to interstate shippers to Bainbridge, Albany, Thomas ville, Quitman, Valdosta, and Waycross, Ga., and undue preferenc of intrastate shippers to Florida points. No movement from Flor ida to Georgia is shown and complainant states that there can b none because of the substantially higher level of the rates inter state than intrastate. There are 64 sawmills along defendant's lin in Georgia within 170 miles of Florida, and representatives o some of them testified that there is available timber in Florid which could be economically purchased and transported over de fendant's line to Georgia mills if the rates were reasonable. Th following will illustrate the comparisons referred to. The charge per car of 50,000 pounds from Live Oak, Fla., to Jacksonville, 12 miles, are $16, while from Live Oak to Waycross, 83 miles, th charges are $35.

Defendant submitted evidence purporting to show the estimate cost of transporting logs of the Brooks-Scanlon Corporation dur ing September, 1928, from Perry and Carbur to Eastport, 16 and 144 miles, respectively; 1,371 loaded cars were transporte in trainloads of from 39 to 50 cars, and the estimated cost pe loaded car was $19.13. This cost does not include interest on in vestment except on equipment used. Based on a lading of 60,20 pounds, the average of 983 carloads transported for this shippe and intervener Putnam Lumber Company, the rate for the averag distance would yield revenue of $20.47 per car, but $1.34 over th estimated cost of service for trainload movements. The Florid commission also introduced a cost study to show that the intra state rates are remunerative to defendant. Its estimate was tha $14.62 represents the approximate cost per car of transportin logs in trainloads between the above points, which, deducted fro the average revenue per car of $20.47, leaves a net revenue o $5.85 per car. Both cost studies are based on certain arbitrar assumptions and both are based on movements in trainloads fro two points of origin to one destination. Neither can be accepted t show the approximate actual cost of transporting logs in singl

carloads intrastate throughout Florida. The record shows that while most of the Florida intrastate log traffic is in trainloads, there is a substantial movement over defendant's line in less than trainloads.

Defendant also shows that the earnings under the Florida intrastate rates are materially lower than the earnings under the interstate rates from Florida to Georgia on brick, sand, lime, and cement. For example, it shows that the interstate rate on sand and gravel for 160 miles, equivalent to 6.75 cents per 100 pounds, yields revenue of $62.46 per car based on a lading of 92,540 pounds, as contrasted with $18.70 on logs, based on a lading of 55,000 pounds. The weights used were the actual average weights on defendant's lines for 1925. It is also shown that these Florida intrastate rates are considerably lower than any other rates, intrastate or interstate, referred to of record.

Witnesses for the Florida interveners testified that any material increase in the Florida intrastate rates would either cause them to move their plants to the timber or abandon operations, in either of which events defendant would lose considerable traffic; that these interveners have expended millions in the development of their properties, communities have grown up in the vicinity of their mills, and abandonment of the present mill sites would result in heavy losses to them and to their employees; that it would cost intervener Brooks-Scanlon Corporation between three and four million dollars to move its plant from Eastport, which would probably lose most of its 5,000 inhabitants, as practically every family is dependent upon the operation of the plant; and that other Florida lumber companies and communities would be similarly affected. They also testified that there exists no Florida timber in commercial volume within 170 miles of Georgia which could be acquired by Georgia log shippers, as all of such timber is owned by Florida mills; and that while there are a few scattered areas of timber in north Florida held largely by farmers for their personal requirements, successful exploitation of these tracts, because of their limited extent, could only be accomplished by the use of portable mills operating in close proximity to the standing timber.

The intrastate rates which defendant proposes from north Florida are in our opinion reasonable. They are, as heretofore stated, the same as those prescribed by the Alabama commission for intrastate application within that State, and by us for interstate application in other sections of the Southeast. All of the Florida points from which they will apply appear to be located south of the line of the Seaboard Air Line extending from Jacksonville to River Junction, from and to which we invariably prescribe maximum reason-

able rates that are higher than from and to other points in southern territory.

It is manifest, we believe, that the intrastate rates assailed, which on the average are less than half of the proposed interstate rates, are less than reasonably compensatory. The rate for 160 miles yields but 4.25 mills a ton-mile, and, based on a lading of 60,200 pounds, 12.8 cents a car-mile. They are approximately one-half of the rates prescribed in *Rates on Chert, Clay, Sand, and Gravel*, 122 I. C. C. 133, on sand and gravel in the Southeast and less than one-half of the rates prescribed in the supplemental report in that case, 140 I. C. C. 85, to points in Florida south of the Jacksonville-River Junction line of the Seaboard Air Line. As stated in the original report in that case, sand and gravel are of unusual low value, it being doubtful whether any traffic moves which is worth less at point of production, load very heavily, and normally move in considerable volume without unusual switching operations at either end and without anything in the nature of special services. The evidence is not convincing that logs could not or would not move from Florida to Georgia if the interstate rates and the Florida intrastate rates were on the same level.

We find that the interstate rates on logs, except walnut, cherry, and cedar, in carloads, from points on defendant's lines in Florida north of and including Jacksonville, Gainesville, Burnett's Lake, and High Springs, to destinations on its lines in Georgia for distances not exceeding 170 miles are, and for the future will be, unreasonable to the extent that they exceed, or may exceed, the following distance scale of rates in cents per 100 pounds, minimum weight 40,000 pounds, which rates we find are and will be reasonable:

Distance	Rate	Distance	Rate
	Cents		*Cents*
10 miles and less	2.5	85 miles and over 70	5.5
20 miles and over 10	3	100 miles and over 85	6
30 miles and over 20	3.5	120 miles and over 100	6.5
40 miles and over 30	4	140 miles and over 120	7
55 miles and over 40	4.5	160 miles and over 140	7.5
70 miles and over 55	5	170 miles and over 160	8

We further find that the Florida intrastate rates assailed, which are lower than the interstate rates herein found reasonable for corresponding distances, result, and will result, in undue preference and advantage of shippers of intrastate traffic within the State of Florida, in undue prejudice to shippers of interstate traffic from points in the State of Florida to points in the State of Georgia, and in unjust discrimination against interstate commerce.

We further find that said undue preference and advantage, undue prejudice, and unjust discrimination can and should be removed

by the establishment of rates for intrastate application within Florida which shall correspond with the rates herein found reasonable for interstate application from Florida to Georgia.

We further find that whether the aforesaid rates pertain to transportation in interstate commerce or to transportation in intrastate commerce the transportation services in each instance are performed by defendant under substantially similar circumstances and conditions.

An appropriate order will be entered.

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 4, held at its office in Washington, D. C., on the 2d day of August, A. D. 1928

No. 18364

Georgia Public Service Commission

v.

Atlantic Coast Line Railroad Company

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and said division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which, said report is hereby referred to and made a part hereof:

It is ordered, That the above-named defendant be, and it is hereby, notified and required to cease and desist, on or before October 10, 1928, and thereafter to abstain, from publishing, demanding, or collecting its present rates for the transportation of logs, except walnut, cherry, and cedar, in carloads, from and to the points designated in the next succeeding paragraph hereof.

It is further ordered, That said defendant be, and it is hereby, notified and required to establish, on or before October 10, 1928, upon notice to this commission and to the general public by not less than five days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply to the transportation of logs, except walnut, cherry, and cedar, in carloads, from points on its lines in the State of Florida north of and including Jacksonville, Gainesville, Burnett's Lake, and High Springs, to destinations on its lines in the State of Georgia, the following rates in cents per 100 pounds, subject to a minimum weight of 40,000 pounds:

Distance	Rate	Distance	Rate
	Cents		*Cents*
10 miles and less	2.5	85 miles and over 70	5.5
20 miles and over 10	3	100 miles and over 85	6
30 miles and over 20	3.5	120 miles and over 100	6.5
40 miles and over 30	4	140 miles and over 120	7
55 miles and over 40	4.5	160 miles and over 140	7.5
70 miles and over 55	5	170 miles and over 160	8

It is further ordered, That said defendant be, and it is hereby, notified and required to cease and desist from practicing the undue preference and advantage, undue prejudice, and unjust discrimination found in said report to exist in the relation of intrastate and interstate rates and to establish, put in force, and maintain rates for the transportation of logs, except walnut, cherry, and cedar, in carloads; minimum weight 40,000 pounds, in intrastate commerce within the State of Florida which shall be the same as those prescribed in the next preceding paragraph hereof as reasonable for transportation in interstate commerce from points in the State of Florida to destinations in the State of Georgia.

And it is further ordered, That this order shall continue in force until the further order of the commission.

By the commission, division 4.

[SEAL.] GEORGE B. MCGINTY,
Secretary.

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INTERSTATE COMMERCE COMMISSION

No. 18364

GEORGIA PUBLIC SERVICE COMMISSION *v.* ATLANTIC COAST LINE RAILROAD COMPANY

Submitted February 3, 1932. Decided July 5, 1932

On further hearing:

1. Finding in original report, 146 I. C. C. 717, that rates on logs over 6 feet in length, except walnut, cherry, and cedar, in carloads, from points in northern Florida to destinations in Georgia for distances of 170 miles and less were unreasonable, affirmed. Present rates found reasonable.
2. Rates on logs over 6 feet in length, except walnut, cherry, and cedar, in carloads, applying on shipments between points on the Atlantic Coast Line Railroad Company in Florida for distances of 170 miles and less found unjustly discriminatory against interstate commerce. Nondiscriminatory basis of rates prescribed.

E. M. Price for complainant.

Frank W. Gwathmey, *Carl H. Davis*, *Robert C. Alston*, and *E. W. Moise* for defendant.

Gary D. Landis, attorney general for State of Florida, and *T. T. Turnbull* for Florida Railroad Commission.

H. P. Adair, *C. G. Ashby*, *C. E. Cotterill*, and *August G. Gutheim* for Brooks-Scanlon Corporation, Wilson Cypress Company, and Cummer Cypress Company; *J. V. Norman* for Wilson Lumber Company; *T. M. True* for Southern Cypress Manufacturers Association; *Thomas D. Guthrie* and *Russell W. Bennett* for various crate manufacturers, and *E. C. Green* for Jacksonville Traffic Bureau, interveners.

Report of the Commission on Further Hearing

Meyer, *Commissioner:*

In the original report herein, 146 I. C. C. 717, division 4 found that the interstate rates on logs, except walnut, cherry, and cedar, in carloads, from points on defendant's lines in Florida north of and including Jacksonville, Gainesville, Burnett's Lake, and High Springs, hereinafter called northern Florida, to destinations on its lines in Georgia for distances not exceeding 170 miles would be unreasonable for the future to the extent that they might exceed a certain scale of distance rates prescribed therein. The division further found that the Florida intrastate rates on similar logs for similar hauls, generally referred to as the Cummer scale, resulted,

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and would result, in undue preference and advantage of shippers of intrastate traffic within Florida, in undue prejudice to shippers of interstate traffic from points in Florida to points in Georgia, and in unjust discrimination against interstate commerce, and that said undue preference and advantage, undue prejudice, and unjust discrimination should be removed by establishing rates for intrastate application within Florida which would correspond with the rates found reasonable for interstate application from northern Florida to Georgia. An order carrying these findings into effect was entered on August 2, 1928.

The State of Florida, the members of the Florida Railroad Commission, and certain manufacturers of lumber in Florida, interveners in this proceeding, brought suits in the United States district court to enjoin that part of the order which dealt with the Florida intrastate rates. The court construed the order with respect to the Florida intrastate rates, which read "within the State of Florida," as being limited to points in northern Florida, and as so construed sustained the order. 30 Fed. (2d) 116. Thereafter, division 4 amended its order by inserting an additional exception of logs 6 feet or less in length, and, with respect to the intrastate rates, by substituting for the phrase "within the State of Florida" the words "within and throughout the entire State of Florida, without exception," such substitution being "for the purpose of clarification." On February 8, 1929, the order, amended as indicated, was complied with by the Atlantic Coast Line. Amended bills were filed in the district court and the case there reheard. The Atlantic Coast Line was allowed to intervene in support of the order. The court upheld the amended order, but only on the ground that it aimed at a discrimination against general interstate commerce caused by intrastate rates which were so low as to throw an undue burden upon the interstate revenues of the carrier. 31 Fed. (2d) 580. On appeal, the Supreme Court, dealing particularly with the ground upon which the order was sustained by the lower court, reversed the decree of that court, holding with respect to the Florida intrastate rates that the order was not supported by appropriate findings. *Florida* v. *United States*, 282 U. S. 194. The Supreme Court, among other things, said:

> The Commission made no findings as to the revenue which had been derived by the carrier from the traffic in question, or which could reasonably be expected under the increased rates, or that the alteration of the intrastate rates would produce, or was likely to produce, additional income necessary to prevent an undue burden upon the carrier's interstate revenues and to maintain an adequate transportation service.

If the facts as to the intrastate transportation of logs in Florida are such as to justify an order as to intrastate rates in order to end an unjust discrimination as against interstate commerce, either as between persons or localities, or because of an undue burden upon the revenues of the carrier, the Interstate Commerce Commission is still at liberty, acting in accordance with the authority conferred by the statute, to make such determinations as the situation may require.

Thereafter, upon petitions filed by complainant and defendant, we reopened the proceeding and assigned it for further hearing, which has been held. A proposed report of the examiners was served upon the parties, to which defendant and interveners filed exceptions, and the case has been orally argued. Our conclusions differ in part from those of the examiners.

Upon rehearing, the Atlantic Coast Line, though nominally the defendant, was in the position of a petitioner under section 13 (3) and (4) of the act seeking relief from what it contends are unduly low State rates.

At the further hearing the Florida interveners moved that the complaint should be dismissed as to the issue whether the Florida intrastate rates cause unjust discrimination against interstate commerce, if the complaint raises such an issue, which they still question, because of the absence of any legal interest in that issue by complainant and its failure to introduce evidence in support thereof. But, as stated in the report of division 4, the complaint in this proceeding alleges, among other things, that defendant's Florida intrastate rates are unjustly discriminatory against interstate commerce, in violation of section 13 of the act. Evidence pertinent of that issue was introduced. Similar objections made by the Florida interveners before the Supreme Court with respect to the scope of the proceeding were overruled, on the ground that—

as the Florida Railroad Commission appeared in defense of the intrastate rates, and the Railroad Company, the rates of which were in question, and other parties in interest, both shippers and carriers, were heard, the question now presented relates to the substance of the determination of the Commission and its support in the evidence rather than to mere matters of pleading and procedure;

The court further said:

In making its order, the Commission could exercise all the authority conferred by the interstate commerce act for the purpose of removing such discrimination as was found to exist. If the Commission had made adequate findings supported by evidence upon the point under consideration, we should not be disposed to conclude that the order must be upset because of the manner in which the proceeding was initiated or of the generality of the allegations of the complaint.

By section 13 (2) the duty is placed upon us to "investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory at the request of such commissioner or commission," and the same paragraph provides that "no complaint shall at any time be dismissed because of the absence of direct damage to the complainant." See *Interstate Commerce Commission* v. *Baird*, 194 U. S. 25, 39. Interveners' motion to dismiss is denied.

The effective date of the order entered by division 4 on August 2, 1928, was October 10, 1928. This date was postponed until February 8, 1929, when the rates prescribed were made effective on interstate traffic from northern Florida to Georgia and on intrastate traffic in Florida. The interstate rates have since remained continuously in force. No further evidence was introduced with respect to their reasonableness and they are apparently satisfactory to all interested parties. The interstate and intrastate rates prescribed applied for distances only up to and including 170 miles. There was no occasion to prescribe either interstate or intrastate rates for greater distances, for the reason that the intrastate (Cummer scale) rates, which were alleged to cause the undue prejudice against shippers and localities in interstate commerce and unjust discrimination against interstate commerce, applied for distances of only 170 miles and less, beyond which the Florida intrastate rates were much higher, distance considered, and were only slightly less than the then prevailing interstate log rates for the same distances.

Following the decision of the Supreme Court, rendered January 5, 1931, which set aside the order in so far as it applied to the Florida intrastate rates, the Cummer scale was restored, effective April 10, 1931, and is now in force. During the period from February 8, 1929, the effective date of the order, to April 10, 1931, the higher rates prescribed by the order were in effect.

The principal issue upon rehearing was whether the Cummer scale causes unjust discrimination against interstate commerce and that issue will now be considered.

The history of the Cummer scale was related in considerable detail in the original report. Briefly summarized, it originated in a contract made in 1903 between the Jacksonville & Southwestern Railroad Company and the Cummer Lumber Company, both then controlled by the same interests. Defendant acquired the properties of the former company in 1904, and assumed its obligations under the contract. During the pendency of the contract defendant entered into a similar agreement with the predecessor of intervener Brooks-Scanlon Corporation in connection with the transporta-

tion of approximately 1 billion feet of pine from Lafayette and Perry Counties, Fla., to its plant at Eastport, near Jacksonville, Fla., in trainloads. The Florida Railroad Commission refused to permit the establishment of the agreed rates in trainloads, and required that such rates as were established should apply on carloads and be available to all shippers on defendant's lines (see Appendix A). Said rates became effective on carload shipments over all of defendant's Florida lines October 30, 1914, and, as modified by subsequent general rate changes (and extended from 150 to 170 miles), have since been in effect, except during the period from February 8, 1929, to April 10, 1931. The Cummer scale never has applied over other railroads nor elsewhere than in Florida on defendant's lines for distances of 170 miles and less.

The rates under the Cummer scale are published in amounts per car of 50,000 pounds, excess in proportion. Certain other rates referred to herein are published in a similar manner. All will be stated in cents per 100 pounds.

Appendix B shows the various scales applying on logs on the most important railroads in southern territory. Column 1 shows the Florida intrastate rates applicable over defendant's lines on the kinds of logs here involved. The rates shown in that column for distances up to and including 170 miles are the Cummer scale rates, beginning with a rate of 1.71 cents for 5 miles and ending with a rate of 3.7 cents for 170 miles. The rates shown in the same column for distances greater than 170 miles are class P rates prescribed by the Florida commission for application on the same kinds of logs. It will be noted that while the Cummer scale rate for 170 miles is 3.7 cents, the Florida commission class P rate for 171 miles is 8.33 cents, or more than twice as high. The Florida commission class P rates were prescribed as maxima for all distances, but the defendant has applied the Cummer scale rates for distances of 170 miles and less, which are substantially lower than the class P rates for those distances, and has maintained the full class P rates for distances over 170 miles.

The rates under the Cummer scale for 5 miles, 110 miles, and 170 miles are 5.03 per cent, 3.54 per cent, and 3.85 per cent, respectively, of the first-class rates for the same distances prescribed by us in *Southern Class Rate Investigation*, 113 I. C. C. 200, 207, 128 I. C. C. 567, for general interstate application throughout the South except to and from that portion of Florida south of the line of the Seaboard Air Line extending from Jacksonville to River Junction, in which transportation conditions were found to warrant a basis of class rates substantially 15 per cent higher.

The scale prescribed in the original report herein is shown in column 5 of Appendix B. That scale had its origin in *Pierpont Mfg. Co.* v. *Sou. Ry. Co.*, 50 I. C. C. 81, wherein division 3 found it to be reasonable and prescribed it for application on the Southern Railway from certain points in South Carolina to Savannah, Ga. In three subsequent cases the scale was reviewed and, as subjected to the general rate changes, was either prescribed or approved for application on logs between various points in the South. *Southern Veneer Asso.* v. *A. C. L. R. R. Co.*, 62 I. C. C. 669, *Southern Cotton Oil Co.* v. *A. C. L. R. R. Co.*, 120 I. C. C. 190, *Sawmill Logs from North Carolina*, 136 I. C. C. 370. Meanwhile, the Alabama commission adopted the same scale and it is now in effect intrastate on defendant's lines in Alabama. The Georgia commission likewise adopted it for intrastate application in that State, but suspended its application because of the existence of the Cummer scale in Florida. The Corporation Commission of Virginia approved the scale for application on defendant's lines in Virginia and it is now in effect in that State. The scale, extended to cover distances up to 450 miles, was proposed by defendant for adoption in this case at the original hearings and defendant expressed willingness to establish it for interstate application over its entire system except south Florida. Although the former order prescribed the scale only from northern Florida to Georgia for distances of 170 miles and less, the defendant later voluntarily established it for uniform application on interstate traffic for all distances over its entire system except from points on its line south of the line of the Seaboard Air Line from Jacksonville to River Junction, from which it established rates 15 per cent higher than from points north of that line. In nearly all instances these rates were reductions from those previously in force.

Columns 3 and 4 of this appendix show the rates applying on logs intrastate in Florida on the Seaboard Air Line and the Georgia Southern and Florida, respectively. It will be noted that the scales applying on these lines are approximately twice as high as the Cummer scale.

Column 2 shows the Florida intrastate rates of defendant and the Seaboard Air Line on logs not over 6 feet in length. These rates were established to permit the movement of short logs which would otherwise go to waste, but which could be used by manufacturers of crates. This scale is somewhat lower than the scale prescribed in the original report herein but is substantially higher than the Cummer scale. (On intrastate traffic in other States and on interstate traffic generally no rate distinction is made as between long and short logs.)

Some southern lines, particularly those operating in the Mississippi Valley, have two scales of log rates, one for ordinary local application, and the other, a scale of net transit or reshipping rates, applying when a certain proportion of the lumber or other manufactured product is shipped over the lines of the carrier delivering the logs. The net transit or reshipping rates are usually lower than the local rates. The interstate net transit scale of the Illinois Central and Mobile & Ohio is typical of such scales. It is shown in column 7 of Appendix B, and is considerably lower than the interstate local scales applying on those lines, which are shown in columns 8 and 9. This net transit scale, except for distances under 20 miles, is more than twice as high as the Cummer scale and compares favorably with the scale prescribed in the original report herein (column 5). The latter scale, hereinafter referred to as defendant's interstate scale, now applies interstate generally between points not only on defendant's lines but also on the Seaboard Air Line and the Southern, and as net transit rates on the Louisville & Nashville. It will thus be seen that this scale or one that compares favorably with it, applies interstate over the lines of the most important carriers in the South. In *Farris Hardwood Lumber Co.* v. *Louisville & N. R. Co.*, 178 I. C. C. 671, division 4 prescribed gross (local) rates on logs from numerous origins in the South to destinations in Tennessee, which rates are considerably higher than defendant's interstate scale. The single-line scale prescribed in that case is shown in column 6 of Appendix B.

In Appendix C the Cummer scale is compared with defendant's intrastate log rates in other southern States. It will be noted that the rates applicable in Virginia and Alabama, which were approved by the regulatory bodies of those States, are the same as defendant's interstate scale; that in Georgia the local rates are somewhat higher and the transit rates somewhat lower than defendant's interstate scale; and that the North Carolina and South Carolina rates are somewhat lower than defendant's interstate scale but average considerably higher than the Cummer scale. Applications are pending before the proper authorities to permit the establishment of defendant's interstate scale uniformly on intrastate traffic throughout those States, approval of which, it is testified, has been withheld because of the low intrastate rates in Florida.

Transportation conditions in Florida are not such as warrant a lower basis of rates on logs in that State than elsewhere on defendant's system. Transportation conditions on defendant's lines in Florida are not more favorable but on the contrary are less favorable than on defendant's system outside of Florida. The cost of the

service in Florida is higher than on the remainder of the system, as shown by cost evidence referred to in detail hereinafter. Density of traffic in Florida is much lighter than on defendant's lines elsewhere. The following table shows the traffic density, in revenue ton-miles per mile of road on defendant's system as a whole, on its lines in Florida, and on its system excluding Florida:

Period	System	Florida	System, excluding Florida	Period	System	Florida	System, excluding Florida
	Ton-miles	*Ton-miles*	*Ton-miles*		*Ton-miles*	*Ton-miles*	*Ton-miles*
Year 1921	514,955	341,152	618,635	Year 1926	963,569	869,411	1,021,610
Year 1922	624,760	409,026	754,341	Year 1927	747,717	570,932	861,713
Year 1923	764,228	512,505	915,990	Year 1928	647,542	442,245	781,682
Year 1924	774,029	570,583	897,150	Year 1929	637,039	400,002	794,395
Year 1925	907,958	740,633	1,009,225	Year 1930	556,771	369,979	698,395

The Florida mileage increased from 37.4 per cent of the system mileage in 1921 to 40 per cent in 1930. It appears that the increase in traffic density on the system during 1925 and 1926 followed closely the increase in traffic density in Florida during those years.

In the Florida peninsula the traffic density is even lighter than in the northern part of Florida, that is, north of the Jacksonville-River Junction line of the Seaboard Air Line. In 1927 there were 894.54 miles of railroad in Florida north of that line that were operated for freight traffic, and 4,183.01 miles in Florida south of that line. The traffic density of the lines in Florida north of that line was 615,318 revenue ton-miles per mile of railroad as compared with 557,286 revenue ton-miles per mile of railroad south of that line. The less favorable operating conditions in Florida south of that line have given rise to the general practice of permitting the addition of arbitraries to the rates on interstate traffic to and from points in that territory. See *Southern Class Rate Investigation*, 100 I. C. C. 513, 585, 626, 646; 128 I. C. C. 567, 594, 602.

The risk in transporting logs is small in so far as loss or damage to the logs is concerned but there is a much greater risk arising from the probability of a train wreck in the event the logs break loose.

The Cummer scale is much lower than the basis of rates prescribed for application throughout central territory in *Indiana Public Service Commission* v. *A. A. R. Co.*, 85 I. C. C. 533. Rates equal to 65 per cent of the sixth-class rates contemporaneously in effect between the same points were there found to be reasonable rates. The order there entered resulted in rates on logs ranging from 5.20 cents for 5 miles to 20.80 cents for 560 miles, the rate for 170 miles being 12.35 cents, whereas the Cummer scale rates for 5 miles and 170 miles are

1.71 cents and 3.70 cents, respectively. The report in that case referred to "the lower operating costs and the greater traffic density" in central territory than in southern territory.

So far as the record in this case shows there is no other scale of rates on logs as low as the Cummer scale.

Defendant's interstate scale and the Cummer scale are compared with the rates on other important low-grade commodities in Appendix D. The freight charges per car under the rates shown are also compared. The rates shown on these other low-grade commodities are the rates applicable between Georgia and Florida, but substantially the same level of rates applies intrastate in northern Florida. Approximately 40 per cent of the total tonnage transported by defendant consists of these low-grade commodities, and a substantial portion of defendant's total freight revenues is derived from their transportation, as is indicated by the following results of a traffic test for the month of May, 1926:

Commodity	Percentage of all tonnage	Percentage of all freight revenue	Value per ton
Logs	7.26	2.05	$2.80
Brick and artificial stone	3.30	2.32	
Sand and gravel	26.49	9.16	0.35 to 1.35
Lime and plaster	.46	.39	
Cement	2.29	2.05	7.48

The above evidence warrants the conclusion that the Cummer scale rates are abnormally low. Upon similar evidence submitted at the original hearing division 4 found that they are "less than reasonably compensatory." We affirm that finding. In its report division 4 said:

> It is manifest, we believe, that the intrastate rates assailed, which on the average are less than half of the proposed interstate rates, are less than reasonably compensatory. The rate for 160 miles yields but 4.25 mills a ton-mile, and, based on a lading of 60,200 pounds, 12.8 cents a car-mile. They are approximately one-half of the rates prescribed in *Rates on Chert, Clay, Sand, and Gravel*, 122 I. C. C. 133, on sand and gravel in the Southeast and less than one-half of the rates prescribed in the supplemental report in that case, 140 I. C. C. 85, to points in Florida south of the Jacksonville-River Junction line of the Seaboard Air Line. As stated in the original report in that case, sand and gravel are of unusual low value, it being doubtful whether any traffic moves which is worth less at point of production, load very heavily, and normally move in considerable volume without unusual switching operations at either end and without anything in the nature of special services.

In considering the question of the relation of the Cummer scale rates to the defendant's income, we may notice what the defendant's

income is. The evidence here shows the investment in defendant's properties as stated in its property investment accounts and its rate of return upon that amount. In 1926 its rate of return on investment in road and equipment, not including materials and supplies and cash, was 6.50 per cent. In the subsequent years up to the time of the rehearing its rate of return was as follows: 1927, 3.70 per cent; 1928, 3.52 per cent; 1929, 4.55 per cent; 1930, 2.54 per cent. The following tabulation shows the supporting figures for the years 1926, 1929, and 1930:

	1926	1929	1930
Investment in road and equipment	$270,564,508	$282,918,571	$285,343,512
Materials and supplies	8,699,718	6,386,742	6,701,666
Cash	8,494,003	17,133,937	13,932,421
Total property investment at end of year	287,758,229	306,439,250	305,977,599
Net railway operating income	17,585,807	12,874,207	7,241,304
Rate of return:			
On investment in road and quipment ..... per cent	6.50	4.55	2.54
On investment in road and equipment, including materials and supplies ..... per cent	6.30	4.45	2.48
On investment in road and equipment, including materials and supplies and cash ..... per cent	6.11	4.20	2.37

The defendant's Florida log traffic is an important one and the revenue from that traffic has a substantial influence upon the defendant's total revenues. During the 5-year period, 1926–1930, system log traffic averaged 7 per cent of the total system traffic. Nearly 50 per cent of the system log traffic was in Florida. For instance, in 1928, the defendant transported a total of 51,801 cars of logs on its system, of which 27,119 cars were in Florida.

The following table contains a brief analysis of the log traffic of the system as a whole and on its lines in Florida for the years 1928–1930:

	1928	1929	1930
System:			
Total traffic ..... tons	20,402,922	18,951,802	16,784,331
Log traffic ..... tons	1,422,874	949,840	667,612
Percentage of log traffic to total traffic ..... per cent	7.0	5.0	4.0
Total revenue	$52,019,283	$53,188,639	$46,428,030
Log revenue	$997,139	$794,334	$615,393
Percentage of log revenue to total revenue ..... per cent	1.9	1.5	1.3
Florida:			
Total Florida traffic ..... tons	8,622,556	8,547,924	7,660,058
Florida log traffic ..... tons	814,777	366,426	272,150
Percentage of Florida log traffic to total Florida traffic ..... per cent	9.4	4.3	3.6

The above figures reflect the small revenue burden borne by the log traffic. In 1928, for instance, the system log tonnage constituted 7 per cent of the total system tonnage, whereas the revenue from the log tonnage was only 1.9 per cent of the total revenue.

The above analysis further shows that the revenue from the system log traffic did not decline proportionately with the volume of that traffic. In 1930 the log traffic of the system was 667,612 tons as compared with 1,422,874 tons in 1928, whereas the revenue from the 1930 log traffic was $615,393 as compared with $997,139 in 1928. Stated in percentages, in 1930 as compared with 1928 the log traffic of the system declined more than 50 per cent but the system log revenue declined only 38 per cent. The smaller decline in the revenue was no doubt due to the fact that in 1928 the Cummer scale was in effect whereas throughout 1930 the increased rates prescribed by the former order herein were collected.

Of much assistance in the determination of the effect of increased intrastate log rates in Florida on the revenues of defendant is the fact that the increased rates prescribed by the former order were actually in effect for a substantial period and were applied on the traffic moving during that period. Defendant submitted in evidence at the hearing in June, 1931, a statement showing all shipments of the kinds of logs here in question which moved over its lines intrastate in Florida during the period from February 8, 1929, to January 31, 1931. This statement shows a total movement of 18,602 carloads in that period on which gross freight revenues of $571,508.94 were collected. If the Cummer scale had applied, this movement would have produced gross freight revenues of only $281,225.75, or $290,283.19 less than those actually collected.[1]

Averring that there is no condition at any point on its lines that would justify higher rates on logs than those applicable within the State of Florida, defendant submitted testimony to the following effect, showing that the existence of low log rates in one State has an influence upon the log rates in other States. The record in the present case shows the influence upon the Georgia rates of the intrastate rates in Florida. In South Carolina the State commission at first approved defendant's present interstate rates for intrastate application but later reduced them because the rates in North Carolina were lower. In the case that is now before the North Carolina commission the existence of rates between points in Virginia on a line other than defendant's is one of the principal obstacles to securing the application of defendant's uniform scale in North Carolina. In every case involving defendant's interstate rates on logs the existence of lower levels of rates within some of the States served by

[1] Restitution suits for the recovery of all amounts paid in excess of the Cummer scale rates on shipments during the period from February 8, 1929, to April 10, 1931, when the higher intrastate rates prescribed by the annulled order of division 4 prevailed, were instituted and are pending.

defendant has been urged as a justification for lower interstate rates on logs.

Defendant submitted the following evidence to show the total losses it would have sustained had the Cummer scale been in effect during the years 1929 and 1930 uniformly on interstate and intrastate traffic throughout its system. The movement of logs on its system, including the long but not the short length logs in Florida, consisted of 3,450,765,300 pounds,[2] of which the interstate movement consisted of 456,134,800 pounds and the intrastate 2,994,630,500 pounds. The revenues from all of these logs amounted to $1,483,424.87,[2] of which the revenue on interstate movements amounted to $266,654.12, and on intrastate to $1,216,770.75. If the Cummer scale had been applicable on all its log movements the reduction in revenues would have been approximately as follows:

Intrastate:	
Virginia	$2,926.20
North Carolina	95,804.17
South Carolina	99,793.77
Georgia	29,068.53
Florida	290,283.19
Alabama	13,245.47
Interstate	144,259.88
Total	675,381.21

These figures represent approximate losses, as they are not based upon an actual rerating of the tonnage, except upon the long-length logs in Florida, the losses on the interstate movement and on the intrastate movements other than in Florida having been arrived at on basis of the percentage that the Cummer scale is of the actual scales applied.

If defendant's present interstate scale had applied uniformly on intrastate traffic on its system in 1929 and 1930 that scale would have had the following effect upon the defendant's revenues if the traffic had been the same. There would have been an increase in revenues in North Carolina of $65,427.27, in South Carolina $7,154.14, in Georgia $14,567.52, a total increase of $87,229.90. There would, of course, have been no change in Florida, in Virginia, or in Alabama, because the present interstate scale was then in effect in those States. Nor would there have been any change in interstate traffic because the defendant's present interstate scale was then in effect.

The Florida interveners contend that the increase in the Florida intrastate rates has had the effect of reducing the volume of the

[2] These figures do not exactly correspond with those given in the table set out above, but the variance is so slight that it is negligible.

Florida log traffic and that as a consequence there has been a decrease in the defendant's revenue from that traffic. It is true that since the original hearings in this proceeding (October, 1926, and January, 1927) there has been a decrease in the volume of the Florida intrastate log movement. The extent of this decrease is indicated in the following table showing the number of cars and the tonnage transported therein during the five years 1926–1930:

Period	Cars	Tons	Period	Cars	Tons
Year 1926	36,799	1,214,361	Year 1929	13,207	366,426
Year 1927	35,415	1,052,927	Year 1930	9,376	272,150
Year 1928	27,119	814,777			

The figures for 1926 and 1927 must be discounted somewhat for the reason that they include posts, poles, and cordwood as well as logs. The statistics for those years grouped the four commodities and information as to the exact number of cars and tons of logs that moved is not available.

Part of the decline in the Florida log traffic has been due to the fact that two lumber companies which operated mills near Jacksonville at the time of the original hearings, the Brooks-Scanlon Corporation at Eastport and the Putnam Lumber Company at Milldale and Ortega, have since moved their plants to locations adjacent to their timber holdings and no longer ship their logs over defendant's lines. At the time of the original hearings these companies drew their logs, usually in trainload lots, from points on defendant's Perry branch, about 166 miles west of Jacksonville. There was evidence to the effect that it was uneconomical for mills to be located so far from the timber and that even the Cummer scale rate for that distance, 3.7 cents, was higher than these mills could afford to pay. The Putnam Lumber Company then indicated its intention to abandon those mills and to develop a plant in the timber. In 1926 it acquired a mill at Bond's Mill, about 85 miles south of Jacksonville, and in 1927 and 1928 it completed the construction of two mills at Cross City, on defendant's Perry branch. Shortly after the intrastate rates were increased in February, 1929, the Brooks-Scanlon Corporation began the construction of a mill at Foley, about 5.5 miles southwest of Perry. Upon the completion of that mill the one at Eastport was abandoned. During the 6-year period from 1923 to 1928 the defendant's gross revenues from the movement to Eastport averaged $309,882.60 a year. Defendant's gross revenues from the movements to the Putnam mills averaged slightly more than $200,000 a year. This movement would have been discontinued

even though the Cummer scale had remained in force, since the company had decided to move its mills to the timber prior to the rate increase.

The defendant asserts that the change in location of these mills from the vicinity of Jacksonville to Foley and Cross City has had a favorable effect upon its revenues in two respects, first, it has rendered unnecessary the transportation of the logs at the inadequate remuneration yielded by the Cummer scale; second, the present location of the mills in the interior has resulted in producing tonnage of lumber rather than of logs, and the transportation of lumber from the standpoint of net revenue is vastly better than the transportation of logs under the Cummer scale. The average weight of 983 cars of logs handled under the Cummer scale for the Brooks-Scanlon Corporation and the Putnam Lumber Company was 60,200 pounds per car, the average haul was 158 miles, and the revenue was $20.47 per car, or 12.9 cents per car-mile. In 1930, 90 per cent of the lumber movement from Foley and 70 per cent of the lumber movement from Cross City to destinations on defendant's lines went to Jacksonville. The rate on lumber from Foley to Jacksonville is 9.14 cents and based on the average per car weight of all lumber in the southern region of 52,000 pounds, the revenue per car from Foley to Jacksonville, 169 miles, is $47.53, which equals 28.1 cents per car-mile. The rate on lumber from Cross City to Jacksonville, 118 miles, is 8⅓ cents, producing revenue of $43.33 per car or 36.7 cents per car-mile.

Another large movement at the time of the original hearings was from Otter Creek, a point on defendant's Perry branch, to the mill of the Cummer Cypress Company at Lacoochee. This movement, which was in trainload lots, began in January, 1926, and ended on May 5, 1928, which was after the original hearings but prior to the decision of division 4 herein, August 2, 1928. This movement ended not because of the rate increase but because of the exhaustion of the company's timber near Otter Creek. Defendant's gross revenues from this movement aggregated $120,261.40. In January, 1929, the Cummer Company began to ship logs from Homosassa over defendant's line to Otter Creek, where it operated a small secondary plant, and it continued this movement after the increased intrastate rates became effective on February 8, 1929. In April, 1929, it began to ship cypress logs from Homosassa to its mill at Lacoochee, over defendant's line. In February, 1930, the movement from Homosassa to both Otter Creek and Lacoochee ended, and since then the Cummer Cypress Company has shipped no logs over the defendant's lines. Defendant's gross revenues from the Homosassa-Otter Creek

movement were $13,507.09 and those from the Homosassa-Lacoochee movement were $77,609.89. These movements were stopped in February, 1930, not because of the rate increase, for the movements continued for a year after the increase became effective, but because the timber at Homosassa was practically cut out, although some additional logs of inferior grade would probably have been cut and shipped had the Cummer scale remained in force. Its present supply of logs from timber on the Withlacoochee River is hauled over its own logging road to the Seaboard Air Line and thence over that line under trackage rights for a short distance to its mill at Lacoochee.

Representatives of these three interveners, the Putnam Lumber Company, the Brooks-Scanlon Corporation, and the Cummer Cypress Company, testified at the further hearings that they would not resume the shipment of their logs over defendant's lines even if the Cummer scale remained in effect.

The fact that the total movement during the period of nearly two years from February 8, 1929, to January 31, 1931, consisted of 18,602 carloads was verified by an investigation conducted by interveners; and their evidence, after eliminating 7,353 cars which moved in trainload lots from Hines to Palatka, showed that of the remaining volume (11,169 cars) 7,965 cars moved in the period from February 8, 1929, to January 31, 1930, and 3,204 cars in the succeeding 12 months. (They were unable to develop when 81 cars moved.)

Interveners' data also showed the following with respect to these 11,169 carloads:

	Pine		Cypress		Hardwood	
	Cars	Revenue	Cars	Revenue	Cars	Revenue
First period	1,282	$31,052.33	2,890	$73,866.90	3,793	$96,971.97
Second period	296	5,288.84	1,556	36,387.01	1,342	28,658.90

From what has been said above it is clear that the decline in the Florida log movement can not be ascribed wholly to the rate advance. Part of the decline has no doubt been due to that cause but a large part has been due to the change from mill locations uneconomical because too far from the timber and cessation of movements because of exhaustion of the timber. The generally depressed conditions throughout the country, in Florida, in the lumber industry generally and in the Florida log industry have also had a marked influence upon the volume of the log movement in Florida. The

table below shows the decline in the total system traffic and in the system log traffic during the 5-year period 1926–1930:

Period	Total traffic		Log traffic	
	Cars	Tons	Cars	Tons
Year 1926	944,101	27,025,422	[1] 79,114	[1] 2,196,971
Year 1927	859,049	23,134,496	[1] 78,532	[1] 2,056,593
Year 1928	752,778	20,402,922	51,801	1,422,874
Year 1929	718,549	18,951,802	37,206	949,840
Year 1930	621,232	16,784,331	25,738	667,612

[1] Includes posts, poles, and cordwood.

Likewise there has been a decline in the lumber traffic throughout the United States, in the southern district, and on the defendant's system, as shown by the following table which also shows the gross revenues received by defendant for the lumber tonnage transported over its lines:

	United States	Southern district	Atlantic Coast Line	Atlantic Coast Line gross revenue
	Tons	*Tons*	*Tons*	
Year 1920	48,617,871	17,708,828	2,665,512	$5,503,389.44
Year 1925	49,015,498	20,311,619	3,751,916	8,092,819.86
Year 1928	42,508,620	17,872,965	3,093,168	6,641,449.38
Year 1929	40,565,975	17,403,907	3,109,401	6,750,434.28
Year 1930	27,584,148	11,395,877	2,211,258	4,711,383.72

Thus, while there has been a substantial decline in the Florida log traffic, there have also been declines in other traffic, and the same forces that operated to cause a decline in other traffic were also no doubt responsible for much of the decline in the Florida log traffic.

Coming now to consideration of the probable future volume of the Florida log traffic, it is relevant to inquire into the total amount of standing timber now in Florida and how much of the total is reasonably tributary to the defendant's lines.

The record indicates that, unlike most of the other southern States, vast stands of virgin timber remain in Florida. An official bulletin of the United States Department of Agriculture (Circular 124, October, 1930, entitled "Rate of Growth of Second-Growth Southern Pines in Full Stands") indicates that in 1927 there remained in the 11 chief pine-producing States of the South 12,650,000 acres of virgin pine, of which 5,450,000 acres, or 43 per cent, were in Florida. That bulletin also states that in addition to this area of virgin pine, there is an area of 12,550,000 acres of cut-over pine lands in Florida, of which 3,150,000 acres have been fully or partially restocked to saw timber, and 4,300,000 acres fully or partially restocked to saplings and cordwood.

The figures published in the department's bulletin were based chiefly on a survey of standing pine timber made in the main producing regions from Virginia to Texas in 1924. The department's bulletin states that this survey, which was conducted by the Southern Pine Association—

> is believed to be the most accurate survey of timber resources yet made in any important lumber-producing region of the United States. The data were obtained in the form of board feet, but have been converted into acreages for the purpose of this bulletin. The computed figures have been checked against the local knowledge of State and Federal forest officers and other authorities.

A compendium published by the Southern Pine Association, entitled "Economic Conditions in Southern Pine Industry," presented by the association to the United States Timber Conservation Board, dated July 1, 1931, shows the number of board feet in the acreages published in the department's bulletin. The 1924 survey showed that in Florida the pine-timber stand was 21.382 billion feet of longleaf and 2.966 billion feet of shortleaf, or a total of 24.348 billion feet of pine. The production in Florida during the six years 1925–1930 totaled 4.564 billion feet, the regrowth in those six years being 2.129 billion feet, or a net depletion of 2.435 billion feet, leaving the then present (July, 1931) pine-timber stand in Florida 21.913 billion feet.

The above figures include pine only. That species of wood is of primary importance in the Florida lumber industry. Cypress is second in importance, and hardwoods such as ash, gum, hickory, cedar, and oak, are third.[3] The record contains no figures as to the stands of cypress and hardwoods in Florida, but there is testimony as to the production, indicating that the annual production of cypress in Florida is around 200,000,000 feet, and that hardwood constitutes probably 5 to 10 per cent of the total business.

The record affords no accurate basis of determining how much of the standing timber in Florida is tributary to the Atlantic Coast Line. By reference to the map of that railroad in Florida, however, it will be seen that its main and branch lines form a network which virtually covers the State, except the extreme southeastern part. This fact, in connection with the practice of constructing logging roads, seems to indicate that a large percentage of the standing

[3] The Gummer scale applies on all species of logs except cedar. The interstate rates found unreasonable in the original report herein applied on all species of logs except walnut, cherry, and cedar. For this reason, the former order in prescribing interstate and intrastate rates on logs excepted those three species. The exception is unimportant in so far as walnut and cherry are concerned, for there appears to be no movement of those species of logs in Florida. The term "hardwood" as used hereinafter will be used to mean hardwoods other than those three.

timber in Florida is tributary to defendant's lines. The defendant's freight-traffic manager testified:

> Not less than one-half of the timber in Florida that is now reasonably adjacent to railroads is reasonably adjacent to the Atlantic Coast Line. Pine timber along the south Atlantic seaboard has been characterized by the United States Forestry Department as one of the fastest reproducing kinds of trees in the world, and the total amount of timber in Florida will be large as a result of regrowth. However, if the Atlantic Coast Line can be assumed to transport 40 per cent of the logs to be produced in Florida from timber now standing, it will handle approximately 9 billion feet, or approximately 128,570 cars of logs. If the average length of haul should be 81 miles, as was the case in 1929-30, which average haul may be expected to be increased as the timber becomes more scarce, our revenues under the Cummer scale, at an average revenue of $16.10 per car, would be equivalent to gross revenue of $2,169,977. If the same transportation should be performed at the rates prescribed by the Interstate Commerce Commission, which for the average haul of 81 miles is 5.5 cents per 100 pounds, or $38.50 per car, the gross revenue would be $4,949,945. The difference in the gross revenue under the two scales of rates would be $2,779,968.

A large movement of logs which was going on at the time of the original hearings, and which still continues, is the movement of cypress logs from Hines, a point on defendant's Perry branch, to the lumber-manufacturing plant of the Wilson Cypress Company at Palatka. This Hines-Palatka movement, which is in trainload lots, began in January, 1926. The company has its own logging road in the timber, connecting with the defendant's line at Hines, from which the haul to Palatka is 119 miles. Although this intervener, as well as others, testified at the original hearing that it would be impossible to continue the movement of logs over defendant's lines if the Cummer scale were increased, it actually has done so. It appears that under normal conditions it will continue to ship these logs over the defendant's line until the timber adjacent to the Perry branch is cut out. Under the normal rate of cutting, it appears this would occur in about one and one-half to two years after the time of the further hearing. During the 4-year period, 1926–1929, the defendant's gross revenue from the Hines-Palatka movement averaged nearly $90,000 a year. During that 4-year period 16,658 carloads were shipped, averaging 4,164 carloads a year. During 1930, when the increased rates were in effect, 5,142 carloads were shipped, on which the defendant's gross revenue was $205,096.20, averaging $39.88 per car at the increased rate of 6.5 cents for the 119-mile haul. During the first five months of 1931, 1,916 cars moved on which the freight charges (gross revenue of defendant) amounted to $50,366.17. Palatka is served by the Southern Railway system (Georgia Southern & Florida Railway) and by the Florida East Coast Railway, as well as by defendant's line. There is a small movement of logs into the Wilson Cypress Company's mill at Palatka over the South-

ern and the Florida East Coast. Besides the movement over defendant's line from Hines there is a small movement over defendant's lines from various other points in Florida.

There is also present a small movement over defendant's lines from various Florida points to the mill of the Putnam Lumber Company at Bonds Mill and a larger movement to the mill of that company at Cross City. During the period from February 8, 1929, to January 31, 1931, the movement to Cross City consisted of 1,260 carloads of pine and cypress logs from seven different points of origin. During the succeeding five months the movement to Cross City was 102 carloads from three points of origin.

Although the Cummer Cypress Company no longer ships its logs over defendant's lines, it does purchase and receive logs shipped over defendant's lines to its mill at Lacoochee from points within distances of 10 to 18 miles. During the 5-month period above mentioned this movement totaled 93 cars.

In addition to the above-mentioned movements to Palatka, Bonds Mill, Cross City, and Lacoochee, there were movements during said 5-month period to Apopka, Buffalo Bluff, Gainesville, Jacksonville, Kissimmee, Lake City, Loughman, Leesburg, Nocatee, Perry, St. Petersburg, Sanford, and Tampa, from numerous points of origin.

At the time of the former hearings there was and at present there is a substantial movement of hardwood logs in Florida. There are several mills in the State that are engaged exclusively in the production of hardwood lumber, including that of the intervener Wilson Lumber Company at Perry. Hardwood trees are usually found in tracts consisting predominantly of pine and cypress and are usually logged as an incident to, or by-product of, the pine or cypress operations. The hardwood-lumber business is relatively new in Florida. Formerly the hardwood trees were left standing but now it is the practice of the pine or cypress operators to cut the hardwood and sell the logs to the hardwood mills. In some instances the hardwood operators own their own tracts of timber. The Wilson Lumber Company built its hardwood mill at Perry in 1927. At that time it made contracts with several of the large pine and cypress operators in Florida for the purchase of the hardwood logs cut incidentally to their operations. There have been fairly large movements of ash, black gum and other hardwood logs from Hines, Cross City, Foley, Homosassa, Otter Creek, and other points to Perry. There have also been some movements of hardwood as well as cypress to Jacksonville. As shown by the table set out above, 5,135 carloads of hardwood logs moved over defendant's lines in Florida during the period February 8, 1929, to January 31, 1931.

"Another type of log movement that frequently takes place in Florida is the movement from the log-shipping point of one lumber manufacturer to the mill of another lumber manufacturer. Such movements occur where the lumber company that cuts the logs is engaged in the manufacture and sale of a particular kind of lumber, e. g., pine, and sells its cypress logs to a cypress-lumber manufacturer. Conversely, the pine manufacturer often buys pine logs cut by a cypress manufacturer.

The 18,602 cars which moved during the period from February 8, 1929, to January 31, 1931, were shipped from 113 different origins to 20 different destinations in all parts of the State, and the hauls ranged from 6 to 169 miles. At the hearing in July, 1931, defendant submitted a supplemental statement showing that the volume of the log movement over its lines in Florida during the succeeding five months, that is, from February 1 to June 30, 1931, which were the five months immediately preceding the hearing, was 2,765 cars. (The Cummer scale was restored during that period, April 10, 1931.) These cars were shipped from 52 different stations to 17 different destinations.

The record as a whole warrants the conclusion that there will be a large Florida intrastate movement of logs over defendant's lines in the future. The movement at present is at a low ebb, but in view of depressed conditions the present movement can not be taken as the criterion for the future. In view of the vast quantity of timber in Florida tributary to defendant's lines, the large number of mills located on defendant's lines at widely scattered points in Florida, and the probability of the establishment of new mills, large and small, we entertain no doubt that the log traffic will increase well above the present volume when economic conditions change for the better.

In the Florida log transportation some competition from trucks is met but only to a very slight degree. It is not shown that logs can or will be transported by trucks except for very short distances, nor that truck competition was or will be increased under advanced rates.

The defendant urges that the revenues produced by the Cummer scale are insufficient to cover the cost of the service performed; that no traffic is of value from a revenue standpoint unless it yields more revenue than the cost of its handling; that its study of the result of the operation under the Cummer scale is conclusive to it that such operation yields it no profit, but, on the contrary, results in an actual loss on the log traffic as a whole. It is manifest that if the Cummer scale produces less revenue than the cost of the service, declines in the traffic have the favorable effect of reducing defend-

ant's losses and that an increase in the traffic would only serve to augment those losses. In support of its contention that the Cummer scale results in losses, defendant submitted voluminous evidence bearing upon the cost of transporting logs in Florida. It is necessary to consider this evidence with a view to determining whether it shows that the Cummer scale rates do result in revenue losses.

The defendant's cost evidence started with figures showing that during the fiscal year ended June 30, 1929, the following road train expenses were incurred in transporting its system freight traffic.

Account	Expenses
No. 401. Trainmen	$2,048,715
No. 392. Train enginemen	1,571,324
No. 394. Fuel for train locomotives	2,281,332
No. 397. Water for train locomotives	96,575
No. 398. Lubricants for train locomotives	42,283
No. 399. Other supplies for train locomotives	29,281
No. 400. Engine-house expenses—Train	450,414
No. 402. Train supplies and expenses	400,760
Total	6,920,684

These expenses are denominated in the testimony and exhibits of record as out-of-pocket expenses and that term will be used herein, although it should be understood that it has reference only to the particular expenses charged to the above-enumerated accounts.

An analysis was then made of the accounts of the third division which could be definitely assigned to the freight service without question to develop the out-of-pocket costs for that division. The third division is wholly in Florida, and includes all mileage south of Jacksonville. The carrier's total mileage in Florida is 2,061.38 miles, all of which, except 126.34 miles north and west of Jacksonville, is in the third division. Hence, the out-of-pocket expenses on the third division were taken as fairly representative of the out-of-pocket expenses in Florida. Taking into consideration the total tonnage carried and the distance of the carriage, and including the empty-car mileage, the out-of-pocket cost per gross ton-mile was determined. For the third division that figure was ascertained to be 0.0882888 cent. The items which made up the total out-of-pocket expenses for the third division were:

Account	Expenses
No. 401. Trainmen	$637,337.05
No. 392. Train enginemen	497,364.58
No. 394. Fuel for train locomotives	606,920.94
No. 397. Water for train locomotives	28,406.12
No. 398. Lubricants for train locomotives	15,379.52
No. 399. Other supplies for train locomotives	9,575.70
No. 400. Engine-house expenses—Train	126,854.35
No. 402. Train supplies and expenses	137,772.40
Total	2,059,610.66

The gross ton-miles in Florida during the fiscal year were 2,332,812,000, which, divided into the total out-of-pocket expenses during that year, $2,059,610.66, resulted in the figure 0.0882888 cent per gross ton-mile. The out-of-pocket expense on the other two divisions combined, similarly reduced to the unit of gross ton-miles, was 0.053263 cent. An analysis was also made of the out-of-pocket costs on the car-mile basis, which gave final cost figures not materially different from those developed on the gross ton-mile basis hereinafter stated.

The total freight operating expenses of the system during the year 1929 were $36,308,813,[4] over five times the system out-of-pocket expenses of $6,920,684. The exact ratio of the latter to the former is 19.069.[5] If this ratio is used as a basis of expanding or projecting the out-of-pocket expenses to determine the total freight operating expenses in Florida, the latter is found to be 0.462996 cent per gross ton-mile.

The weighted-average distance of the 18,602 carloads of logs transported by defendant in Florida during the period from February 8, 1929, to January 31, 1931, was 81.36 miles, the average weight of the lading was 56,754 pounds, and the tare weight of the cars was 33,000 pounds, resulting in a gross weight of the loaded movement of 89,754 pounds. The testimony is to the effect that the log cars were returned empty almost without exception. Using 100 per cent as the proper figure for return empty movement, the gross weight of the loaded and empty movements was 122,754 pounds or 61.377 tons. The latter figure multiplied by 81.36 miles gives the gross ton-miles as 4,994. The unit cost of 0.462996 cent per gross ton-mile applied to 4,994 gross ton-miles results in a cost of $23.12 per car. This figure includes nothing for taxes or interest on investment. When $3.56 per car, as the proportion of taxes paid by defendant to the State of Florida, and $7.62 per car as the proportion of interest on investment of 5.75 per cent, are added, the cost becomes $34.30 per car.

The defendant did not present the figure $34.30 per car as representing the actual cost of the service, but stated that it was greater than the cost because it included certain expenses which were not attributable to the handling of logs. Defendant also presented another figure, $25.23 per car, based on the ratio of system out-of-

[4] The primary segregation of total operating expenses as between freight and passenger was made in accordance with the formula which we have prescribed. See order of Dec. 1, 1919, effective Jan. 1, 1920, providing rules for the separation of operating expenses between freight and passenger service on large steam roads. The total operating expenses were $53,431,589. The proportion assigned to freight under that formula, $36,308,813, was 67.95 per cent of the total.

[5] Exhibits of record erroneously show this ratio as 23.549. Defendant agreed that the correct ratio is 19.069.

pocket expenses to total system freight operating expenses after many deductions were made from the latter. There were deducted, first, all freight yard accounts, 42 in all, the total of which aggregated $4,550,039. Then all amounts in 15 other accounts, aggregating $4,665,936, were completely eliminated. Many of these were obviously not directly attributable to the handling of logs, such as wharves and docks, paving, assessments for public improvements, floating equipment, outside agencies, advertising, traffic associations, and industrial and immigration bureaus. Some of the others were clearly attributable, at least in part, to the handling of logs but were entirely omitted because of the difficulty of ascertaining the proper proportion that should be allocated to that traffic. For example, station employees in the transportation block of expenses, account 373, shows charges to freight of $3,281,352.20. There would seem to be no doubt but that a portion of the charges to this account is properly attributable to the handling of logs. To this account are charged agents, clerks, and attendants, telegraph and telephone operators, station agents, etc., who handle the billing of log shipments and perform other services. But that account was entirely eliminated. Finally there was eliminated 4.4897 per cent of general expenses, amounting to $413,769. The grand total thus eliminated aggregated $9,629,744.

This aggregate was deducted from the total freight operating expenses of $36,308,813, leaving the sum of $26,679,069 denominated the "total haulage expenses." The ratio of the total system out-of-pocket expenses, $6,920,684, to the total haulage expenses, $26,679,069, is 25.9405.[6]

Use of this ratio results in a unit figure of 0.340351 cent per gross ton-mile (0.0882888 cent, divided by 25.9405, multiplied by 100). This results in a haulage cost of $17 per car. When a proportionate amount is added for Florida property taxes, $2.62 per car, the haulage cost plus taxes becomes $19.62 per car. A proportionate amount added to that figure as representing interest on investment at 5.75 per cent, $5.61 per car, results in a final figure of $25.23 per car.

The defendant's general auditor testified that the actual cost lies somewhere between $18.75[7] and $34.30 per car; that in determining the lower figure he eliminated over $9,000,000 of expenses embracing all yard items and certain other items, some of which expenses are properly attributable to the handling of logs, and that this figure

[6] This ratio is erroneously shown in exhibits of record as 35.027. As a result of the error the cost figures were shown to be lower than they would have been if the correct ratio had been used.

[7] This figure is based on the erroneous ratio of 35.027. When recalculated on basis of the correct ratio of 25.9405 it becomes $25.23.

understates the cost of handling logs; but from his experience in studying accounts he does not believe it would be proper to include all of the expenses included in the higher figure, and that therefore the cost lies somewhere between the two. Based on his survey of the application of the Cummer scale rates, and from his experience as an accountant, he expressed the opinion that the Cummer scale does not afford a revenue which is equal to the cost of doing the business covered thereby; that as shown by the exhibits filed, in practically every case the cost, including a reasonable return on investment, exceeds the revenue derived, and in some instances the operating expenses exceed the revenue, without including any taxes or return on investment.

The average revenue under the Cummer scale on the 18,602 cars above referred to was $15.12 per car. The rates prescribed by the order previously entered in this proceeding were in force during the period in which all of these 18,602 cars moved, and the defendant's actual aggregate gross revenue on them was $571,508.94. Had the Cummer scale been in effect, the aggregate gross revenue would have been $281,225.75. The latter sum, divided by 18,602, gives the above-stated average revenue per car under the Cummer scale, $15.12 per car. It will be noted that this revenue is substantially below either of the two cost figures mentioned above, $25.23 per car and $34.30 per car. It is $1.88 per car less than the haulage cost stated above, $17 per car.

The unit cost as given above, 0.340351 cent per gross ton-mile as the purely haulage cost, and 0.462996 cent per gross ton-mile as the total operating cost, as applied to specific movements, results in the following figures, with which are included for comparative purposes the figures for the averages of the total movement of 18,602 cars referred to above:

Movement	Miles	Per car				
		Revenue on Cummer scale	Purely haulage expense [1]	Purely haulage expense plus taxes and return	Total operating expense [2]	Total operating expense plus taxes and return
Average of 18,602 cars during period Feb. 8, 1929, to Jan. 31, 1931	81.36	$15.12	$17.00	$25.23	$23.12	$34.30
Homosassa to Lacoochee	68.00	12.44	13.58	20.15	18.47	27.40
Homosassa to Otter Creek	52.00	12.02	10.80	16.06	14.69	21.79
Perry to Eastport	169.00	22.10	36.16	53.65	49.19	72.98
Carbur to Eastport	152.00	20.30	32.52	48.25	44.23	65.63
Homosassa to Perry	130.00	20.62	28.80	42.73	39.18	58.13
Astor to Groveland	99.00	13.78	19.54	28.99	26.58	39.43

[1] Based on unit cost of 0.340351 cent per gross ton-mile.
[2] Based on unit cost of 0.462996 cent per gross ton-mile.

Defendant also submitted evidence showing the actual out-of-pocket expenses for the movement of logs from Hines to Palatka during the month of November, 1930, agreed to be typical of the year 1930. This evidence discloses the results of a special examination of the expenses incurred in connection with that particular movement. The Wilson Cypress Company operates a private logging railroad from its tract of timber to a point of connection with defendant's line at Hines. The cars used in this service are ordinary flat cars owned by defendant but specially assigned to the Wilson Cypress Company, which has equipped them with special devices for log transportation. This special equipment, owned and maintained by the lumber company, consists of four stanchions on each side of the car, which fit into pockets of a design which permits release of the stanchions to facilitate quick unloading. Chains fastened to the stanchions hold the logs in place, and permit the car to be loaded more heavily than a car staked in the ordinary way. The cars are loaded in the timber and the trains are hauled by the lumber company over its logging road to Hines. The defendant transports the trains to Palatka, 119 miles, and makes delivery at the lumber company's plant. A trainload of 40 to 45 cars moves from Hines to Palatka every other day. The actual time consumed in the trip from Hines to Palatka is about eight hours.

During the month in question this log movement amounted to 3,734,936 gross ton-miles, whereas the movement between Hines and Palatka other than logs was only 128,515 gross ton-miles. Inasmuch as the latter is only 3.3 per cent of the total movement, the out-of-pocket expenses for the movement of the trains, reduced to the gross ton-mile basis, may be taken as fairly reflecting the out-of-pocket expenses attributable to logs.

The out-of-pocket expense for the total traffic, 3,863,451 gross ton-miles, was $2,398.55, made up as follows:

Account	Expense
No. 392, Train enginemen	$506.19
No. 394, Fuel for train locomotives	1,138.49
No. 397, Water for train locomotives	39.50
No. 398, Lubricants for train locomotives	8.27
No. 399, Other supplies for train locomotives	8.82
No. 400, Enginehouse expenses—Train	19.05
No. 401, Trainmen	562.86
No. 402, Train supplies and expenses	115.37
Total	2,398.55

This resulted in an out-of-pocket expense for this movement of 0.0620831 cent per gross ton-mile. The average loading of the log cars from Hines to Palatka during November, 1930, was 64.000

pounds and the tare weight of the cars was 33,000 pounds, resulting in a gross weight on the loaded movement of 97,000 pounds, and, since the return-empty movement of these cars is 100 per cent, there should be added the tare weight of the car for the empty movement, making the gross weight of the loaded and empty movement 130,000 pounds, or 65 tons. Thus, 65 tons were transported 119 miles, equivalent to 7,735 gross ton-miles for each car. If the out-of-pocket expenses on this movement, 0.0620831 cent per gross ton-mile, were 25.9405 per cent of the total haulage expenses, as they were on the system as a whole, then the total haulage expenses on this movement were $18.51 per car. When 6 cents per car for Federal income taxes, and $2.85 per car for Florida taxes are added, the haulage cost plus taxes is $21.42, and if $6.10 as representing a proportionate share of interest on investment at 5.75 per cent is added to the latter figure, the haulage cost plus taxes and return becomes $27.52 per car.

During the month in question the rates prescribed by the former order were in effect. The rate prescribed for the distance from Hines to Palatka, 119 miles, was 6.5 cents. This rate applied to the average weight of the Hines-Palatka shipments, 64,000 pounds, resulted in a revenue of $41.60 per car. The rate under the Cummer scale for 119 miles is 3.2 cents, yielding a revenue under the weight of 64,000 pounds of logs of $20.48 per car. This revenue is but $1.97 per car greater than the purely haulage cost of $18.51 per car. It is 94 cents less than the haulage cost plus taxes, $21.42, and is $7.04 less than the haulage cost plus taxes and interest, $27.52.

The costs in connection with the trainload movement from Hines to Palatka are undoubtedly less than they are in connection with movements in single carload lots. The Cummer scale rates are not trainload rates but apply on single carloads; and all present log movements in Florida other than the Hines to Palatka movement are carload rather than trainload movements. Practically the only service performed in the Hines-Palatka movement is the road haul, except that two switches . day are made at the Palatka plant. No other terminal services, such as are necessary in single carlot movements, are performed.

The Florida interveners presented no affirmative evidence tending to show the cost of transporting logs in Florida but criticized defendant's cost evidence, their principal criticisms being that the defendant's cost figures are based on the average out-of-pocket expense of handling all traffic on the third division and that the methods employed in assigning maintenance and other expenses, taxes, and return or interest on investment to this traffic were erroneous. The unit cost figure of 0.0882888 cent per gross ton-mile

was admitted by defendant to represent merely the average out-of-pocket expense of handling all traffic on the third division. It can not, therefore, be accepted as indicating the average out-of-pocket cost to defendant of transporting logs in Florida. *Nor. Pacific Ry.* v. *Dept. Public Works*, 268 U. S. 39; *Calif. Growers' & Shippers' Protective League* v. *S. P. Co.*, 129 I. C. C. 25, 52. It appears that nearly 25 per cent of the traffic moving in Florida consists of fruits and vegetables which require special and costly service. The cost of such service enters into the average out-of-pocket cost of the third division and would apparently tend to make it higher than the actual out-of-pocket cost of the log traffic. The conclusion seems to follow that the average cost figure of 0.0882888 cent per gross-ton mile is higher than the actual out-of-pocket cost of the Florida log traffic.

On the other hand it appears that the unit out-of-pocket cost figure developed in connection with the Hines to Palatka movement, 0.0620831 cent per gross-ton mile, is below the average out-of-pocket cost of the Florida log transportation. That movement, it must be remembered, was a regular one in trainload lots of 40 to 45 cars, and the cost of handling such solid trainloads direct between two given points without any intermediate train break-up in classification yards and without any switching en route, is undoubtedly less than on single carload movements which are handled in ordinary pick-up service.

There appears to be no doubt that the operating costs per unit are generally higher in Florida than the average for the defendant's system as a whole either including or excluding Florida. This is clearly indicated by various things. Using the year 1929 as illustrative, freight-traffic density in Florida, expressed in terms of revenue ton-miles per mile of road operated, was 62.8 per cent of that for the system including Florida, and 50.4 per cent of that for the system excluding Florida. Using a 5-year average, 1926 to 1930, inclusive, which included the boom period, freight-traffic density in Florida was 72.8 per cent of that for the system including Florida, and 63.9 per cent of that for the system excluding Florida. Also using the year 1929 as illustrative, freight-service train-miles in Florida were 30.63 per cent of those for the system including Florida, and freight-service locomotive-miles in Florida were 30.92 per cent of those for the system, including Florida, while loaded freight car-miles in Florida were 21.25 per cent of those for the system including Florida; loaded and empty freight car-miles in Florida were 22.43 per cent of those for the system including Florida, and revenue ton-miles in Florida were 25.05 per cent of those for the system in-

cluding Florida. In 1929 the trains operated in freight service hauled an average of 18.16 loaded cars or 31.69 loaded and empty cars per train in Florida, as compared with 26.17 loaded cars or 43.28 loaded and empty cars per train on the system, including Florida.

In determining the out-of-pocket expenses in Florida, the allocation of revenues and expenses to Florida was made by defendant on the following basis. Intrastate revenues were directly assigned and interstate revenues were apportioned to that State on the basis of a mileage prorate, the operating expenses being allocated on the basis of the operating ratio applied to the revenues. As all interstate traffic handled in Florida originates or terminates in that State, the apportionment of the revenues therefrom on the basis of a straight mileage prorate, without regard to the origin or destination terminal services involved, tends to understate the revenues from that class of traffic. Further, the Florida commission refers to the higher rates on class traffic moving to and from points in Florida south of the Jacksonville-River Junction line of the Seaboard Air Line, than on class traffic moving to and from other sections of the South, which were prescribed by this commission in *Southern Class Rate Investigation*, 128 I. C. C. 567, and points out that Florida was not given proper credit on this account in apportioning the interstate revenues on the basis of a mileage prorate. Defendant admits that the interstate revenues apportioned to Florida were understated to some extent on account of these things, but calls attention to the fact that the operating expenses were also understated, because the allocation was based upon the revenues. Defendant also refers to the service performed by the balance of its system in getting coal and supplies to Florida. Coal is charged to the operations in Florida at the average system cost, notwithstanding a substantial haul from the Alabama, Virginia, or West Virginia fields to that State is involved. The portion of the road in Florida, it is claimed, performs no like service for other parts of the system.

From the foregoing it is apparent that the operating expenses allocated by defendant to Florida are not actual but constructive expenses, and that they are understated to an unknown extent. In view of this fact, system figures including Florida, which are not in question, may be utilized as the basis for approximating the cost of transporting logs in that State. Ordinarily it would be unsound to use a system unit cost to determine the cost in a particular State, but since it is indisputable that unit costs are higher in Florida than elsewhere on the system, it seems clear that system unit costs may be used to find a cost that may be said to be less than the cost in Florida.

Appendix E is a computation to approximate the cost of transporting logs on the basis of system average costs per unit, applied to the average carload, tare weight, empty haul, and average distance that class of traffic is hauled in Florida. In this computation attempt has been made to meet as far as possible the criticisms of the defendant's cost evidence. For instance, deduction from the freight-service operating expenses has been made for wharves and docks, maintenance and operation of floating equipment, and certain traffic expenses, which the defendant concedes are not involved in handling logs. The deductions for these items include their proportion of the expenses for superintendence, as well as their proportion of the general expenses. The total freight-service operating expenses amounted to $36,308,813 in 1929, and these deductions aggregate $1,281,069, leaving $35,027,744 as the remainder. This amount has been apportioned 70.3539 per cent to road or haulage expenses and 29.6461 per cent to yard or nonhaulage expenses, these percentages being based upon the road and yard proportions of certain of the expenses for maintenance of way and structures and for transportation which are segregated in the accounts between these services in accordance with our rules. These are the proportions used by the witness for the Florida commission in his apportionment of the operating expenses between road or haulage and yard or nonhaulage expenses. Applied to the net amount of the freight-service operating expenses above, namely $35,027,744, these percentages result in road or haulage expenses of $24,643,384, and yard or nonhaulage expenses of $10,384,360.

Giving consideration to the criticism that the traffic here involved is carload traffic, and that deduction should be made for the excess terminal expense attributable to handling less-than-carload freight over that attributable to carload traffic, the amount of $2,555,778 has been deducted from the nonhaulage expenses, making the net amount of the nonhaulage expenses $7,828,582 applicable to carload traffic. This deduction of $2,555,778 for platform and excess clerical expenses that are involved for less-than-carload freight, but not for carload freight, is an estimate based upon 75 per cent of the aggregate amount of the expenses for Account 373, "Station employees," and Account 376, "Station supplies and expenses." As a substantial part of the expenses for station employees and station supplies and expenses is obviously attributable to carload freight, the amount that should be deducted on account of less-than-carload freight was therefore estimated at 75 per cent of these expenses.

Dividing the total haulage expenses, $24,643,384, by the total number of gross ton-miles, 11,600,829,000, comprising both revenue

and nonrevenue or company freight, produced an average haulage expense of 0.21243 cent per gross ton-mile, revenue and nonrevenue. The statistics kept by defendant made no segregation of the loaded-car miles and the gross ton-miles between revenue and nonrevenue freight, and the record does not show the number of tons and ton-miles of nonrevenue freight. Due to this fact it is not practicable to segregate the cost of transporting revenue freight on the basis of including therein the cost of transporting nonrevenue or company freight, so that the costs hereinafter developed are understated on this account.

Based on total loaded-car miles (revenue and nonrevenue), 209,835,784, and total revenue ton-miles, 3,281,770,000, there was an average of 15.6397 tons of revenue freight carried per loaded-car mile (revenue and nonrevenue). Using this figure as the divisor, and the total tons of revenue freight carried, 18,951,802, as the dividend, there was approximately a total of 1,211,775 loaded cars of revenue and nonrevenue freight carried. Based on total nonhaulage expenses of $7,828,582, applicable to carload traffic, the average nonhaulage expense was $6.46 per loaded car.

In 1929, United States Government taxes (corporation income) amounted to $570,076, and other than Government taxes (State taxes) to $5,669,924, or a total of $6,240,000 for the road as a whole. Based on these figures and total operating expenses of $53,431,589, freight and passenger, taxes amounted to $0.11678 per dollar of operating expenses.

Property investment in 1929 amounted to $306,439,250, and 5.75 per cent interest thereon to $17,602,257. Based on total operating expenses of $53,431,589, freight and passenger, interest on investment amounted to $0.32977 per dollar of operating expenses.

Based upon the foregoing the following is a summary of the computation of the cost of transporting the average car of logs in Florida the average distance of 81.36 miles:

Operating expenses:	
Haulage expenses; 4,994 gross ton-miles × 0.21243 cent per gross ton-mile	$10.61
Nonhaulage expenses: Average per loaded car	6.46
Total operating expenses	17.07
Taxes: $17.07 (operating expenses) × $0.11678 (taxes per dollar of operating expense)	1.99
Interest on investment at 5.75 per cent:	
$17.07 (operating expense) × $0.32977 (interest per dollar of operating expense)	5.63
Total cost per car	24.69

Cost per 100 pounds	4.35 cents
Average revenue (Cummer scale) per car of logs for average haul, 81.36 miles	$15.12

The above figures undoubtedly understate the cost of transporting logs in Florida for several reasons. One of these is that costs per unit in Florida are higher than the average for the entire road or system including Florida. Another reason why the computation on the basis of average costs per unit for the system understates the cost of transporting logs in Florida is that these average costs per unit do not include anything for joint-facility and equipment rents. As heretofore indicated the cost is also understated because it does not include the cost of transporting nonrevenue or company freight.

It is of course well known, as defendant concedes, that it is impossible on a system like the defendant's, engaged in the general transportation of all kinds of freight and of passengers, to determine accurately the exact cost of transporting any one commodity. From the evidence submitted in this case, however, we are convinced that the defendant's revenue under the Cummer scale of $15.12 per car for transporting a car of logs weighing 56,754 pounds a distance of 81 miles, and transporting the empty car back, is insufficient under all the circumstances and conditions to cover the full cost of the service.

Conclusions and findings.—In determining whether the Cummer scale results in unjust discrimination against interstate commerce the fundamental question, in the language of the Supreme Court in *Wisconsin R. R. Comm.* v. *C., B. & Q. R. R. Co.*, 257 U. S. 563, 568, and in *Florida* v. *United States*, 282 U. S. 194, 211, is whether the traffic moving on that scale pays "a fair proportionate share" of the cost of maintaining defendant, or whether it causes an undue revenue burden upon the interstate traffic of defendant. The record shows the low earnings of defendant; the low earnings on its log traffic as compared with its earnings on other low-grade commodities; the much lower earnings on its Florida log traffic than on its interstate log traffic; and the much lower level of the Cummer scale than of other scales applicable interstate and intrastate throughout the South. These facts and the cost evidence clearly warrant the conclusion that the traffic moving under the Cummer scale does not pay its "fair proportionate share" of operation and maintenance alone.

In condemning the previous order in this case the Supreme Court did so because the ultimate finding of unjust discrimination was not properly supported by appropriate subordinate findings, that is, there were no findings (1) as to the revenue which had been

derived by the carrier from the traffic in question, (2) as to the revenues which could be reasonably expected under the increased rates, or (3) that the alteration of the intrastate rates would produce, or was likely to produce, additional income necessary to prevent an undue burden upon the carrier's interstate revenues and to maintain an adequate transportation service.

While the record shows that defendant's Florida log traffic declined considerably after the increase of rates on February 8, 1929, the record further shows that there was no substantial increase in the movement after the Cummer scale was restored on April 10, 1931. The depressed condition of the lumber industry has materially affected this log traffic since the latter part of 1930, and this depressed condition, in our opinion, has been and will be of far greater importance than the level of the Florida log rates in determining the extent of the movement in the immediate future at least. The record shows that during the period of approximately two years following the increase in the rates the total movement amounted to 18,602 cars. This total included 3,740 cars transported to Eastport, Lacoochee, and Otter Creek in trainload movements that have ceased and will not be resumed. Under normal economic conditions it seems probable that the annual volume of the Florida log movement under rates the same as those previously prescribed will not be less than the average of this 2-year period minus the number of cars included in the discontinued trainload movements. This average is 7,431 cars. That the movement will not be less than this under normal conditions is confirmed by the fact during the five months immediately preceding the last hearing in this case, February to June, 1931, when conditions were abnormal, there were shipped over defendant's lines in Florida a total of 2,765 cars of logs. This movement was at the rate of 6,636 cars a year. We believe that the movement of logs intrastate in Florida over defendant's lines will not be materially curtailed under the rates which we here prescribe, which are the same or substantially the same as the rates generally in effect and under which logs freely move throughout the South.

The freight charges collected on the 18,602 cars above referred to aggregated $571,508.94, and if the Cummer scale had applied the charges would have been $281,225.75. The freight charges collected on the 3,740 cars referred to were $100,439.06, and if the Cummer scale had applied they would have been $48,286.75. On the 14,862 cars remaining after deducting the 3,740 cars from the total movement of 18,602, the freight charges collected were $471,069.88 ($571,508.94 minus $100,439.06) and if the Cummer scale had been applicable they would have been $232,939 ($281,225.75 minus $48,286.75)

or $238,130.88 less than those actually collected. Accordingly, on the basis of an average of 7,431 cars a year under normal economic conditions, which basis we believe conservative, the gross revenues under the rates prescribed by the previous order herein would be more than $100,000 a year greater than under the Cummer scale, now in effect. The application of the Cummer scale, therefore, places a substantial burden upon defendant's interstate revenues. If the revenues yielded by the Cummer scale are not sufficient to cover the cost of the service, as the cost evidence indicates, it would follow that part of the above-stated amount would constitute a dead loss in net revenue.

We find that the circumstances and conditions surrounding the transportation of these logs intrastate in Florida are not on the whole as favorable as the circumstances and conditions surrounding the interstate movement of logs over defendant's lines.

We affirm the finding of division 4 that the interstate rates previously in force on logs over 6 feet in length, except walnut, cherry, and cedar, in carloads, from points in northern Florida to destinations in Georgia were unreasonable to the extent that they exceeded those prescribed in the report of division 4, and we find that the rates therein prescribed, which are now in effect, are reasonable.

We further find that the intrastate rates on logs over 6 feet in length, except walnut, cherry, and cedar, applicable between points on the Atlantic Coast Line in Florida for distances of 170 miles and less are, and for the future will be, unjustly discriminatory against interstate commerce, and that such unjust discrimination can be and should be removed by the establishment between all points on the Atlantic Coast Line in Florida for distances of 170 miles or less of rates not less than the rates shown for such distances in Appendix F hereto, which are the rates found reasonable for interstate application from northern Florida to Georgia.

In the former report herein division 4 found that the Cummer scale resulted and would result in undue preference and advantage of shippers of intrastate traffic within the State of Florida and in undue prejudice to shippers of interstate traffic from points in the State of Florida to points in the State of Georgia, as well as in unjust discrimination against interstate commerce. The evidence introduced at the original hearing did not show any actual movement of logs from Florida to Georgia. The then existing interstate rates were more than twice as high as the Cummer scale. The evidence was conflicting as to whether there were logs available in northern Florida that could be economically purchased and transported over defendant's lines to Georgia, but was not convincing

that logs could not or would not so move if the interstate and intrastate rates were on the same level. As a result of the former order entered herein the rates from northern Florida to Georgia were reduced and the rates within Florida were increased and both were on the same level from February 8, 1929, to about April 10, 1931. Notwithstanding this parity of rates, it appears from the evidence introduced at the further hearing that there was no movement of logs from Florida to Georgia during that period, except possibly an occasional carload. Whether an interstate movement from Georgia to Florida will develop after the interstate and intrastate rates are again put on a parity and the rate situation finally settled, it is impossible to say at the present time. Inasmuch as we find that the Cummer scale rates cause unjust discrimination against interstate commerce from a revenue standpoint and our order herein removes that discrimination by increasing those rates on defendant's lines throughout the State of Florida to the level of the interstate rates previously prescribed and now in effect, no finding in reference to undue prejudice against persons and localities in interstate commerce is necessary and we make no finding in that regard. Any such undue prejudice as now exists because of the disparity in the intrastate and interstate rates will be removed by compliance with the order which we here enter for the purpose of removing the unjust discrimination against interstate commerce.

An appropriate order will be entered.

APPENDIX A

Letters from Florida Railroad Commission having reference to establishment of the Cummer scale

TALLAHASSEE, *Oct. 9, 1914*
File #3685

RAILROAD COMMISSION STATE OF FLORIDA

SUBJECT: Logs. Rates to Milldale, Fla.
Mr. Jas. Menzies, FTM,
Atlantic Coast Line RR.
Wilmington, N. C.

Dear Sir:

This office is in receipt of your Freight Tariff No. 3339, effective October 3, 1914, carrying rates on logs, C. L. between stations on the Atlantic Coast Line RR up to a distance of 150 miles, which tariff cancels your No. 3282, which carried rates on logs in trainloads of 28 cars.

I am directed by the Commissioners to call your attention to the paragraph in this paragraph which reads:

"When two or more cars are shipped from one station in one day by one shipper for delivery to one consignee at one destination these rates will be charged for an average carload weight of 50,000 pounds per car; excess of the average weight of 50,000 pounds per car will be charged for pro rata."

The Commissioners wish to say that they will not approve this tariff with the above paragraph incorporated therein, and will expect that you immediately re-publish the tariff with this paragraph eliminated.

When this is done, Freight Tariff No. 3339 will comply with the ideas of the Commissioners, in that the rates are stated per carload, and that they apply between all stations up to the given distance of 150 miles. The Commissioners wish it distinctly understood that this approval extends only to the method of stating the rates in this tariff and not to the rates themselves, and that in their opinion they are too low.

The rates carried in this tariff are such as might be deemed confiscatory, and there is little doubt in the minds of the Commissioners if they were to order such a scale of rates that your company would contend that they amounted to confiscation and the taking of your property without due process of law.

To make such a scale of rates for the movement of logs in this State reduces the power of the Atlantic Coast Line RR Company to make other just and reasonable rates to be charged on all classes of freights that the public may be interested in. It also reduces the power of this Commission upon complaint and hearing hereafter to prescribe what might be just and reasonable rates to be charged for other freights when the entire revenues of the Atlantic Coast Line Railroad Company are to be taken into consideration. They amount practically to a discrimination against other classes of freight and all other people engaged in different lines of business.

You will recall that at the conference in Tallahassee on the 14th of July when the matter of withdrawing your log rates to Milldale, Fla., was under discussion the Commissioners advised you that they thought you should supplant the Milldale rates with your present rates on logs as they are being applied to other points in this State, which advice was based on the conviction that your log rates to Milldale were entirely too low.

The Commissioners regret that you have seen fit to publish these extremely low rates. There is no question but that the time will come when these barely remunerative rates will be used as the basis for opposition to the reduction of other rates, where perhaps a reduction might not only be justifiable but necessary, and therefore the Commissioners wish to impress upon you the fact that the low rates carried in your Freight Tariff #3339 were not only not ordered into effect or suggested by them, but were published by you in direct opposition to their advice and suggestions.

Yours very truly,

(S) J. H. TENCH,
Rate Expert.

RAILROAD COMMISSION, STATE OF FLORIDA

TALLAHASSEE, FLA., *August 18, 1915.*

Mr. E. C. McLeod,
Kendrick, Fla.

Dear Sir:

Replying to your letter of August 17th, with reference to the present rate on logs, carload, applicable between stations on the Atlantic Coast Line RR, for a distance of 150 miles and under.

Beg to advise that the Commissioners thoroughly agree with you that this rate is too low. It was not made by the Commission, nor was it put into effect with our approval. On the contrary, it was made effective contrary to the advice and wishes of the Commission. However, in order that you may

become familiar with the situation, it will be necessary for me to go into the history of this rate at some length.

In April, 1914, it came to the attention of the Commission that the Atlantic Coast Line was operating a special rate on logs in trainload lots from stations on the Newberry district to Milldale, Fla., that were not only much lower than the Commission Class P rates, which were applicable on logs, but they were much lower than any other rates that the Atlantic Coast Line had in effect on logs between points in this state.

To be perfectly frank, in the opinion of the Commissioners, this was a preferential rate, made in the interest of the Cummer Lumber Company, because the timber holding of the Cummer Lumber Co. largely lay on the Newberry District of the Atlantic Coast Line, and because of the further fact that there was no mill at Milldale except that of the Cummer Lumber Company.

The Commissioners advised the Atlantic Coast Line RR Co. that they would have to cancel this tariff or make it applicable between all stations on its line in Florida, and that in any event they would have to cancel the application of the rate to logs in trainload lots, as the Commissioners would not recognize anything above the carload as a rate-making unit.

Much to the surprise of the Commissioners, the Atlantic Coast Line corrected the tariff so as to make it applicable between all stations, and open to everyone who had as much as one car of logs to ship. As soon as this was done, we advised the Atlantic Coast Line that we did not approve of these rates, and we also asked counsel for an opinion as to whether we had authority under the law to order the cancellation of a rate on the ground that in our opinion it was too low. We could get no encouragement from counsel that the Commissioners possessed such authority under the law.

As further information I enclose herewith a copy of a communication that was addressed to Mr. Jas. Menzies, Freight Traffic Manager of the Atlantic Coast Line RR, just after their decision to publish these rates as open rates on a mileage basis.

Should the railroad at any time make application to the Commissioners to be allowed to cancel this scale of rates, we would unquestionably allow them to be canceled, but as the matter now stands the move to cancel must be made by the carrier, as the Commission is without authority to order cancellation of a rate because it is too low.

So long as the present conditions prevail it would be to your advantage to locate your mill in Ocala, for the reasons set forth in your letter. The Commissioners regret this condition exists, and I feel sure that after you read the letter to Mr. Menzies, which is attached hereto, you will be convinced that these rates are in effect, not because of any action of the Commissioners, but in spite of their expressed objection.

The present Class P rates in this state, which apply on lumber, logs and wood, were put into effect by the Commissioners after an extended investigation, not only of the lumber industry in this state and adjoining territory, but also of the financial condition of the carriers, and we are convinced that these rates are just and reasonable as applicable to this traffic. If you will compare the rates on lumber in this state with the rates on lumber in Georgia, Alabama, South Carolina, North Carolina, Virginia and Tennessee, you will find that our rates are lower than in any of these states, in which states the conditions are practically the same, except in that in each state mentioned the density of population is greater than it is in Florida.

Yours very truly,

(Signed) R. HUDSON BURR,
Chairman.

APPENDIX B

Florida intrastate log scales compared with various interstate scales in the South (reduced to cents per 100 pounds)

Distance	Florida interstate scales				Interstate scales in Southeast		Interstate scales in Mississippi Valley		
	Atlantic Coast Line (other than cedar)[1]	A.C.L. and S.A.L. (not over 6 feet in length)	Seaboard Air Line (other than cedar and over 6 feet long)	Georgia Southern & Florida (other than cedar)	On A.C.L., S.A.L., Southern and as net transit rates on L. & N.[2]	Single-line scale prescribed in 178 I.C.C. 671 to destinations in Tennessee[3]	Net transit scale on I.C. and M. & O. (except cedar, cherry, and certain foreign woods)[4]	Local scale on Illinois Central (except cedar, walnut, and cherry)	Local scale on Mobile & Ohio (except cedar, walnut, cherry, and mahogany)
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
	Cents	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*
5 miles and under	1.71	2.14	2.81	1.95	2.5	3.5	2	3.5	4.5
10 miles and over 5	1.71	2.14	2.81	2.40	2.5	3.5	2	3.5	4.5
15 miles and over 10	1.71	2.37	2.81	3.16	3	4	2	4.5	6
20 miles and over 15	1.71	2.37	2.81	3.16	3	4	2.5	5	6
25 miles and over 20	1.71	2.75	3.37	3.66	3.5	4.5	2.5	6	7
30 miles and over 25	1.71	2.75	3.37	3.66	3.5	4.5	2.5	6	7
35 miles and over 30	1.71	2.88	3.94	3.83	4	5	3.5	6.5	7
40 miles and over 35	1.71	2.88	3.94	3.83	4	5	3.5	7	8.5
45 miles and over 40	2.10	3.25	3.94	4.33	4.5	5.5	4	8	8.5
50 miles and over 45	2.10	3.25	3.94	4.33	4.5	5.5	4.5	8.5	8.5
55 miles and over 50	2.10	3.50	4.50	4.60	4.5	6	4.5	8.5	8.5
60 miles and over 55	2.10	3.50	4.50	4.60	5	6	5	8.5	8.5
65 miles and over 60	2.30	3.75	4.50	5.00	5	6.5	5	9	8.5
70 miles and over 65	2.30	3.75	4.50	5.00	5	6.5	5	9	8.5
75 miles and over 70	2.30	4.00	5.06	5.33	5.5	7	6	10.5	8.5
80 miles and over 75	2.30	4.00	5.06	5.33	5.5	7	6	10.5	8.5
85 miles and over 80	2.30	4.25	5.63	5.66	5.5	7	6	10.5	8.5
90 miles and over 85	2.30	4.25	5.63	5.66	6	7.5	6.5	10.5	10.5
95 miles and over 90	2.60	4.50	6.19	6.00	6	7.5	6.5	11	10.5
100 miles and over 95	2.60	4.50	6.19	6.00	6	7.5	6.5	11	10.5
105 miles and over 100	2.80	4.62	6.19	6.16	6.5	8	6.5	11	10.5
110 miles and over 105	2.80	4.62	6.19	6.16	6.5	8	6.5	11	10.5
115 miles and over 110	3.20	5.00	6.19	6.66	6.5	8	6.5	11	10.5
120 miles and over 115	3.20	5.00	6.19	6.66	6.5	8	6.5	11	10.5
125 miles and over 120	3.20	5.13	6.75	.....	7	8.5	7	11.5	10.5
130 miles and over 125	3.20	5.13	6.75	.....	7	8.5	7	11.5	10.5
135 miles and over 130	3.40	5.13	6.75	.....	7	8.5	7	11.5	10.5
140 miles and over 135	3.40	5.13	6.75	.....	7	8.5	7	11.5	10.5
145 miles and over 140	3.40	5.50	7.31	.....	7.5	9	7	11.5	11.5
150 miles and over 145	3.40	5.50	7.31	.....	7.5	9	7	11.5	11.5
155 miles and over 150	3.40	5.75	.....	.....	7.5	9	7	11.5	11.5
160 miles and over 155	3.40	5.75	.....	.....	7.5	9	7	11.5	11.5
165 miles and over 160	3.70	6.25	.....	.....	8	9.5	8	12.5	11.5
170 miles and over 165	3.70	6.25	.....	.....	8	9.5	8	12.5	11.5
180 miles and over 170	8.33	6.25	.....	.....	8	9.5	.....	.....	.....
200 miles and over 180	8.33	6.25	.....	.....	8.5	10	.....	.....	.....
220 miles and over 200	8.67	6.50	.....	.....	9	10.5	.....	.....	.....
240 miles and over 220	9.00	6.75	.....	.....	9.5	11	.....	.....	.....
260 miles and over 240	9.17	6.87	.....	.....	10	11.5	.....	.....	.....
280 miles and over 260	9.50	7.12	.....	.....	10.5	12	.....	.....	.....
290 miles and over 280	9.67	7.25	.....	.....	11	12.5	.....	.....	.....
300 miles and over 290	9.83	7.37	.....	.....	11	12.5	.....	.....	.....

[1] Cummer scale to and including 170 miles; Class P minimum 30,000 pounds for distances over 170 miles.
[2] On A. C. L. scale does not apply on cedar, cherry, mahogany, or walnut logs. Scale runs to 550 miles.
[3] Scale runs to 800 miles.
[4] On I. C. does not apply on pine or walnut.

APPENDIX C

Comparison of Cummer scale with intrastate rates on logs between points on Atlantic Coast Line Railroad in Virginia, North Carolina, South Carolina, Georgia, and Alabama (reduced to cents per 100 pounds)

	Cummer scale (except cedar).	Virginia (except cedar, cherry, mahogany and walnut)	North Carolina	South Carolina	Georgia (transit)	Georgia (local)	Alabama
	Cents	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*
5 miles	1.71	2.5	1.8	2	1.83	3.05	2.5
7 miles	1.71	2.5	1.8	2	1.83	3.05	2.5
10 miles	1.71	2.5	1.8	2	2.11	3.51	2.5
12 miles	1.71	3	1.8	2.5	2.11	3.51	3
15 miles	1.71	3	2.13	2.5	2.11	4.17	3
17 miles	1.71	3	2.13	2.5	2.5	4.17	3
20 miles	1.71	3	2.13	2.5	2.63	4.38	3
22 miles	1.71	3.5	2.13	3	2.63	4.38	3.5
25 miles	1.71	3.5	2.62	3	2.88	4.79	3.5
27 miles	1.71	3.5	2.62	3	2.88	4.79	3.5
30 miles	1.71	3.5	2.62	3	3	5	3.5
32 miles	1.71	4	2.62	3	3	5	4
35 miles	1.71	4	2.88	3	3.25	5.41	4
37 miles	1.71	4	2.88	3	3.25	5.41	4
40 miles	1.71	4	2.88	3	3.38	5.61	4
42 miles	2.1	4.5	2.88	3.5	3.38	5.61	4.5
45 miles	2.1	4.5	2.88	3.5	3.5	5.91	4.5
47 miles	2.1	4.5	3.25	3.5	3.5	5.91	4.5
50 miles	2.1	4.5	3.25	3.5	3.5	5.91	4.5
52 miles	2.1	4.5	3.25	3.5	3.5	5.91	4.5
55 miles	2.1	4.5	3.5	3.5	3.63	6.04	4.5
57 miles	2.1	5	3.5	4	3.63	6.04	5
60 miles	2.1	5	3.5	4	4	6.66	5
62 miles	2.3	5	3.5	4	4	6.66	5
65 miles	2.3	5	4	4	4.13	6.87	5
67 miles	2.3	5	4	4	4.13	6.87	5
70 miles	2.3	5	4	4	4.25	7.08	5
72 miles	2.3	5.5	4	5	4.25	7.08	5.5
75 miles	2.3		4.25	5	4.38	7.29	5.5
77 miles	2.3		4.25	5	4.38	7.29	5.5
80 miles	2.3		4.25	5	4.63	7.71	5.5
82 miles	2.3		4.25	5	4.63	7.71	5.5
85 miles	2.3		4.62	5	4.75	7.91	5.5
87 miles	2.3		4.62	5	4.75	7.91	6
90 miles	2.3		4.62	5	4.88	8.12	6
92 miles	2.6		4.62	5	4.88	8.12	6
95 miles	2.6		5	5	5.32	8.54	6
97 miles	2.6		5	5	5.13	8.54	6
100 miles	2.6		5	5	5.38	8.96	6
110 miles	2.8		5.38	6.5	5.5	9.17	6.5
120 miles	3.2		5.63	6.5	5.63	9.34	6.5
130 miles	3.2		6.13	7	5.75	9.58	7
140 miles	3.4		6.25	7	6	10	7
150 miles	3.4		6.75	8	6.25	10.41	7.5
160 miles	3.4		7.13	8	6.38	10.62	7.5
170 miles	3.7		7.38	8	6.5	10.83	8

APPENDIX D

Comparison of rates per 100 pounds and car-revenue under rates assailed on logs with important commodities moving between north Florida and Georgia points on the Atlantic Coast Line

[Loadings shown are the average for the system in 1925. Average haul for system in May, 1926, logs 109 miles, brick 213 miles, sand and gravel 120 miles, lime 217 miles, cement 243 miles]

	Rates on logs		Georgia-Florida interstate rates			
	Interstate	Florida intrastate	Common brick	Gravel and sand	Lime	Cement
	Cents	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*
5 miles	2.5	1.71	3	2.5	2.8	4
10 miles	2.5	1.71	3	2.5	3.6	5
15 miles	3	1.71	3.5	2.75	4	6
20 miles	3	1.71	3.5	2.75	4.4	7
25 miles	3.5	1.71	4	3	4.8	8
30 miles	3.5	1.71	4	3	5.2	8
35 miles	4	1.71	4.5	3.5	5.6	8.5
40 miles	4	1.71	4.5	3.5	6	8.5
45 miles	4.5	2.10	5	4	6.4	9
50 miles	4.5	2.10	5	4	6.8	9
55 miles	4.5	2.10	5	4	7.2	9.5
60 miles	5	2.10	5	4	7.6	9.5
65 miles	5	2.30	5.5	4.5	8	10
70 miles	5	2.30	5.5	4.5	8.4	10
75 miles	5.5	2.30	6	4.5	8.8	10.5
80 miles	5.5	2.30	6	4.5	8.8	10.5
85 miles	5.5	2.30	6.5	5	9.2	11
90 miles	6	2.30	6.5	5	9.2	11
95 miles	6	2.60	6.5	5	9.6	11.5
100 miles	6	2.60	6.5	5	9.6	11.5
110 miles	6.5	2.80	7	5.5	10	12
120 miles	6.5	3.20	7	5.5	10	12
130 miles	7	3.20	7	6	10.4	12.5
140 miles	7	3.40	7	6	10.4	12.5
150 miles	7.5	3.40	7.5	6	10.8	13
160 miles	7.5	3.40	7.5	6.5	10.8	13
170 miles	8	3.70	8	6.5	11.2	13.5

	Revenue per car, logs		Revenue per car, Georgia-Florida interstate			
	Interstate, 55,000 pounds	Florida intrastate, 55,000 pounds	Brick, 66,580 pounds	Gravel and sand, 92,540 pounds	Lime, 50,000 pounds	Cement, 70,740 pounds
5 miles	$13.75	$9.41	$19.97	$23.14	$14.00	$28.30
10 miles	13.75	9.41	19.97	23.14	18.00	35.37
15 miles	16.50	9.41	23.30	25.45	20.00	42.44
20 miles	16.50	9.41	23.30	25.45	22.00	49.52
25 miles	19.25	9.41	26.63	27.76	24.00	56.59
30 miles	19.25	9.41	26.63	27.76	26.00	56.59
35 miles	22.00	9.41	29.96	32.39	28.00	60.13
40 miles	22.00	9.41	29.96	32.39	30.00	60.13
45 miles	24.75	11.55	33.29	37.02	32.00	63.67
50 miles	24.75	11.55	33.29	37.02	34.00	63.67
55 miles	24.75	11.55	33.29	37.02	36.00	67.20
60 miles	27.50	11.55	33.29	37.02	38.00	67.20
65 miles	27.50	12.65	36.62	41.64	40.00	70.74
70 miles	27.50	12.65	36.62	41.64	42.00	70.74
75 miles	30.25	12.65	39.95	41.64	44.00	74.28
80 miles	30.25	12.65	39.95	41.64	44.00	74.28
85 miles	30.25	12.65	43.28	46.27	46.00	77.81
90 miles	33.00	12.65	43.28	46.27	46.00	77.81
95 miles	33.00	14.30	43.28	46.27	48.00	81.35
100 miles	33.00	14.30	43.28	46.27	48.00	81.35
110 miles	35.75	15.40	46.61	50.90	50.00	84.89
120 miles	35.75	17.60	46.61	50.90	50.00	84.89
130 miles	38.50	17.60	46.61	55.52	52.00	88.43
140 miles	38.50	18.70	46.61	55.52	52.00	88.43
150 miles	41.25	18.70	49.94	55.52	54.00	91.96
160 miles	41.25	18.70	49.94	60.15	54.00	91.96
170 miles	44.00	20.35	53.26	60.15	56.00	95.50

APPENDIX E

Estimated cost of transporting logs in Florida for average distance of 81.36 miles, based on A. C. L. average costs per unit for calendar year 1929 applied to the average units involved in hauling logs in that State

BASIC DATA

Operating expenses:		
Total freight-service operating expenses		$36,308,813
Expenses not involved in handling log traffic:		
Maintenance of way and structures:		
No. 241. Wharves and docks	$135,980	
No. 201. Superintendence (proportion), 5.334 per cent × $135,980	7,253	
Maintenance of equipment:		
Nos. 323 and 324. Floating equipment—Repairs and depreciation	33,481	
No. 301. Superintendence (proportion), 3.845 per cent × $33,481	1,287	
Traffic:		
No. 352. Outside agencies	488,740	
No. 353. Advertising	4,579	
No. 354. Traffic associations	46,802	
No. 356. Industrial and immigration bureaus	16,637	
	556,758	
No. 351. Superintendence (proportion), 81.94 per cent × $556,758	456,246	
Transportation—Rail line:		
No. 408. Operating floating equipment	33,543	
No. 371. Superintendence (proportion), 4.392 per cent × $33,543	1,473	
Total	1,226,021	
General expenses:		
Proportion applicable to above items—4.490 per cent × $1,226,021	55,048	
Total expenses not involved		1,281,069
Net freight-service operating expenses		35,027,744

Apportionment between haulage and nonhaulage expenses	Haulage expenses	Nonhaulage expenses
Net freight-service operating expenses, apportioned 70.3539 per cent to haulage and 29.6461 per cent to nonhaulage, based on proportions obtained from those of "Maintenance of way and structures" and "Transportation—Rail line" accounts, which are segregated between cost of haulage and yard or nonhaulage expenses (see testimony, Witness Pettijohn, R. 1465)	$24,643,384	$10,384,360
Deduction for excess terminal expense (platform and clerical) incurred for less-than-carload over that incurred for carload freight, estimated at 75 per cent of accounts 373, "Station employees," and 376, "Station supplies and expenses" ($3,407,701 × 75 per cent)		2,555,778
Net amounts applicable to carload traffic	24,643,384	7,828,582

Gross ton-miles	11,600,829,000
Average haulage expense per gross ton-mile	$0.0021243
Revenue ton-miles	3,281,770,000
Loaded-car miles (revenue and nonrevenue)	209,835,784
Revenue tons per loaded-car mile (revenue and nonrevenue)	15.6397
Total revenue tons carried	18,951,802
Total loaded cars carried (revenue and nonrevenue)	1,211,775
Average nonhaulage expense per loaded car	$6.46
Taxes:	
U. S. Government (corporation income)	$570,076
Other than U. S. Government (State taxes)	$5,669,924
Total taxes	6,240,000
Total operating expenses (freight and passenger)	53,431,589
Taxes per dollar of operating expense	$0.11678
Interest on investment at 5.75 per cent:	
Property investment as of December 31, 1929	$306,439,250
5.75 per cent interest on investment	$17,620,257
Interest on investment per dollar of operating expense	$0.32977
Statistical data for log traffic in Florida:	
Average revenue per car under so-called Cummer scale	$15.12
Average distance hauled (miles)	81.36
Average billing weight (pounds)	56,754.
Average tare weight of car (pounds)	33,000.
Average tare weight of car, empty haul (pounds)	33,000.
Gross weight (pounds)	122,754.
Gross weight (tons)	61.377
Gross ton-miles per car (61.377 gross tons x 81.36 miles)	4,994.

COMPUTATION OF COSTS

Estimated cost per car of hauling logs in Florida based on A. C. L. average costs per unit:

Operating expenses:		
Haulage expenses: 4,994 gross ton-miles x $0.0021243 per gross ton-mile	$10.61	
Nonhaulage expenses: Average per loaded car	6.46	
Total operating expenses		$17.07
Taxes: $17.07 (operating expenses) x $0.11678 (taxes per dollar of operating expenses)		1.99
Interest on investment at 5.75 per cent: $17.07 (operating expenses) x $0.32977 (interest per dollar of operating expenses)		5.63
Total cost per car		24.69
Cost per 100 pounds		4.35 cents
Average revenue (Cummer scale) per car of logs for average haul of 81.36 miles		15.1

APPENDIX F

Minimum rates per 100 pounds prescribed herein on Florida intrastate log traffic

Distance	Rate [1]	Distance	Rate [1]
	Cents		*Cents*
10 miles and under	2.5	85 miles and over 70	5.5
20 miles and over 10	3	100 miles and over 85	6
30 miles and over 20	3.5	120 miles and over 100	6.5
40 miles and over 30	4	140 miles and over 120	7
55 miles and over 40	4.5	160 miles and over 140	7.5
70 miles and over 55	5	170 miles and over 160	8

[1] Minimum 40,000 pounds.

186 I. C. C.

18345

INTERSTATE COMMERCE COMMISSION

No. 18364

GEORGIA PUBLIC SERVICE COMMISSION *v.* ATLANTIC COAST LINE RAILROAD COMPANY

154781—33

U. S. GOVERNMENT PRINTING OFFICE: 1933

No. 18364

GEORGIA PUBLIC SERVICE COMMISSION *v.* ATLANT COAST LINE RAILROAD COMPANY

Submitted November 22, 1932. Decided January 9, 1933

Findings in prior report on further hearing, 186 I. C. C. 157, that the rates logs over 6 feet in length, except walnut, cherry, and cedar, in carlo applying on shipments between points on the Atlantic Coast Line Railr in Florida for distances of 170 miles and less were unjustly discriminat against interstate commerce, affirmed.

R. C. Alston and *F. W. Gwathmey* for defendant.

T. T. Turnbull for Florida Railroad Commission.

H. P. Adair, C. T. Ashby, J. V. Norman, A. G. Gutheim, F. Hillyer, and *E. C. Green* for interveners.

SECOND REPORT OF THE COMMISSION ON FURTHER HEARING

MEYER, *Commissioner:*

Our report on further hearing of July 5, 1932, 186 I. C. C. 1 contains a full and complete history of this proceeding up to t time. To briefly summarize what is there shown: In the origi report, 146 I. C. C. 717, defendant's interstate rates on logs ove feet in length, except walnut, cherry, and cedar, for distances of 1 miles and less, from northern Florida to Georgia were found unr sonable, and its Florida intrastate rates on similar logs for simi hauls, known as the Cummer scale, found to result in undue pref ence to shippers of intrastate traffic within Florida and undue pre dice to shippers of interstate traffic from points in Florida to poi in Georgia and in unjust discrimination against interstate commer Suits were brought by the State of Florida, the Florida Railro Commission, and certain manufacturers of lumber in Florida, int veners herein, to enjoin that part of the order entered that dealt wi the Florida intrastate rates, and in *Florida v. United States*, 2 U. S. 194, the Supreme Court held that such part of the order w not supported by appropriate findings. Thereafter, upon petitio of complainant and defendant, we reopened the proceeding for fu ther hearing, which was held. In our report on such further hea ing, referred to above, we affirmed the previous findings, exce that as to the alleged undue prejudice against persons and localiti

in interstate commerce we made no finding. We again, by order of July 5, 1932, as amended by order of July 28, 1932, required that the unjust discrimination against interstate commerce be removed by establishing intrastate in Florida the same scale which we found reasonable for interstate application from Florida to Georgia. Bills to enjoin this order were filed in the United States district court by the same parties who had succeeded in enjoining the previous order. Argument was had before the court September 14, 1932, the day before the effective date of our order. The court took the case under advisement and, in order to allow time for it to consider the case, issued a temporary suspension order for not to exceed 60 days. In early October the same parties filed with us petitions for further hearing, setting forth therein that since our report on further hearing other southern rail carriers had reduced their log rates to substantially the same basis as the Cummer scale. On or about the same time they filed supplemental bills in the United States district court in which they set up the filing of these petitions and prayed that our order be further stayed. Upon consideration of the petitions referred to, we suspended the operation of our order of July 5, 1932, as amended, until our further order and reopened the proceeding for further hearing for the sole purpose of receiving evidence respecting any change in the rates on logs since the close of the previous hearing, the circumstances connected with and the conditions which occasioned such changes, and whether such circumstances and conditions, or any of them, are present with respect to the Florida intrastate log rates of defendant. The bills and supplemental bills filed in the United States district court are still pending. The further hearing has been held; also oral argument before the presiding examiner, as provided by our order of reopening.

The evidence introduced at the further hearing shows that certain carriers that operate in southwestern and southern territories have in recent months established rates on logs, bolts, billets, rough staves, and heading in amounts per car regardless of weight, which rates are on substantially the same level as the Cummer scale referred to. These rates were first established by certain railroads operating west of the Mississippi River, following a meeting held March 29, 1932, between their representatives and certain shippers, at which meeting it was agreed that rates of $12.50 for distances of 25 miles or less, $15 for distances of 25 but not over 50 miles, $17.50 for distances of 50 but not over 75 miles, and $22.50 for distances of 75 but not over 100 miles should be established in Arkansas, Louisiana, and Missouri experimentally in an effort to meet truck competition, and that they should expire by limitation December 31, 1932.

On or about the same time the Illinois Central system, and later the Gulf, Mobile & Northern Railroad, Mobile & Ohio Railroad, St. Louis-San Francisco Railway, Central of Georgia Railway, Southern system, Nashville, Chattanooga & St. Louis Railway, Seaboard Air Line Railway, Western Railway of Alabama, and Columbus & Greenville Railway established similar rates. Those of the Illinois Central system became effective April 1, 1932, intrastate in Mississippi, and April 12, 1932, interstate; those of the Gulf, Mobile & Northern, May 9, 1932; and those of the other lines at subsequent dates, generally in July and August, 1932. Generally these rates are published to expire in one year unless sooner canceled, changed, or extended.

The rates of these southern lines are not uniform and also vary somewhat from those referred to above as agreed upon by the southwestern carriers. Like those of the southwestern carriers, all are in amounts per car regardless of weight. Generally they are either $12 or $12.50 for distances to 25 miles and either $20 or $22.50 for distances over 75 but not over 100 miles, with rates for the intermediate mileage blocks the same as those of the southwestern carriers. However, the rates of the Seaboard Air Line and Central of Georgia to Montgomery, Ala., and those of the Western of Alabama to Montgomery and Selma, Ala., which are the only per car rates published by those lines, as well as those of the Southern to Selma, Mobile, and York, Ala., are $14.50, $17.50, $20, and $22.50 for the respective mileage blocks mentioned above. The Columbus & Greenville has also established rates of $22.50 for distances over 100 but not over 125 miles; $25 for distances over 125 but not over 150 miles; and $27.50 for distances over 150 but not over 170 miles.

The per car rates of the Illinois Central system apply to approximately 30 manufacturing points east of the Mississippi River, 2 of which are in Tennessee, 2 in southern Louisiana, and the remainder in Mississippi; those of the Seaboard Air Line and the Central of Georgia to Montgomery only; those of the Western of Alabama to Montgomery and Selma; those of the Southern to Mobile, Selma, and York, Ala., Chattanooga and Memphis, Tenn., and Laurel and Corinth, Miss.; those of the Mobile & Ohio to Columbus, Corinth, and Meridian, Miss., Humboldt and Jackson, Tenn., and Mobile and Whistler, Ala.; those of the Columbus & Greenville to Columbus, Greenville, Grenada, and West Point, Miss.; and those of the Gulf, Mobile & Northern, St. Louis-San Francisco east of the Mississippi River, and Nashville, Chattanooga & St. Louis to all points on those lines, although in practical effect those of the Gulf, Mobile & Northern and St. Louis-San Francisco apply only to manufacturing points, their application being dependent upon an outbound movement of manufactured products, as will be later explained. It will

be noted that all of these rates apply in the western portion of southern territory and none in the eastern portion.

Some of the per car rates of the southern carriers are published as transit rates and others as local or proportional rates. All except those of the Nashville, Chattanooga & St. Louis and some of those of the Southern, apply only if the manufactured product moves outbound over the line of the carrier which moves the logs inbound. In some instances the tariffs provide that, upon the shipper giving satisfactory bond to forward the outbound manufactured product over the line of the carrier transporting the logs, the charges originally collected on the logs will be these per car rates; in other instances they provide that the original charges will be based on the local rates and, upon satisfactory evidence of the outbound movement of the manufactured product over the line of the carrier which moved the logs inbound, refund will be made to the basis of these per car rates. The local log rates in effect prior to the establishment of these per car rates are still in effect and are applicable to the movement of logs to points to which the per car rates are not applicable, also to points to which they are applicable if the tariff provisions referred to above are not complied with. The rates of the Nashville, Chattanooga & St. Louis and those of the Southern to Mobile, Selma, York, and Chattanooga are local rates and their application is not dependent upon the outbound movement of the manufactured products over their lines.

The per car rates of these southern lines, like those of the southwestern lines, were established primarily as an experiment to meet actual truck competition which the carriers' investigations showed to exist. While the extent of this truck competition is not shown, it apparently was sufficiently compelling, in the judgment of the managers of these railroads, to warrant the establishment of these rates as an experiment. With some of these southern carriers, particularly the Mobile & Ohio and the St. Louis-San Francisco, carrier competition also had a considerable influence in the establishment of these rates. For example, a representative of the St. Louis-San Francisco testified that that road had decided not to establish these rates east of the Mississippi River, but was later forced to do so to meet the competition of other carriers, it having found that logs were being trucked from its rails to competing railroads which had previously established the per car rates. In this connection it should be remembered that the carrier transporting the logs to the manufacturing point at these per car rates is also assured of the outbound movement on the manufactured products,

except in the case of the Nashville, Chattanooga & St. Louis and, in some instances, the Southern.

It is clear from the record that the object of the southern lines in establishing these per car rates was not merely to meet the truck competition on the logs, but was to be assured at the same time of receiving the outbound movement of the manufactured product; and that while these rates standing alone would not be attractive to these carriers from a revenue standpoint, they are attractive when coupled with the rates for the outbound movement of the manufactured product. A representative of the Southern testified that in those instances in which its per car rates were not made dependent on the outbound movement of the manufactured product it was willing to depend upon what it termed the moral obligation of the shipper to give it the outbound movement. With respect to its per car rates to Memphis, Laurel, and Corinth the Southern provides by its tariffs that such rates shall apply only if it transports the outbound manufactured product. No representative of the Nashville, Chattanooga & St. Louis appeared at the further hearing.

Representatives of the Illinois Central, Gulf, Mobile & Northern, Mobile & Ohio, St. Louis-San Francisco, Central of Georgia, and Southern testified that they hoped that the experiment of publishing these rates would prove successful after sufficient time had elapsed to fully test it, but that so far the experiment had not proved successful, as they had regained relatively little of the log traffic from the trucks; that what traffic they had regained from the trucks had been for the most part traffic moving from about 25 to 60 miles, although some had been recovered that moved as much as 98 miles and some that moved as little as 11 miles; and that there is little, if any, hope of securing much of the traffic that now moves by truck for distances under 25 miles, a considerable portion of which never has moved by rail.

A witness for the Florida interveners testified that two mills, which he had visited and whose records he had inspected, had materially increased their shipments by rail since the establishment of these per car rates; that one, at Montgomery, previously received about 10 per cent of its logs, amounting to about 10 or 12 carloads a month, by rail, whereas since the establishment of these rates it had received over the Central of Georgia from 60 to 90 carloads a month, which constituted about 50 per cent of the logs received; and that the other, at Chattanooga, with a capacity of 25,000 feet a day and operating from two to three days a week for the past year, previously received about 20 per cent of its logs by rail and 80 per cent by truck, whereas since the establishment of these rates it has re-

ceived about 80 per cent by rail and 20 per cent by truck. His testimony with respect to the receipts of the mill at Montgomery is not borne out by the testimony of the representative of the Central of Georgia, which shows that that carrier's per car rates to Montgomery became effective August 15, 1932, intrastate, and September 13, 1932, interstate, and that thereafter to November 11, 1932, which was 10 days prior to the further hearing, it had transported but 53 carloads of logs to Montgomery. On the basis of two days' operation per week, the total log requirements of the Chattanooga mill would be about five carloads of 100,000 pounds each per week. Accordingly, the increase in the rail movement of logs to that mill from approximately 20 to 80 per cent of the total represents an increase of but three carloads a week. On the basis of three days' operation, the increase would be about four or five carloads a week.

The parties are in agreement that the tendency of rates per car regardless of weight is to increase the loading of the cars. The Florida interveners show that since the establishment of these per car rates the mill at Chattanooga, referred to above, will accept only cars that have a loading capacity of about 125,000 pounds and that its average loading ranges from 105,000 to 110,000 pounds; and that mills at Montgomery and Memphis have received cars loading over 90,000 pounds and a mill at Laurel has received cars loading as high as 122,000 pounds.

Such truck competition as has been shown in the movement of logs in Florida is generally to the smaller lumber mills and between points where the rail hauls are 25 miles or less. A witness employed by the Florida intervener to make an investigation of the extent of the movement of logs by truck in Florida specified 23 mills located at 19 different points in Florida to which all or substantially all of the logs cut were transported by truck. Most of these mills were cutting less than 10,000 feet of lumber a day, only four were cutting more. The 23 mills were cutting a total of less than 200,000 feet a day, which is less than the capacity of a single large Florida mill such as that of intervener Brooks-Scanlon Corporation at Foley, and is a very small percentage of the total lumber cut in Florida. This witness testified as to the range of the hauls by truck to nearly all of these mills, but did not know what the average hauls were, the location of the logs, or how far they were from a railroad. The maximum hauls were 10 miles or less to three of the mills, between 10 and 15 miles to two, between 15 and 20 to five, between 20 and 25 miles to four, between 25 and 30 miles to two, and between 30 and 45 miles to five. The length of the hauls to two of the mills were not known. Of the 23 mills, 7 were located on defendant's lines exclusively, 3 on the lines of defendant and the Seaboard Air Line,

1 on the lines of defendant and the Southern, 9 on the Seaboard Air Line exclusively, 1 on the Florida East Coast, 1 on the Georgia Southern & Florida, and 1 on the Live Oak, Perry & Gulf. The 11 mills located on defendant's lines were cutting a total of approximately 87,500 feet a day; and the maximum haul by truck was 10 miles to two of the mills, between 10 and 15 miles to two, between 15 and 20 miles to two, between 20 and 25 miles to three, and between 25 and 30 miles to one. The length of the hauls to two were not known. The record does not show whether any of the logs moved by truck to these 11 mills could have moved over defendant's lines. A cut of 87,500 feet a day represents approximately 20 carloads of logs, based on 4,231 board feet to the carload, the average of one intervener, as will hereinafter appear.

In addition to the above, representatives of two other mills located at Jacksonville testified as to the movement of logs to their mills by truck. One is located on defendant's lines exclusively and the other on the Seaboard Air Line exclusively. The former started operations in June, 1930, and cuts approximately 700,000 feet a month; the latter started operations in March, 1931, and has cut from 75,000 to 100,000 feet a week from that time to early in November last, when it ceased operations until the first of the year when it expected to resume.

The first of these mills is that of F. S. Buffum Company, which company was permitted to intervene herein at the time the case was reopened for further hearing. From June, 1930, to October, 1932, both months inclusive, it received 1,092 carloads of logs by rail, 931 of which were transported to Jacksonville by defendant, 135 by the Seaboard Air Line, 2 by the Southern, and 24 by the Florida East Coast. During the same period this intervener received the equivalent of 1,935.3 carloads by truck and 154.3 carloads by water, using 4,231 board feet of logs as a carload, that being the average board measure per carload received by rail at this mill. The movement during the period when the interstate rates prescribed in the original report of division 4 were in effect is compared with the movement during the subsequent period when the Cummer scale was charged. While the Cummer scale was reestablished April 10, 1931, shipments received during April and May, 1931, were included in the period during which the interstate scale was in effect, the witness for intervener stating that it had taken some time to rearrange the mill's contracts for logs. During the 12 months from June, 1930, to May, 1931, this intervener received 275 carloads by rail and the equivalent of 703.8 carloads by truck and 85 by water, a total of 1,063.8 carloads. Approximately 26 per cent of the carloads were received by rail during this period. During the subsequent seven

months, June to December, 1931, during which the Cummer scale was in effect, a total of 529 carloads were received, of which approximately 26 per cent were by rail. During the latter period the mill was not operating for two and a half months. During the first 10 months of 1932, when the Cummer scale was also in effect, 683 carloads were received by rail and the equivalent of 848.5 by truck and 64.2 by water, a total of 1,595.7 carloads. During this period approximately 43 per cent of the carloads moved by rail. The hauls of the shipments received by truck during these 10 months of 1932 ranged from 16 to 55 miles and the weighted-average haul was 30.6 miles. If these logs had moved by rail, the rail hauls would have ranged from 12 to about 40 miles. The differences between the rail and the truck distances range from 2 to 20 miles and apparently the greater part of these differences represent the hauls necessary to get the logs to the railroad. For example, the truck hauls from Maxville and Doctor's Inlet are given as 30 and 38 miles, respectively, and the rail hauls from the same points as 28 and 18 miles, respectively. Of the shipments by truck during these 10 months only the equivalent of 254 carloads, or approximately 30 per cent of the total received by truck, were from points from which they could have moved over defendant's lines if moved by rail; over 50 per cent were from points adjacent to the Florida East Coast. These 254 carloads moved by truck notwithstanding the fact that the Cummer scale was in effect over defendant's lines. All but 3 of these 254 carloads moved from points from which the rail distances to Jacksonville range from 11 to 26 miles.

The other Jacksonville mill referred to is that of the W. J. Bryson Lumber Company. Its representative testified that since it started operations in March, 1931, it has received all of its logs by truck, except that 27 or 28 carloads were received by rail from Dukes and Cross City on defendant's lines. The rail hauls to Jacksonville from those points are 58 and 118 miles, respectively. While the witness further testified that the truck hauls ranged from 10 to 68 miles and that a substantial portion of the logs were hauled over 50 miles, instancing the haul from Green Cove Springs as between 60 and 70 miles, the evidence introduced by the Jacksonville intervener, referred to above, shows that its truck hauls from that point were but 40 miles and the rail distance 26 miles. This witness also testified that the average haul by truck to his mill was about 50 miles, but the evidence of record as a whole indicates that none of the specific movements referred to by him was over about 40 miles.

The total cut of all the mills to which the Florida interveners show a movement of logs by truck is less than 250,000 feet a day, which is equivalent to a daily movement of about 57 carloads of logs.

However, many of these mills are not on the rails of defendant and much of the movement by truck to these mills is from territory not served by defendant. As stated, approximately 254 carloads moved to the Buffum Company by truck during the first 10 months of 1932 that could have moved over defendant's lines, and the record also indicates that approximately 200 carloads received by the Bryson Company since March, 1931, could have moved over defendant's lines, but the record does not show that any of the other logs shown to have moved by truck in Florida could have moved over defendant's lines. The logs that moved by truck to these two companies which the record shows could have moved over defendant's lines represent an average of approximately 35 carloads a month and, as indicated above, they moved for relatively short distances. During the first eight months of 1932, defendant transported 773 carloads of logs to Jacksonville, an average of 96.5 carloads per month. The rail hauls on these logs ranged from 32 to 185 miles; the hauls on all except eight carloads were 53 miles or more.

A witness for intervener Wilson Lumber Company of Florida, which operates at Perry one of the larger hardwood mills in Florida, testified that that company has received very few logs by truck, but that the road conditions in the vicinity of the mill are favorable for movement by truck; that his company owns or has under option about 14,000,000 feet of timber located from about 0.25 to 15 miles from defendant's line at Carbur, which is 17 miles from Perry over defendant's lines, and about 1,000,000 feet at other points within about 30 miles of its mill; that it also buys hardwood logs from other companies which cut pine and cypress, which logs have moved by rail for distances up to about 170 miles; that it has received an offer from a responsible party to transport these logs from Carbur to Perry for $2 per thousand feet, minimum 25,000 feet a day; that the Cummer scale rate of 171 cents per 100 pounds for the distance from Carbur to Perry is equivalent to $2.05 per thousand feet, and the interstate scale of 3 cents for that distance equivalent to $3.60 per thousand feet, which latter rate it would be out of the question for his company to pay as against the truck rate of $2 per thousand feet.

The freight-traffic manager of defendant testified that one of his important duties is to keep informed as to the extent to which trucks are taking business from defendant and as to the advisability and practicability of defendant reducing its rates because of truck competition, and that from 75 to 80 per cent of his time is given to a study of truck competition; that there has been no substantial change in conditions in Florida since the former hearing; that the movement of logs by truck in the territory served by defendant, including

Florida, is negligible and not sufficient to warrant reductions in rates to save such traffic from the trucks; and that the log traffic which moves by truck for distances under 25 miles could not be regained by any rates defendant might make because in most instances the distances from the woods to the railroad stations represent such a large percentage of the distances to the mills as not to justify transfer from the trucks to cars. This witness also showed that defendant's total log traffic in Florida, exclusive of that moving in trainloads, for the 13 months following the last hearing, that is from August 1, 1931, to August 31, 1932, was 2,453 carloads as compared with 3,245 carloads during the previous 13 months from July 1, 1930, to July 31, 1931. The decrease was 792 carloads, or 24.4 per cent, but the decrease in defendant's Florida lumber traffic during the same period was even greater. From July 1, 1930, to July 31, 1931, defendant transported 15,949 carloads of lumber, shingles, and lath originating in Florida, whereas during the subsequent 13 months it transported but 9,672 carloads, a decrease of 6,277 carloads, or 39.4 per cent. Defendant also shows that the decrease in its Florida lumber traffic has been substantially the same as the decrease in the lumber traffic over its entire line, over all Class I carriers in the southern region, and over all Class I carriers in the United States. For example, from July 1, 1930, to June 30, 1931, defendant's Florida lumber traffic amounted to 15,130 carloads, an average of 3,782 for each quarter year, and during the following nine months the quarterly average was 2,604 carloads, a decrease of 1,178 carloads, or 31 per cent. The corresponding percentage reductions in the lumber traffic over defendant's entire line and of the carloads of lumber originated by all Class I carriers in the southern region and by all Class I carriers in the United States were 27, 28, and 30, respectively.

Exclusive of the movement in trainloads, defendant handled a monthly average of 282 carloads of logs over 6 feet in length between points in Florida during the year 1930, an average of 198 carloads a month during 1931, and an average of 188 carloads a month during the first eight months of 1932. In this connection it should be remembered that in 1930, when the movement was heaviest, and to April 10, 1931, the interstate scale of rates prescribed in the original report was in effect, and that during the remainder of 1931 and 1932 the much lower Cummer scale was charged. The monthly movement, exclusive of that in trainloads, since the former hearing, July 21, 1931, has averaged substantially the same as from December 1, 1930, to August 1, 1931. As stated in our prior report on further hearing the main depression in the lumber industry in Florida began about the latter part of 1930. At the time of the last previous hearing, the only remaining train-

load movement was from Hines to Palatka. The extent of that movement and the extent to which the mill at Palatka has been operating since that time has not been shown, nor has it been shown that the mill at Palatka has received any logs by truck. As stated in our prior report on further hearing, the movement from February 1 to June 30, 1931, was from 52 different stations to 17 different destinations. The movement from February 1, 1931, to August 31, 1932, exclusive of the trainload movement from Hines to Palatka, was 4,079 carloads, which shipments were from 125 different stations to 28 destinations for hauls ranging from 5 to 235 miles. Of these shipments, 79 moved for distances over 170 miles, beyond which distance the Cummer scale does not extend, and, as indicated by Appendix B to our prior report on further hearing, the Florida intrastate rates applicable over defendant's lines for distances over 170 miles are on substantially the same level as the interstate rates generally applicable in southern territory and as the rates prescribed for intrastate application in Florida for distances of 170 miles and less in the original report in this proceeding.

The record warrants the conclusion that truck competition and, to a lesser degree, carrier competition, has been sufficiently compelling in the judgment of the responsible traffic officials of the various railroads operating in the western portion of southern territory to warrant the establishment experimentally of the low per car rates on logs hereinbefore referred to; that these reduced rates have not as yet succeeded in regaining for the railroads which established them any great amount of log traffic; that it is doubtful if the log traffic now moving by truck for the shorter distances, particularly 25 miles and under, can be regained by these or any other rates that the carriers could make; that there is but little competition between defendant and trucks for the movement of logs intrastate in Florida for distances over 25 miles and, in the judgment of defendant's responsible traffic official, it is not of sufficient importance to warrant the establishment or maintenance of subnormal rates in an effort to regain it; and that the circumstances and conditions which occasioned the establishment of the experimental reduced per car rates on logs by other railroads in a section of southern territory quite widely separated from that in which defendant operates are not present with respect to the intrastate log traffic over defendant's lines in Florida.

The Florida interveners contend that as transportation conditions are substantially similar throughout southern territory and as the Cummer scale is substantially the same as or slightly higher than the per car rates of these other southern lines, the Cummer scale can not cast an undue revenue burden on interstate commerce, as found in our prior report on further hearing, unless the per car

rates referred to also cast a similar revenue burden on interstate commerce.

Transportation conditions are not substantially similar throughout southern territory. In our prior report on further hearing we specifically found that the circumstances and conditions surrounding the transportation of these logs intrastate in Florida were not on the whole as favorable as the circumstances and conditions surrounding the interstate movement of logs over defendant's lines. Therein we also pointed out that the less favorable operating conditions in the Florida peninsula than in the remainder of southern territory have given rise to the general practice of permitting the addition of arbitraries to the rates on interstate traffic to and from points in that territory. We referred to *Southern Class Rate case* in which we prescribed class rates for that part of the hauls within the Florida peninsula that were 15 per cent higher than the basis prescribed for the remainder of southern territory. In that proceeding we stated that if and when we were called upon to fix maximum reasonable commodity rates to and from Florida, we would not be bound by what had been done with respect to the class rates. Since then we have in several cases prescribed commodity rates with relatively higher arbitraries for the hauls within Florida than were prescribed in the *Class Rate case*. In *Rates on Chert, Clay, Sand, and Gravel*, 140 I. C. C. 85, and *Petroleum and Its Products*, 171 I. C. C. 286, the rates prescribed for the hauls in Florida were approximately 40 per cent higher than for the remainder of southern territory.

Even if transportation conditions were similar in Florida as on the lines of the carriers that have established the per car rates, competitive conditions are not similar, as has been pointed out. The carriers that have established the per car rates have done so voluntarily as an experiment in an endeavor to regain traffic that was moving by truck and thereby increase their revenues, not only on the logs to the mills but on the outbound manufactured products from the mills, their per car rates being conditioned upon an outbound movement of the manufactured products in nearly all instances.

In Florida, on the other hand, the movement of logs has not been shown to have gone to the trucks to any substantial extent where the hauls are over 25 miles and this record warrants the conclusion that truck-competitive rates for distances under 25 miles would regain little, if any, traffic, and that to require defendant to continue to maintain the Cummer scale to meet what little truck competition could be met would greatly decrease the revenues of defendant and would not be warranted. Logs in single carloads are now

moving by rail over defendant's lines throughout Florida in substantially the same volume as at the time of the previous hearing and for the six months prior thereto, and the movement has not decreased to as great an extent as the outbound movement of lumber from Florida. The monthly movement since February 10, 1931, when the Cummer scale was reestablished, has been substantially the same as from the latter part of 1930, when the main depression in the lumber business in Florida began, to February 10, 1931, indicating that the reestablished substantially lower Cummer scale has had no effect on the volume of rail movement.

Generally we do not approve of rates published in amounts per car regardless of weight and nothing contained herein should be considered as an approval of rates so published on logs. These per car rates on logs are not here in issue and no one has complained to us in any other proceeding that they are unreasonable, unduly preferential, or otherwise unlawful.

We affirm all of the findings in our prior report on further hearing and will vacate our order suspending the operation of our order of July 5, 1932, as amended.

Our findings herein and in our prior report on further hearing are without prejudice to the right of the authorities of the State of Florida or of any other interested party to apply in the proper manner for a modification of our findings and order as to any specified intrastate rate on the ground that it is not related to interstate rates in such a way as to contravene the provisions of the interstate commerce act.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1933

No. 342

STATE OF FLORIDA, EUGENE S. MATTHEWS, MAMIE EATON-GREENE, AND W. B. DOUGLAS, ETC., ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, GEORGIA PUBLIC SERVICE COMMISSION, AND ATLANTIC COAST LINE RAILROAD COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.

REPLY OF ATLANTIC COAST LINE RAILROAD COMPANY TO THE BRIEF OF APPELLANTS OPPOSING THE MOTION OF ATLANTIC COAST LINE RAILROAD COMPANY TO DISMISS THE APPEAL OR AFFIRM THE DECISION OF THE DISTRICT COURT, WHICH BRIEF ALSO OPPOSES THE ATLANTIC COAST LINE'S STATEMENT AGAINST JURISDICTION.

A. Reply to Statement of Appellants under the Title "The Original Proceedings Before the Interstate Commerce Commission" (Page 5 of Appellants' Brief).

We contend that it is inaccurate to state that in the original petition before the Interstate Commission "The Atlantic Coast Line appeared in defense of both the interstate rate and the intrastate rate."

The Commission, in its first report (146 I. C. C. 717), at 720, states the position of the Atlantic Coast Line Railroad Company, as follows:

> "The intervening carriers contend that defendant's (Atlantic Coast Line) Florida intrastate rates are unreasonably low and are opposed to their continuance and to any reduction in defendant's interstate rates, contending that if the latter are reduced competition will necessitate corresponding reductions in their rates.
>
> "Defendant does not consider the intrastate rates reasonably compensatory for general application throughout Florida but proposes to continue them, if permitted to do so, until the logs referred to in the Carpenter-O'Brien contract have been transported. It strongly opposes the use of such rates as a measure of reasonable interstate rates from Florida to Georgia. While not admitting that the interstate rates are unreasonable, defendant submitted a proposal to revise such rates down to the level of the Alabama intrastate log rates which became effective June 1, 1925, pursuant to an order of the Alabama Public Service Commission."

The Atlantic Coast Line's witness, J. W. Perrin, testified that the Atlantic Coast Line had entered into a contract with Carpenter-O'Brien Company (which became Brooks-Scanlon Corporation) "under which it agreed, throughout the length of time necessary to move the logs covered by the contract at a specific rate subject only to law and to change or cancellation required by law, or by judgment of

any court or commission of competent jurisdiction." (See Volume 1, page 475, of the record in cases Nos. 493, 495, and 495, October term, 1929, of this Court—this case being a continuation of that, the evidence in that case is a part of the record in this.)

The Atlantic Coast Line's management elected to comply with the terms of the contract in good faith, even to the extent of applying "these abnormally low rates."

In volume II of the same record, at page 719, the same witness gives an account of the conference between shippers and officers of the Atlantic Coast Line, held on June 24, 1926—after the case had been instituted before the Interstate Commerce Commission. In that conference the witness quotes a representative of the Atlantic Coast Line as stating that the Coast Line

> "would defend the reasonableness of its existing interstate rates, and that while the Florida intrastate rates are very low, the Atlantic Coast Line would submit the entire history of those rates with an expression of its desire to live fully up to the terms of the Carpenter-O'Brien contract—now known as the Brooks-Scanlon Corporation contract—as long as it is legal to do so without extending these low rates to interstate business or to other log hauls."

The position of the Atlantic Coast Line in reference to the Brooks-Scanlon Corporation's contract was changed by a change in its contractual relationship with the latter corporation. This came about between the time of the decision of the United States District Court in the case of *Florida* v. *United States*, 30 Fed. (2d) 116 (January 17, 1929), and the second hearing in that case, reported in 31 Fed. (2d) 580 (March 22, 1929). This removed whatever restraint the Coast Line had been under because of the Brooks-Scanlon contract; and at all subsequent hearings

of this case the Coast Line has taken an active part in opposing the continuance of the intrastate rates which are known as the "Cummer" scale of rates.

B. Reply to Section of Appellants' Brief Entitled "The Further Hearings Had Before the Interstate Commerce Commission under Its Order of April 6, 1931" (Beginning at Page 8 and Ending on Page 15 of Appellants' Brief).

The purpose of this section in the brief appears to be to induce the finding that the power of the Commission under § 13(4) of the Interstate Commerce Act did not attach. This position was ruled against the contention of the appellants by the United States District Court, assembled in accordance with the statutes, in the case of *Florida* v. *United States*, 30 Fed. (2d) 116, beginning with the fourth paragraph of the opinion at page 119, which section of the opinion ends with these words:

> "The State rate was thereby clearly put in issue and the power of the Commission under section 13(4) invoked."

It was again likewise ruled against the appellants by the same court in the reopened hearing before it in the case of *Florida* v. *United States*, 31 Fed. (2d) 580, beginning at the bottom of page 581 (March 22, 1929). It was clearly and decisively ruled against the contention of the appellants by this Court in the case of *Florida* v. *United States*, 282 U. S. 194, at 209.

Furthermore, in the motion of the Georgia Public Service Commission to the Interstate Commerce Commission to reopen this case, it was alleged in paragraph 5 as follows:

> "Complainant respectfully moves this Commission to reopen the said cause and to proceed in the manner

prescribed by law and the rules of this Commission to make the determinations required by the situation and to issue such report and to make such findings and orders as will result in removing the discriminations set out in the original petition."

And the prayers of said motion were as follows:

"WHEREFORE, complainant prays:

(*a*) That the Atlantic Coast Line Railroad Company, and all of the persons, associations, partnerships or corporations who have intervened in this cause, be given notice of this motion; that the State of Florida be notified thereof; that this Commission proceed to make such further findings and to issue such further reports and orders in this cause as it may deem to be requisite or necessary to fully accomplish the purposes of the original petition and of this motion.

(*b*) That this Commission prescribe just, reasonable, non-discriminatory and non-prejudicial interstate rates to be observed and charged by the defendant carrier for the transportation of carload shipments of logs, from all points located in the State of Florida to all destinations located in the State of Georgia; that the measure of said rates be no higher than the rates concurrently in effect for the same kind of property, from producing points located within the State of Florida, moving in intrastate commerce, to destinations within the State of Florida.

(*c*) That this Commission issue such other and further reports, findings and orders as this Commission may deem proper, to the end that the discrimination referred to in the original complaint be removed and remedied."

In the motion of the Atlantic Coast Line to reopen the the case before the Interstate Commission, recitation was made of this Court's opinion entered in this cause on Jan-

nary 5, 1931 (282 U. S. 194), and paragraph 6 of said motion was as follows:

> "Movant respectfully shows that it is necessary that this Commission reopen the said cause and proceed therein to make such additional findings and orders as may be proper in the light of the opinion of the Supreme Court of the United States in this cause."

And the prayers of said motion were as follows:

> "WHEREFORE movant prays:
>
> (*a*) That the Georgia Public Service Commission, and all of the persons, associations, partnerships or corporations who have intervened in this cause, be given notice of this motion; that the State of Florida be notified thereof; that this Commission proceed to make such further findings and to issue such further reports and orders in this cause as it may deem to be requisite or necessary.
>
> (*b*) That this Commission prescribe such intrastate rates in Florida for the transportation of logs over the lines of this movant, for distances up to one hundred seventy (170) miles, and for distances beyond said one hundred seventy (170) miles, as may be lawful.
>
> (*c*) That this Commission issue such other and further reports, findings and orders as this Commission may deem proper."

The United States District Court in dealing with this position in its conclusions of law stated:

> "The contention is vigorously renewed that the proceeding before the Commission never was one in which a burden by the State rates on the revenues of the carrier was made an issue, so that the Commission could properly so find and on that ground prescribe a State rate under § 13(4) of the Act. We adhere to the views expressed in our former decisions, 30 Fed. (2d), 116; 31 Fed (2d) 580. It is true that the Georgia Public

Service Commission in its original complaint did not ask that the Florida State rates be raised, and it rather preferred that the interstate rates should be lowered, but the complainant directly challenged the States rates, alleged that they caused a discrimination against interstate commerce within § 13 of the Act, and prayed for its removal. The State of Florida was duly notified as required by that section, and on full hearing discrimination was found to exist and sought to be removed by prescribing a new State rate by virtue of § 13(4). This Court held that discrimination by revenue burden was within the case before the Commission, and upheld the order on that ground only. The Supreme Court, 282 U. S. at p. 209, so far from disagreeing said: 'As the Florida Railroad Commission appeared in defense of the intrastate rates, and the Railroad Company the rates of which were in question and other parties in interest, both shippers and carriers were heard, the question now presented relates to the substance of the determination of the Commission and its support in the evidence, rather than to mere matters of pleading and procedure. In making its order the Commission could exercise all the authority conferred by the Interstate Commerce Act for the purpose of removing such unjust discrimination as it found to exist. If the Commission had made adequate findings, supported by evidence, upon the point under consideration we should not be disposed to conclude that the order must be upset because of the manner in which the proceeding was initiated or because of the generality of the allegations of the complaint.' Much more forcibly do these words apply, now that the parties have had another full hearing upon this precise issue, with full knowledge that courts and Commission regarded that issue not only as present but as controlling. The Commission having in due form found that the State rates do cause an unjust discrimination against interstate commerce by the very words of §13(4): 'it shall prescribe the rate * * * thereafter to be charged * * * in such manner as in

its judgment will remove such discrimination.' It is the judgment of the Commission and not the wish or the prayers of the Georgia State Commission that is to determine what shall be done about the discriminatory State rate."

C. Reply to Section of Appellants' Brief Entitled "The Second Reopened Proceedings Before the Interstate Commerce Commission" (Beginning at Page 15).

This section of the brief deals with the fact that certain railroads had put into effect experimental rates, forced upon them by competition of trucks and by combined rail and truck competition. These rates were put in on the basis of carloads; that is, the same rate applied to a car carrying 60,000 pounds of logs as to one carrying 120,000 pounds; both moving over the same rail, between the same points, and even in the same train. This system has been many times condemned by the Commission and by the courts. These rates were dealt with in the Atlantic Coast Line's original motion in this cause and the brief in support thereof. Appellants' brief shows that these reduced rates are rarely ever applicable between all points on any road. Pages 16 and 16*a* of their brief show that the rates are applicable between all points on only two roads out of the twenty referred to. On some of the roads, for instance, the Southern Railway, their application is very limited to 9 manufacturing points; on the Seaboard Air Line, to 3 manufacturing points; on the Central of Georgia, to 4 manufacturing points; on the Illinois-Central, to 12 manufacturing points; etc.

We submit that this section of appellants' brief shows that it is inaccurate to say that:

"There is no doubt that in Louisiana, Mississippi, Alabama, Tennessee, parts of Georgia and Western

Florida, the general level of interstate and intrastate rates are on the basis of the Newly Reduced Rates."

This subject will be dealt with again in replying to a further part of appellants' brief.

I. Reply to Point I of Appellants' Brief (p. 21).

This point, in substance is, that at the times the last two reports of the Interstate Commerce Commission were entered, there was no substantial disparity between the scale of Florida intrastate log rates (the Cummer scale) and the general level of interstate log rates in the southern rate group.

The point is based upon the theory that a number of railroads, listed at pages 16 and 16a of appellants' brief, had filed with the Interstate Commission experimental reduced rates on logs, for limited distances, and applying to limited points on their respective lines (on two lines, as has been pointed out, the newly reduced rates apply between all points).

The first answer to this is, that many, if not all of the tariffs relied upon by the appellants to establish the contention made in this point were introduced before the Commission in the reopened hearing which was ordered by the Commission on October 21, 1932. This evidence was introduced at a hearing held for that purpose on November 21 and 22, 1932, and the Commission's report, based on that evidence, was made on January 9, 1933. So that, it is plain that the Commission considered the merits and demerits of this contention and determined that those rates were not such as to exercise controlling influence. The Commission further determined that those new rates did not require or justify a change in the findings previously made by it on the 5th day of July, 1932 (186 I. C. C. 157). See Also 190 I. C. C. 588-600.

The value to be given to those rates was especially within the jurisdiction of the Commission and its judgment on that subject is final.

In the original motion we cited to this effect *Northern Pacific Railroad* v. *United States*, 60 Fed. (2d) 302, 318:

> "Competition may compel such a reduction in rates as to altogether destroy their value for the purpose of comparison."

In our original motion we cited *Louisville & Nashville Railroad Company* v. *United States*, 238 U. S. 1, 13.

It has been recognized many times that competition may force rates which are so low as to make them an improper standard of comparison, and whether or not that condition exists in any case is, of course, a function of the Commission. (See Alldredge on Rate-Making for Common Carriers, pp. 52, *et seq.*)

The Commission did not approve these rates, its language in reference to them, in its report of January 9, 1933 (190 I. C. C. 588, 600) being:

> "Generally we do not approve of rates published in amounts per car regardless of weight and nothing contained herein should be considered as an approval of rates so published on logs. These per car rates on logs are not here in issue and no one has complained to us in any other proceeding that they are unreasonable, unduly preferential, or otherwise unlawful."

The district court did not consider that those rates required a different ruling on the part of the Commission.

The remainder of appellants' argument in support of Point I of their brief appears to be based on the theory that the intrastate scale of rates complained of must work a discrimination against all of the roads in the Southern rate group; that is, there must be an ascertainment of what was the aggregate value of the properties of all the carriers

in the group "as a whole", and there must be an "aggregate" of the income of all the carriers in the group "as distinguished from the income of a particular carrier."

The argument, carried to the conclusion apparently intended, would permit the application of the sections of the Interstate Commerce Act for the removal of unjust discrimination against interstate commerce only when the aggregate income of all the carriers in a rate group was ascertained; and when the aggregate value of the properties of the carriers in that group had been likewise ascertained; and would permit a shipper to require the originating or connecting carrier, or both, to render intrastate transportation service for a reward less than that which is reasonable to the carrier, and which would not provide the carrier with sufficient revenue from its intrastate transportation to pay its fair proportionate share of the cost of maintaining an adequate railway system.

The shipper's right as to the charge which a carrier by rail may make for service rendered to him, is to demand a charge which is reasonable as to him, and to the carrier under the law.

The power of the Commission under Section 15 (*a*) of the Act to regulate commerce is to be used "in the exercise of its power to prescribe just and reasonable rates."

The requirement of § 1 of the Act—that all rates shall be reasonable—and the requirements of §§ 2 and 3 against unjust discrimination and unreasonable preference or advantage, were not repealed by § 15 (*a*).

The duty of the Commission to make rates is not satisfied by making rates to

> "clear confiscation and yield something toward a fair return, and that they be equally applied to all to whom the carrier owes an immediate duty under Sections 2 and 3 of the act, and that the provisions of Section 4 are observed. These statutory duties directly concern

those who are immediately affected, but who form only a portion of the great public whose interest in the maintenance of an adequate transportation system has been recognized by Congress in the act we are charged to enforce and administer."

See *Lake Cargo Coal Company*, 139 I. C. C. 367, 392.

This recognition is made by this Court in the *Dayton-Goose Creek Railway Company* v. *United States*, 263 U. S. at 487.

On ample evidence the Interstate Commission has twice held that the Florida intrastate rates complained of in this proceeding are unjust and unreasonable and unjustly discriminatory (*Georgia Public Service Commission* v. *Atlantic Coast Line Railroad Company*, 146 I. C. C. 717, 724; Same case, 186 I. C. C. 157).

Those findings of the Interstate Commission have been sustained by the United States District Court for the Northern District of Georgia, assembled as provided by statute, not only in the present case, but as well in its opinion in the case of *State of Florida* v. *United States*, 31 Fed. (2d) 580, 582.

Apparently the argument of appellants proceeds upon the theory that the Commission may make an unreasonable rate on a given commodity for one railroad, provided that all the rates on all transportation service of all the railroads in that group yield a sufficient aggregate income; the theory apparently being that the carrier with the unreasonable rate can be protected by the recapture clause. They rely upon a quotation from the *Dayton-Goose Creek Railway Company* v. *United States*, *supra*, at page 485, to the effect that

> "The control of the excess profit due to the level of the whole body of rates is the heart of the plan. To divide that excess and attempt to distribute one part to

> interstate traffic and the other to intrastate traffic would be impracticable and defeat the plan. This renders indispensable the incidental control by Congress of that part of the excess possibly due to intrastate rates, which, if present, is indistinguishable."

The expression "heart of the plan" was not used to justify the making of a rate by a State which is unreasonable as to any carrier; or to justify the making of a rate by a State which is so much less than the interstate rate as to place a burden upon interstate commerce; or to justify the making of a rate by a State which is so low that it does not carry its fair proportionate share of the cost of maintaining an adequate railway system. Nor was the expression intended to permit the shipper to demand rail transportation service at rates which are less than just and reasonable, or which are unjustly discriminatory against persons, places or classes of traffic, or against general interstate commerce.

> "The devotion of the carrier's property to public use is qualified by the carrier's right to a reasonable reward." *Northern Pac. Rwy.* v. *North Dakota*, 236 U. S. 585.
>
> "The statute does not require that the net return from all the rates shall affect the reasonableness of a particular rate or a class of rates. In such an inquiry, the Commission may have regard to the service done, its intrinsic cost, or a comparison of it with other rates, and need not consider the total net revenue at all." *Dayton-Goose Creek Ry.* v. *United States*, 263 U. S. 456, 480. See also same case at page 482.

The recapture clause of the Interstate Commerce Act has been repealed by the *Emergency Railroad Transportation Act of 1933*. If appellants' contentions are correct, the effect would be to destroy the power of the Interstate Commerce Commission to prevent unjust discrimination against

interstate commerce by intrastate rates, although the Emergency Act clearly indicates that its purpose is to "foster, protect and control" interstate commerce.

The construction of the Act contended for by appellants would make it perfectly impracticable and would defeat its purposes.

There has been power in the Commission to prohibit unjust discrimination against interstate commerce from its beginning. That power did not come into existence with § 13. *Board* v. *Great Northern Railway*, 281 U. S. 412, 424, *et seq.* It did not disappear with the repeal of the recapture clause.

This section of appellants' brief (page 31) ends with the argument that because certain railroads, as stated above, had filed for intrastate and interstate transportation, for limited distances, reduced rates on logs applicable to carloads, regardless of quantity; and that those rates were forced by competition, they should become the controlling standard for the making of all other rates for the transportation of logs in the southern territory. The Interstate Commission in this case found against that contention, and the Interstate Commission's finding on that subject was sustained by the United States District Court.

II. Reply to "Point II" of Appellants' Brief (Pages 31-32).

In Point II appellants claim that "The Interstate Commerce Commission has failed to make the basic or essential findings necessary to support a State-wide order prescribing intrastate rates. There is no substantial evidence before the Commission to support such findings."

The evidence before the Commission covered the entire State of Florida. We have referred to the reports of the Commission in our original motion. These amply refute the claim that there were no basic or essential findings, and no substantial evidence to support them.

No specific failure of the evidence is pointed out by the appellants in this section of their brief. We respectfully submit that no such failure exists. We have shown in our original motion that the court stated that there was not only adequate evidence to sustain the findings of the Commission, but that the findings were such as they themselves would have made. A copy of that opinion is attached to the original motion, and substantial extracts from it are quoted in the part of our motion under the title "Decision of the United States District Court of February 24, 1933."

The district court in its opinion in *State of Florida* v. *United States*, 31 Fed. (2d) 580, 582, made the following summation of the evidence:

> "There was in evidence, also, comparisons of the attacked rate with rates on similar logs of other railroads in Florida and in adjacent States, and on other articles, such as sand, gravel, brick, lime and cement, which, like logs are shipped in large lots, loaded and unloaded by patrons, and expose the carrier to little risk of loss. There was further comparison with interstate rates established by the Commission itself for this same railroad and in this same territory. All these rates were shown to be from twice to thrice the attacked log rate. On the face of things the log rate is too low, and likely to burden the carrier. The Commission expressly finds that it is obviously unremunerative. It is shown that the commerce in logs over the Coast Line system is and will continue to be very large, and this item of its rates is therefore an important one. We cannot say the order is without evidence to sustain it, on the ground that the former State rate was an undue discrimination against general interstate commerce over the Coast Line Railroad."

All of the evidence which was before the Commission then was before it in the last hearing, and a great deal more.

The discussion of the evidence in the succeeding parts of this reply are referred to and made a part of this section.

III. Reply to "Point III" of Appellants' Brief (pp. 33-34).

This point is based upon the allegation that:

> "There was no finding and no evidence of the amount of revenue which had been derived in the past from this particular traffic in question under the Cummer scale of rates."

It is stated under this point that:

> "The report of the Interstate Commerce Commission does not purport to find the amount of revenue derived in Florida from the Cummer scale of rates and there is no evidence from which any such finding could be made. This data could have been produced."

The witness MacPherson testified to the number of cars of logs shipped by the Wilson Cypress Company in the years 1926, 1927, 1928, 1929 and 1930 and stated the amount of the gross freight charges paid each year, the aggregate of which was $562,295.38. (R. 1282 of reported evidence of the hearing held June 10-12, 1931.)

The witness Perrin testified (R. 1496 of reported evidence of hearing July 20-21, 1931), locating the various tracts of timber in Florida and showed that there were 21,913,000,000 feet of pine timber in Florida at the time he testified. Circular 124 of the United States Department of Agriculture was introduced in evidence and showed the timber conditions in Florida in great detail. This is discussed at pages 172 and 173 of the report of the Commission in 186 I. C. C. This circular confirms the evidence of the witness Perrin.

The witness Perrin at page 1497 of the reported evidence of the hearing had July 20-21, 1931, testified:

"Within my experience there was a time when the same conditions existed in the other States served by the Atlantic Coast Line as now exist in Florida, whereby the large bulk of lumber manufactured was by large saw mill companies holding large tracts of standing timber. The real difference between Florida and these other States is that the manufacture of lumber in its larger proportions began earlier in the other States than in Florida, and the large individual holdings of standing timber in the other States have been cut earlier than in Florida. Nevertheless, these other States, in which 60 per cent of the Atlantic Coast Line's mileage is located, are still producing 50 per cent of the lumber that we transport. The lumber industry at points on the Atlantic Coast Line in North Carolina and South Carolina still constitutes one of the most important industries to be found in those sections, although the manufacture of lumber is no longer confined so largely to the operations of large companies, many of which no longer exist. I have previously stated that approximately one-half of the Atlantic Coast Line's log traffic is in States other than in Florida. There is no reason that I know of upon which to base the conclusion that the future of the lumber industry in Florida will be any different from what has been, and still is, the lumber manufacturing conditions in these other States, and the fact that standing timber in Florida may within the course of a few years become scattered in its larger proportions does not mean that as long as standing timber exists there will not be a demand for its use."

The Commission found that the production in Florida during the six years, 1925-1930, was 4.564 billion feet; that the regrowth in that period was 2.129 billion feet; that the net depletion was 2.435 billion feet, "leaving the pine timber stand in Florida 21.913 billion feet" in July, 1931.

Exhibit No. 30 (R. 321 in cases Nos. 493, 494, and 495, October term, 1929) shows the number of cars of logs

hauled to Milldale, Florida, from 1889 to 1916, and the amount of freight paid year by year. Those shipments were hauled under the Cummer scale of rates.

Exhibit No. 35 (R. 360) shows the number of cars of logs shipped by the Putnam Lumber Company to Milldale, Florida, for the years 1919-1925, both inclusive; the number of feet, and the amount of freight paid. The same exhibit shows for the years 1922-1925, both inclusive, the amount of cypress logs shipped by the Putnam Lumber Company to Ortega, Florida, the number of feet, and the amount of freight paid.

Exhibit No. 41 (R. 378) shows that the Brooks-Scanlon Corporation had, on August 31, 1926, available uncut timber to the extent of 1,027,432,000 feet; which when logged would amount to 186,800 carloads of logs; and also showed the amount of freight which would be paid to move the timber to the mills.

Exhibit No. 42 (R. 380) shows the number of cars of logs shipped from Carbur and Scanlon to Eastport, Florida, for the years 1915-1926, both inclusive, and the amount of freight paid. All of those shipments were made under the Cummer scale of rates.

Exhibit No. 61 shows for the period February 9, 1929-January 31, 1931, both inclusive, the number of cars of logs, more than six feet in length, hauled by the Atlantic Coast Line, the weights, and revenue collected, together with the amount of revenue which would have accrued on the basis of the Cummer scale of rates. 18,602 cars of logs were hauled during that period and the revenue collected amounted to $571,508.94; under the Cummer scale it would have amounted to $281,225.75, or a difference of $290,283.19.

Exhibit No. 128 shows the number of cars of logs moved over the Atlantic Coast Line intrastate in Florida, during the period from February 1, 1931, to June 1, 1931, both in-

clusive; that is, it carried forward Exhibit No. 61. The number of cars moved during that period was 2765. They moved from fifty-two different stations to seventeen points of destinations. This is referred to by the Commission in its report in 186 I. C. C. at 176.

Exhibits Nos. 61, 111 and 128, above referred to, were offered at the reopened hearing before the Interstate Commerce Commission after the decision of this Court in cases Nos. 493, 494 and 495 (282 U. S. 194).

The Commission's report (186 I. C. C. 169, *et seq.*) deals with these facts, which were carefully analyzed by it.

Complaint is made by the appellants because the Commission did not order the Atlantic Coast Line Railroad Company to compile and produce a statement showing the amount of revenue derived in Florida from the Cummer scale of rates. The district court in its opinion of February 24, 1933, in its conclusions of law, dealt with that subject as follows:

> "Early in the reopened proceedings before the Commission the complainants made a written demand on the Atlantic Coast Line R. R. Company that it produce a statement supported by individual car-record movements, showing certain details as to cars of logs moving on its lines between points in Florida and Georgia for each of the years 1926, 1927, 1928, 1929 and 1930, a like statement concerning cars moving within the State of Florida for each of those years, and a statement showing the gross earnings from both interstate and intrastate shipments of such logs for each of those years. The Railroad Company in answer stated that it expected to furnish certain appropriate data about its log traffic, but could not get up the statements requested for lack of time and because its records did not show the distinctions in log traffic required. The Railroad Company did produce details of its log traffic since 1928, but not before. The Commission refused to compel further compliance. It will

be noted that no specified books or papers were asked to be produced, nor any specified witness called on to tell what he might know. We are aware of no rule of law or practice which would require a litigant laboriously to compile information for his adversary, even if it were in his power to do so. Certainly it would lie in the discretion of the tribunal to decline to compel it. We find in such refusal no cause to upset an order founded on evidence which was duly produced before that tribunal.

But it is said that the information demanded was essential to a finding of unjust discrimination, the revenue before 1929 under the State rates being one of the things mentioned by the Supreme Court as necessary to be established. We do not understand that the revenue, either gross or net, produced by the State rates must be exactly established, but only that the operation of those rates and their effect upon the carrier must be investigated and found. It was here established that the State rates produced a loss, and were a drain on the carrier. It might have been desirable to show the extent of the loss, but if that be impracticable, and if it appear that the loss will be in the future substantial and the carrier is not in position to absorb it without detriment to his service and support as an interstate carrier, a sufficient case is made to find an unjust discrimination against interstate commerce, and to require its correction."

It is rather technical for the appellants to say in this point that:

"At no time did the carrier offer evidence to show the amount of revenue derived or the amount of movement had under the Cummer scale either before or after the entry of the unlawful order of the Interstate Commerce Commission dated August 2, 1928, or after that order was set aside."

Evidence was offered by the carrier which showed the amount of revenue derived and the amount of movement

of logs from February 9, 1929, to January 31, 1931; and also to show what the revenue would have been if the Cummer scale had been applied thereto, as pointed out above; also for the five months from February, 1931, to June, 1931, both inclusive (186 I. C. C. 188). The other evidence referred to, as to the volume of traffic in logs and the amount of freight collected thereon was not offered "by the carrier", but it was offered by certain of the shippers and was, none the less, a part of the record.

IV. Reply to Appellants' Point IV (Pages 34-40).

This answers Point IV of appellants' brief which asserts that:

> "There was no finding as to the amount of revenue which can reasonably be expected to be derived by the carrier from the traffic in question 'under the increased rates.'"

The latter part of the argument of this point (page 40) claims that "as a direct result" of the Commission's order mills were removed from Eastport, Milldale, and Ortega.

The Commission did not agree with that statement. In its report of July 5, 1932 (186 I. C. C. 171), the Commission takes notice of the amount of logs moved from February 8, 1929, to January 31, 1931 (the Cummer scale was not in effect during those months), divides that into two parts; the first from February 8, 1929, to January 31, 1931; and the second, the succeeding twelve months. The second part showed a decline in the number of cars moved and in the amount of revenue. The Commission said:

> "From what has been said above it is clear that the decline in the Florida log movement can not be ascribed wholly to the rate advance. Part of the decline has no doubt been due to that cause but a large

part has been due to the change from mill locations uneconomical because too far from the timber. The generally depressed conditions throughout the country, in Florida, and in the lumber industry generally and in the Florida log industry have also had a marked influence upon the volume of the log movement in Florida" (186 I. C. C. 171).

The Commission then shows the log movement and the lumber movement over a period of years (186 I. C. C. 172).

The Commission's statement to the effect that the cause of the removal of the mills was that their location had become uneconomical because "too far from the timber", is borne out by the witness, M. L. Fleishel, president of the Putnam Lumber Company (Record in cases Nos. 493, 494, and 495, October Term, 1929, Supreme Court, which record is a part of the record in this case, at pages 608, 610, and 615). Mr. Fleishell states at page 615:

> "We are dismantling certain portions of our property, to the amount of about one million five hundred thousand dollars, and moving it from tidewater to the woods, because the economy of the thing appeals to us and causes us to do that, and certainly for no other reason whatever."

And by the witness F. H. Wilson, then general manager of the Wilson-Cypress Company, at page 580 of the above-mentioned record, where he said:

> "I would put the mill into the timber because it would be an economical way of manufacturing the timber regardless of any log rate; not because I had access to the Florida rate at Valdosta."

(Valdosta is in Georgia and the witness was saying what he would do if he were locating a mill in Georgia); and by the evidence of Mr. C. R. McPherson, President and General

Manager of the Wilson Cypress Company, to the effect that:

> "It is more economical to locate the mills in the timber" (Transcript of the hearing on June 10-12, 1931, page 1310);

and by the witness J. S. Foley, then Vice President and General Manager of the Brooks-Scanlon Corporation (page 661 of the above-mentioned Supreme Court record), who testified:

> "It is distinctly to the advantage of the owner of the timber to locate his mill at the timber. There are other practical reasons why it is beneficial to have a mill located at the timber."

At pages 662 and 663 Mr. Foley goes into further details to the same effect. At page 664 he speaks of the conditions which have changed since the mills were located at tidewater and again declares it is more economical to have the mills at the source of supply.

The Commission found in its first report (146 I. C. C. 724) that the Cummer scale of rates was "less than reasonably compensatory". This was affirmed in its second report (186 I. C. C. 165).

In its second report (186 I. C. C. 166, *et seq.*) the Commission entered into an elaborate cost statement, and found that for the average distance of 81.36 miles (186 I. C. C. 186-187) the total cost per car to transport logs intrastate in Florida was $24.69 against an average revenue per car of $15.12 under the Cummer scale of rates. The Commission then states (186 I. C. C. 187):

> "The above figures undoubtedly understate the cost of transporting logs in Florida for several reasons. One of these is that costs per unit in Florida are higher than the average for the entire road or system including Florida. Another reason why the computation on

the basis of average costs per unit for the system understates the cost of transporting logs in Florida, is that these average costs per unit do not include anything for joint facility and equipment rents" (186 I. C. C. 187).

The indicated costs also did not include the cost of transporting nonrevenue or company freight.

The Atlantic Coast Line's accountant, Lamb, stated the cost of transporting these logs in two forms, one eliminating all terminal expenses, all hired equipment expense and all agency expenses. The cost calculated on this basis is shown in column A of Mr. Lamb's Exhibit No. 86; and for the average distance of 81.36 miles that cost amounted to $25.24 against the Commission's ascertainment of $24.69. The operating costs thus ascertained for the average distance (Exhibit No. 86), before taking into account taxes and return on investment was $17.01, as ascertained by Mr. Lamb, and the Commission's ascertainment of the same cost up to that point amounted to $17.07 (186 I. C. C. 186).

The two accountants came very close together in their calculations. Neither of them claimed that it was practicable to ascertain accurately the exact cost of transporting any one commodity.

The gross income on a car of logs for the average haul was $15.12 under the Cummer scale of rates.

Mr. Lamb's ascertainment of the cost under his column B (Exhibit No. 86) was $34.75; this included the terminal expenses, hired equipment expense and agency expenses.

As we have shown above, the Commission states, after setting out its ascertainment of the costs:

> "The above figures undoubtedly understate the cost of transporting logs in Florida for several reasons" (186 I. C. C. 187).

The complaint under this point of appellants' brief is that there was no finding as to the amount of revenue which could reasonably be expected to be derived by the carrier from the traffic in question under the increased rates.

The Commission, as we have seen, had ascertained the exact movements of cars of logs in Florida during the period from February 8, 1929, to January 31, 1931, and from February 1 to June 1, 1931 (Exhibits 61 and 128). Careful analyses were made of Exhibit No. 61 above referred to, showing the number of cars hauled from each point of origin, the number of miles hauled, description of the logs and the revenue collected. These were made by the appellants and were laid before the Commission as Exhibits Nos. 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, and 122.

The amount of standing timber in Florida was known, as we have pointed out.

Exhibit No. 80 showed the number of cars of logs handled by the Atlantic Coast Line, the number of tons handled, and the revenue thereon for the system for the years 1926, 1927, 1928, 1929 and 1930 (the revenue was not available for the years 1926 and 1927). That exhibit also showed the ratio of the log traffic to the total traffic and the ratio of the revenues appertaining thereto, except that the ratio of the revenue was not shown for 1926 and 1927. The same exhibit showed the number of cars of logs handled by the Atlantic Coast Line during the same period and the number of tons hauled in Florida, as well as the ratio of the logs hauled in Florida to the logs hauled over the entire system. In tons the Florida logs hauled were 7.3 per cent of the total Florida traffic. The ratio of the Coast Line's system log traffic revenue to the total freight revenue for the years 1928, 1929 and 1930 was 1.6 per cent (Exhibit No. 80).

The relation of the Company's traffic, measured in revenue and in revenue tons for the system and for the State of Florida, is shown in Exhibit No. 81.

The traffic density of the company for the system, for the State of Florida and for the system, exclusive of the State of Florida, is shown in Exhibit No. 83.

In considering this section of appellants' brief, attention is called to the fact that upon petition of the appellants the Interstate Commission reopened the proceedings before it by its order entered October 21, 1932. This was after the cause had been submitted to the United States District Court but before its decision had been rendered. After the case was reopened before the Commission the court suspended action awaiting further report of the Commission.

Extensive new and additional evidence was taken, and a new and additional report of the Commission was rendered on January 9, 1933 (190 I. C. C. 588). The Commission, in that report, took full cognizance of the changes that had come in the economic conditions of the country; and of the changes which were claimed by the appellants to have been worked by certain experimental rates which had been put into effect to meet truck and other competition.

After making consideration of those facts, the Commission reaffirmed its report of July 5, 1932.

Supplemental pleadings were filed by the appellants in the district court of the United States, and on February 24, 1933, the court entered its order together with its conclusions of fact and of law. This has been heretofore set out in our original motion, and has been referred to in this reply. The court sustained the Interstate Commerce Commission.

We respectfully state that the evidence before the Commission was ample to justify its findings, and the district court not only so found, but passed its independent judgment thereon, arriving at the same conclusions.

That data constitutes the bases from which the future effect of the Florida intrastate rates is to be judged. With that information the Commission determined that the rates fixed by it in its order of August 2, 1928, reaffirmed July 5, 1932, should be adhered to. The court sustained that position.

The Interstate Commission in this case made its finding of the unreasonableness of the Florida intrastate rates on logs (the Cummer scale) not on the theory that bare unreasonableness of a State rate is sufficient to give its jurisdiction over that rate, but the theory on which the Commission proceeded was that the Cummer scale of rates did not permit the traffic to which it applied to bear its fair proportionate share of the expense of rendering that transportation service, and in consequence placed a burden upon the interstate commerce. The Commission makes the following statement:

> "The defendant urges that the revenues produced by the Cummer scale are insufficient to cover the cost of the service performed; that no traffic is of value from a revenue standpoint unless it yields more revenue than the cost of its handling; that its study of the result of the operation under the Cummer scale is conclusive to it that such operation yields it no profit, but, on the contrary, results in an actual loss on the log traffic as a whole. It is manifest that if the Cummer scale produces less revenue than the cost of the service, declines in the traffic have the favorable effect of reducing defendant's losses and that an increase in the traffic would only serve to augment those losses. In support of its contention that the Cummer scale results in losses, defendant submitted voluminous evidence bearing upon the cost of transporting logs in Florida. It is necessary to consider this evidence with a view to determining whether it shows that the Cummer scale rates do result in revenue losses" (186 I. C. C. 177).

The Commission then makes a long study of the costs and expenses and determines that the cost of this traffic is greater than the gross revenue received from it. After making this study, the Commission states the following conclusions:

> "In determining whether the Cummer scale results in unjust discrimination against interstate commerce the fundamental question, in the language of the Supreme Court in *Wisconsin R. R. Comm.* v. *C., B. & Q. R. Co.*, 257 U. S. 563, 658, and in *Florida* v. *United States*, 282 U. S. 194, 211, is whether the traffic moving on that scale pays 'a fair proportionate share' of the cost of maintaining defendant, or whether it causes an undue revenue burden upon the interstate traffic of defendant. The record shows the low earnings of defendants; the low earnings on its log traffic as compared with its earnings on other low-grade commodities; the much lower earnings on its Florida log traffic than on its interstate log traffic; and the much lower level of the Cummer scale than of other scales applicable interstate and intrastate throughout the south. These facts and the cost evidence clearly warrant the conclusion that the traffic moving under the Cummer scale does not pay its 'fair proportionate share' of operation and maintenance alone" (186 I. C. C. 187).

V. Reply to Point V of Appellants' Brief (p. 41).

In this point the appellants allege that:

> "There was no sufficient finding and no evidence upon which the Commission could base a sufficient finding that the alteration of the intrastate rate would produce or would be likely to produce additional income necessary to prevent an undue burden and to maintain an adequate (national) transportation system."

Much that has been heretofore said applies to this point. The Commission stated that the facts and cost evidence "clearly warrant the conclusion that the traffic moving

under the Cummer scale does not pay its 'fair proportionate share' of operation and maintenance alone" (186 I. C. C. 187).

That the use of the Cummer scale of rates had the effect of decreasing the income (distinguishing between income and revenue) of the carrier was proved by the evidence.

It is not accurate to say that the cost evidence to which the Commission makes reference "is no more nor less than a series of computations based upon system averages", without saying more. In so far as *system* averages were used by the Commission, this has been true only after it was found that the cost of transportation in Florida was very much greater than the cost on the entire system as a whole. The cost which the Commission used in its calculations, was declared by it, as we have pointed out, to be very much less than the actual cost (186 I. C. C. 187).

The Commission did nothing which offends the opinion of this Court in the case of *Northern Pacific Ry. v. Department of Public Works*, 268 U. S. 39.

In so far as unit figures were used, they were not used until the Commission had made the following determination:

> "From the foregoing it is apparent that the operating expenses allocated by defendant to Florida are not actual but constructive expenses, and that they are understated to an unknown extent. In view of this fact, system figures including Florida, which are not in question, may be utilized as the basis for approximating the cost of transporting logs in that State. Ordinarily it would be unsound to use a system unit cost to determine the cost in a particular State, but since it is indisputable that unit costs are higher in Florida than elsewhere on the system, it seems clear that system unit costs may be used to find a cost that may be said to be less than the cost in Florida" (186 I. C. C. 184).

The Commission in its calculations undertook to meet the criticisms which the appellants now aim at the cost studies; and in its report of July 5, 1932, in 186 I. C. C. 185-187 makes the following statement:

> "Appendix E is a computation to approximate the cost of transporting logs on the basis of system average costs per unit, applied to the average carload, tare weight, empty haul, and average distance that class of traffic is hauled in Florida. In this computation attempt has been made to meet as far as possible the criticisms of defendant's cost evidence. For instance, deduction from the freight-service operating expenses has been made for wharves and docks, maintenance and operation of floating equipment, and certain traffic expenses, which the defendant concedes are not involved in handling logs. The deductions for these items include their proportion of the expenses for superintendence, as well as their proportion of the general expenses. The total freight-service operating expenses amounted to $36,308,813 in 1929, and these deductions aggregate $1,281,069, leaving $35,027,744 as the remainder. This amount has been apportioned 70.3539 per cent to road or haulage expenses and 29.6461 per cent to yard or nonhaulage expenses, these percentages being based upon the road and yard proportions of certain of the expenses for maintenance of way and structures and for transportation which are segregated in the accounts between these services in accordance with our rules. These are the proportions used by the witness for the Florida commission in his apportionment of the operating expenses between road or haulage and yard or nonhaulage expenses. Applied to the net amount of the freight-service operating expenses above, namely $35,027,744, these percentages result in road or haulage expenses of $24,643,384, and yard or non-haulage expenses of $10,384,360.
>
> Giving consideration to the criticism that the traffic here involved is carload traffic, and that deductions should be made for the excess terminal expense attribu-

table to handling less-than-carload freight over that attributable to carload traffic, the amount of $2,555,778 has been deducted from the nonhaulage expenses, making the net amount of the nonhaulage expenses $7,828,582 applicable to carload traffic. This deduction of $2,555,778 for platform and excess clerical expenses that are involved for less-than-carload freight, but not for carload freight, is an estimate based upon 75 per cent of the aggregate amount of the expenses for Account 373, 'Station employees,' and Account 376, 'Station supplies and expenses.' As a substantial part of the expenses for station employees and station supplies and expenses is obviously attributable to carload freight, the amount that should be deducted on account of less-than-carload freight was therefore estimated at 75 per cent of these expenses.

Dividing the total haulage expenses, $24,643,384, by the total number of gross ton-miles, 11,600,829,000, comprising both revenue and nonrevenue or company freight, produced an average haulage expense of 0.21243 cent per gross ton-mile, revenue and nonrevenue.

The statistics kept by defendant made no segregation of the loaded-car miles and the gross ton-miles between revenue and nonrevenue freight, and the record does not show the number of tons and ton-miles of nonrevenue freight. Due to this fact it is not practicable to segregate the cost of transporting revenue freight on the basis of including therein the cost of transporting nonrevenue or company freight so that the costs hereinafter developed are understated on this account.

Based on total loaded-car miles (revenue and nonrevenue), 209,835,784, and total revenue ton-miles, 3,281,770,000, there was an average of 15.6397 tons of revenue freight carried per loaded-car mile (revenue and nonrevenue). Using this figure as the divisor, and the total tons of revenue freight carried, 18,951,802, as the dividend, there was approximately a total of 1,211,775 loaded cars of revenue and nonrevenue freight carried. Based on total nonhaulage expenses of

$7,928,582, applicable to carload traffic, the average nonhaulage expenses was $6.45 per loaded car.

In 1929, United States Government taxes (corporation income) amounted to $570,076, and other than Government taxes (State taxes) to $5,669,924, or a total of $6,240,000 for the road as a whole. Based on these figures and total operating expenses of $53,431,589, freight and passenger, taxes amounted to $0.11678 per dollar of operating expenses.

Property investment in 1929 amounted to $306,439,250, and 5.75 per cent interest thereon to $17,602,257. Based on total operating expenses of $53,431,589, freight and passenger, interest on investment amounted to $0.32977 per dollar of operating expenses.

Based upon the foregoing the following is a summary of the computation of the cost of transporting the average car of logs in Florida the average distance of 81.36 miles:

Operating expenses:	
Haulage expenses: 4,994 gross ton-miles X 0.21243 cent per gross ton-mile	$10.61
Nonhaulage expenses: Avgrage per loaded car	6.46
Total operating expenses	$17.07
Taxes: $17.07 (operating expenses) X $0.11678 taxes per dollar of operating expense)	1.99
Interest on investment at 5.75 per cent, $17.07 (operating expense) X $0.32977 (interest per dollar of operating expense)	5.63
Total cost per car	$24.69
Cost per 100 pounds	4.35 cents.
Average revenue (Cummer scale) per car of logs for average haul, 81.36 miles	$15.12

The above figures undoubtedly understate the cost of transporting logs in Florida for several reasons. One of these is that costs per unit in Florida are higher than the average for the entire road or system includ-

ing Florida. Another reason why the computation on the basis of average costs per unit for the system understates the cost of transporting logs in Florida is that these average costs per unit do not include anything for joint-facility and equipment rents. As heretofore indicated the cost is also understated because it does not include the cost of transporting non-revenue or company freight."

The Commission, in its findings of fact, quotes from the Atlantic Coast Line's traffic manager's evidence as follows:

"Not less than one-half of the timber in Florida that is now reasonably adjacent to railroads is reasonably adjacent to the Atlantic Coast Line. Pine timber along the South Atlantic seaboard has been characterized by the United States Forestry Department as one of the fastest reproducing kinds of trees in the world, and the total amount of timber in Florida will be large as a result of regrowth. However, if the Atlantic Coast Line can be assumed to transport 40 per cent. of the logs to be produced in Florida from the timber now standing, it will handle approximately 9 billion feet, or approximately 128,570 cars of logs.

"If the average length of haul should be 81 miles, as was the case in 1929-30, which average haul may be expected to be increased as the timber becomes more scarce, our revenues, under the Cummer scale, at an average revenue of $16.10 per car, would be equivalent to gross revenue of $2,169,977. If the same transportation should be performed at the rates prescribed by the Interstate Commerce Commission, which for the average haul of 81 miles is 5.5 cents per 100 pounds, or $38.50 per car, the gross revenue would be $4,949,945. The difference in the gross revenue under the two scales of rates would be $2,779,968" (186 I. C. C. 174).

It is also found by the Commission that if the Cummer scale of rates had been in effect uniformly on interstate

and intrastate movements throughout the Atlantic Coast Line's entire system during the years 1929 and 1930 its revenue would have been reduced for those two years by $675,384.21 (186 I. C. C. 168).

The Commission also found that during the period from February 8, 1929, to January 31, 1931, the difference in the application of the interstate scale and the Cummer scale on the logs hauled in Florida by the Atlantic Coast Line amounted to $290,283.19 (186 I. C. C. 167).

VI. Reply to Point VI of Appellants' Brief (p. 46).

The appellants make the point that:

> "Even if it were possible to find any unjust discrimination against interstate commerce in this proceeding, there is no finding and no evidence upon which the Commission could base a finding that that discrimination was of such character and consequence that it was the affirmative duty of the Commission, as an important step in maintaining an adequate national railway transportation system, to remove it."

What has been said before answers this point.

The Cummer scale produced a revenue, as compared with the interstate rates, rarely so much as one-half of the revenue prescribed for interstate transportation.

The transportation of logs in Florida affected by the Cummer scale of rates for the years 1926, 1927, 1928, 1929 and 1930 governed 121,916 cars or 3,720,641 tons, or about 50 per cent of all the log tonnage of the entire system of Atlantic Coast Line; and about 7.3 per cent of the total traffic of the system.

In 1930 the Atlantic Coast Line earned on its investment in road and equipment, including material and supplies and cash only 1.17 per cent.

VII. Reply to Point VII of Appellants' Brief (p. 53).

This point is that:

> "The Interstate Commerce Commission has the power to prescribe intrastate rates only when such action has been made to 'clearly appear.' The existence of such jurisdictional facts is a judicial question which must be determined by the judicial branch of the government irrespective of any finding which may have been made by the Interstate Commerce Commission."

This is based upon the theory that the case of *Crowell* v. *Benson* (285 U. S. 22) controls. We have dealt with that subject in our original motion. It is clear that that case does not control.

VIII. Reply to Point VIII of Appellants' Brief (p. 57).

The eighth point is not argued in appellants' brief and is otherwise discussed in this one.

IX. Reply to Point IX of Appellants' Brief (pp. 57-58).

The point made is:

> "The rate comparisons furnished no cause for the invasion of State domain by the Federal power."

It does not appear to be denied that appropriate rate comparisons make very powerful evidence in determining whether or not a rate under attack is unjust and unreasonable. Apparently this point is based upon the theory that some of the railroads established between some of the stations on their respective lines reduced rates on logs. As we have heretofore pointed out, the appellants moved the Commission to reopen the cause to consider the effect of the newly filed tariffs putting in those reduced rates. The

Commission granted that motion and reopened the case and received substantial evidence; and made a further report dated January 9, 1933 (190 I. C. C. 588—See appendix to our original reply). The Commission closely and carefully analyzed all the evidence offered in the reopened hearing and held against the motion. A part of the finding of the Commission in this report, taken from page 598, is as follows:

> "The record warrants the conclusion that truck competition and, to a lesser degree, carrier competition, has been sufficiently compelling in the judgment of the responsible traffic officials of the various railroads operating in the western portion of southern territory to warrant the establishment experimentally of the low per car rates on logs hereinbefore referred to; that these reduced rates have not as yet succeeded in regaining for the railroads which established them any great amount of log traffic; that it is doubtful if the log traffic now moving by truck for the shorter distances, particularly 25 miles and under, can be regained by these or any other rates that the carriers could make; that there is but little competition between defendant and trucks for the movement of logs intrastate in Florida for distances over 25 miles and, in the judgment of defendant's responsible traffic official, it is not of sufficient importance to warrant the establishment or maintenance of subnormal rates in an effort to regain it; and that the circumstances and conditions which occasioned the establishment of the experimental reduced per car rates on logs by other railroads in a section of southern territory quite widely separated from that in which defendant operates are not present with respect to the intrastate log traffic over defendant's lines in Florida."

The Commission further held (page 600):

> "We affirm all of the findings in our prior report on further hearing and will vacate our order suspend-

ing the operation of our order of July 5, 1932, as amended."

This report of the Commission was made the subject matter of attack by the claimants in their supplemental bill in the United States District Court and was considered by that court which not only sustained the Commission but held, in effect, that if they (the court) were making independent findings, they would make the same findings as those made by the Commission.

X. Reply to Point X of Appellants' Brief (p. 59).

This point is:

> "There were no figures of record showing the average cost of hauling logs over the Atlantic Coast Line System."

In its report of July 5, 1932 (186 I. C. C. 185) the Commission states its method of ascertaining the cost of hauling logs in Florida. It first ascertained that:

> "It is indisputable that unit costs are higher in Florida than elsewhere on the system," etc. (186 I. C. C. 184);

and that system figures may be utilized as the basis for approximating the cost of transporting logs in Florida.

When value has been given to the Commission's computations wherein it makes deductions from the freight service operating expenses for many items which are not involved in handling logs, the conclusion can not be escaped that the district court is right in saying:

> "On the question of the cost of the service, figures were considered which showed the average cost of hauling logs over the Coast Line System, exact figures for the particular traffic in Florida not being available."

The Commission pursued calculations which it deemed to be correct and then found:

> "The above figures undoubtedly understate the cost of transporting logs in Florida for several reasons" (186 I. C. C. 187).

This case was begun before the Interstate Commission in May, 1926. It has had many hearings before that Commission and its examiners. It had two hearings in the United States District Court for the Northern District of Georgia, and then it came to this Court on appeal (282 U. S. 194). The lower court was reversed because the Commission had not made adequate intermediate findings of fact to sustain its final finding of unjust discrimination against interstate commerce.

The case was reopened by the Commission and again a great deal of evidence was taken and the Commission made its finding of unjust discrimination against interstate commerce. This latter finding was made after hearings before the whole Commission.

Cases were then brought in the United States District Court for the Northern District of Georgia to set aside that order of the Commission. Those cases were heard in September, 1932. The Commission reopened the case to receive evidence as to certain new carload rates made without regard to weight. Evidence was received at great length and the Commission made its report and order of January 9, 1933 the one now complained of. Supplemental bills were filed and a hearing had in February, 1933, before the district court. That court sustained the Commission's findings and order.

In each of its three orders, the Commission has condemned the Florida state rate as unjust, unreasonable and discriminatory against interstate commerce.

The district court has three times sustained these findings.

This Court's statement of the law applicable to the case, as laid down in the 282 U. S. 194, has been accepted by the litigants, the Commission and the District Court; and the evidence, the findings of the Commission, and the conclusions of law and fact made by the district court all conform to the decisions of this Court.

We respectfully submit that the litigation should now end.

Respectfully submitted.

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August 1, 1933.

FILE COPY

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In the Supreme Court of the United States

OCTOBER TERM, 1933

STATE OF FLORIDA, EUGENE S. MATTHEWS, MAMIE EATON-GREEN, and W. B. DOUGLASS, etc., ET AL,
Appellants,

VERSUS

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, GEORGIA PUBLIC SERVICE COMMISSION, and ATLANTIC COAST LINE RAILROAD COMPANY,
Appellees.

No. 342

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA

BRIEF ON BEHALF OF ATLANTIC COAST LINE RAILROAD COMPANY

CARL H. DAVIS,
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February 5, 1934.

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In the Supreme Court of the United States

OCTOBER TERM, 1933

STATE OF FLORIDA, EUGENE S. MATTHEWS, MAMIE EATON-GREEN, AND W. B. DOUGLASS, etc., ET AL

Appellants,

VERSUS

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, GEORGIA PUBLIC SERVICE COMMISSION, and ATLANTIC COAST LINE RAILROAD COMPANY,

Appellees.

No. 342

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA

BRIEF ON BEHALF OF

ATLANTIC COAST LINE RAILROAD COMPANY

PART ONE

I.

REFERENCE TO OFFICIAL REPORTS AND OPINIONS IN THIS CAUSE

1. Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, 146 I. C. C. 717, decided August 2, 1928, (R-Vol. I, p. 16 in cases Nos. 16, 17, and 18, October term, 1930, 282 U. S. 194).

2. Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, 186 I. C. C. 157, decided July 5, 1932 (R-Vol. I, p. 27).

3. Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, 190 I. C. C. 588, decided January 9, 1933 (R-Vol. I, p. 361).

   (The above mentioned three decisions are set out in full beginning at page 59 of the Statement of the Atlantic Coast Line Railroad Company Opposing Jurisdiction and Motion To Dismiss Or Affirm, filed in this cause).

4. Florida v. United States, 30 Fed. (2d) 116, decided Jan. 17, 1929.

5. Florida v. United States, 31 Fed. (2d) 580, decided March 22, 1929.

6. Florida v. United States, 4 Fed. Sup. 477, decided Feb. 24, 1933.

   (Copy of the findings of fact and conclusions of law in No. 6 above, is set out beginning at page 34 as an appendix to the Statement of the Atlantic Coast Line Railroad Company Opposing Jurisdiction and Motion To Dismiss Or Affirm, filed in this cause; also R-Vol. I, p. 610).

7. Florida v. United States, 282 U. S. 194, decided January 5, 1931.

8. By stipulation it was agreed that the printed transcript of record in the case of State of Florida, et al v. United States, et al, and the companion cases (Nos. 16, 17 and 18, October term, 1930 in the Supreme Court of the United States, the opinion in which is reported in 282 U. S. 194) comprising the proceedings before the Interstate Commerce Commission in its docket No. 18364 prior to the time of said decision of the Supreme Court, might be transmitted to the Supreme Court of the United States in this cause instead of a transcript thereof. (R.-Vol. I, p. 607).

9. Order of consolidation, February 24, 1933—the three cases: State of Florida, et al v. United States, et al, No. 690; Wilson Cypress Co. and Wilson Lumber Co. of Florida v. United States, et al, No. 691; and F. S. Buffum Co., Inc. v. United States, et al, No. 695, were consolidated "into one bill under the style first above stated and that the case hereafter proceed as a single cause." (R-Vol. I, pp. 390, 604, 607).

II.

STATEMENT OF THE CASE

The subject matter of this case is a continuation of the controversy dealt with in the case of *State of Florida, et al v. United States, et al*, 282 *U. S.* 194.

The matter involved is a final decree of the United States District Court for the Northern District of Georgia, (three judges sitting—Mr. Circuit Judge Sibley, Mr. District Judge Underwood and Mr. District Judge Strum). The decree was entered on February 24, 1933 (R-Vol. I, p. 610—copy of the findings of fact and conclusions of law and the decree is set out in full as an appendix beginning at page 34 of the Statement of Atlantic Coast Line Railroad Company Opposing Jurisdiction and Motion to Dismiss or Affirm).

The controversy involves intrastate rates on logs more than six feet in length except walnut, cherry and cedar, moving in intrastate commerce in carload lots over the lines of the Atlantic Coast Line Railroad Company in Florida for distances not exceeding 170 miles.

The Interstate Commerce Commission found that:

> "The intrastate rates on logs over 6 feet in length, except walnut, cherry, and cedar, applicable between points on the Atlantic Coast Line in Florida for distances of 170 miles and less are, and for the future will be, unjustly discriminatory against interstate commerce, and that such unjust discrimination can be and should be removed by the establishment between all points on the Atlantic Coast Line in Florida for distances of 170 miles

or less of rates not less than the rates shown for such distances in Appendix F hereto, which are the rates found reasonable for interstate application from northern Florida to Georgia." (186 I. C. C. 189).

The effect of the decree of the United States District Court for the Northern District of Georgia, which is the subject matter of this appeal, was to sustain the aforesaid order of the Interstate Commission; that is to sustain the finding of the Interstate Commerce Commission that the Florida intrastate rates complained of—the Cummer scale of rates—worked unjust discrimination against interstate commerce to such an extent that it should be removed by another and different scale of rates.

III.

HISTORY OF THE LITIGATION

First Hearing Before the Interstate Commission.

The case originated before the Interstate Commerce Commission in a petition which was filed by the Georgia Public Service Commission against the Atlantic Coast Line Railroad Company, known as the Commission's docket No. 18364, reported in 146 I. C. C. beginning at 717. The petition was filed on May 3, 1926 and decided by the Commission on August 2, 1928. It then became the subject matter of litigation in the case reported as *Florida v. United States*, 30 *Federal* (2d) 116 (*January* 17, 1929). The United States District Court in that case sustained the order of the Interstate Commerce Commission but limited its application. Subsequently the Interstate Commission amended its order by declaring in effect that it should have state-wide application in Florida; and on supplemental bills the District Court sustained the Commission's order as thus construed by the Commission. [*Florida v. United States*, 31 *Federal* (2d) 580, *March* 22, 1929].

This court reversed the District Court by its decision entered January 5, 1931—*Florida v. United States*, 282 *U. S.* 194. In its opinion reversing the lower court, this court stated among other things as follows:

> "The question is not merely one of the absence of elaboration or of a suitably complete statement of the grounds of the Commission's determination, to the importance of which this Court has recently adverted (*The Beaumont Sour Lake & Western Railway Company v.*

United, ante, p. 74), but the lack of the basic or essential findings required to support the Commission's order. In the absence of such findings, we are not called upon to examine the evidence in order to resolve opposing contentions as to what it shows or to spell out and state such conclusions of fact as it may permit. The Commission is the fact-finding body and the Court examines the evidence not to make findings for the Commission but to ascertain whether its findings are properly supported. If the facts as to intrastate transportation of logs in Florida are such as to justify an order as to intrastate rates in order to end an unjust discrimination against interstate commerce either as between persons and localities, or because of an undue burden upon the revenues of the carrier, the Interstate Commerce Commission is still at liberty, acting in accordance with the authority conferred by the statute, to make such determinations as the situation may require."

The Atlantic Coast Line Railroad Company filed its petition with the Interstate Commerce Commission to reopen the proceedings praying, among other things, that the "Commission proceed to make such further findings and issue such further reports and orders in this cause as it may deem to be requisite or necessary;" and that "it prescribe such intrastate rates in Florida for the transportation of logs over the lines of this movant, for distances up to 170 miles and for distances beyond 170 miles, as may be lawful." There were prayers for such other and further reports, findings and orders as the Commission might deem proper.

The Georgia Public Service Commission also filed a like petition.

The Interstate Commission granted the prayers of those petitions and reopened the case for further hearing.

In its first report rendered August 2, 1928, the Commission had stated that:

> "We further find that the Florida intrastate rates assailed, which are lower than the interstate rates herein found reasonable for corresponding distances, result, and will result, in undue preference and advantage of shippers of intrastate traffic within the State of Florida, in undue prejudice to shippers of interestate traffic from points in the State of Florida to points in the State of Georgia, and in unjust discrimination against interstate commerce.
>
> "We further find that said undue preference and advantage, undue prejudice, and unjust discrimination can and should be removed by the establishment of rates for intrastate application within Florida which shall correspond with the rates herein found reasonable for interstate application from Florida to Georgia." (146 I. C. C. 724:5).

The intrastate rates there prescribed are the same as those which were prescribed in the order which is the subject matter of this case.

SECOND HEARING BEFORE THE COMMISSION—
FIRST REOPENED HEARING UNDER
ITS ORDER OF APRIL 6, 1931.

The Commission had additional hearings in the reopened case and a large amount of new evidence was taken. The hearings were had before the Interstate Commission's examiners. The first hearing on June 10, 11 and 12, 1931, at Jacksonville, Florida, was adjourned to the City of Washington and further testimony taken on July 20 and 21, 1931.

The report of the evidence in this reopened proceeding begins in the record at page 621 of Vol. I and extends through page 915 of Volume II.

The Commission's examiners filed their proposed report. Exceptions were filed thereto and arguments had thereon before the full Commission. Thereafter and on July 5, 1932, the Commission made its second report and entered its order (186 I. C. C. 157, R-Vol. I, p. 27—this report is reproduced at page 59 of the Statement of the Atlantic Coast Line Railroad Company Opposing Jurisdiction and Motion to Dismiss or Affirm).

The evidence before the Commission in this reopened proceeding, of course, included that which had been offered in the original hearing and, as well, all of the additional evidence which was adduced at the long and tedious hearings which followed.

In its second report the Commission, as we shall show, carefully followed the decision of this court which reversed the United States District Court's opinion upholding the Commission's original report and order (282 U. S. 194).

The Commission in its second report (186 I. C. C. 189) made the findings referred to, to the effect that the Cummer scale of rates was, and for the future would be, unjustly discriminatory against interstate commerce, and prescribed rates for use to remove the unjust discrimination so found. The Commission stated that rates "not less than" those rates were necessary to remove that condition. (146 I. C. C. 717).

The Commission in its second report made a great many detailed findings, which will be more particularly referred to

hereinafter. These, we contend, fully comply with the requirements of the law as declared by this court, and especially as stated in the case of Florida v. United States, 282 U. S. 194.

The Brooks-Scanlon Corp., Wilson Cypress Company and Wilson Lumber Company of Florida on August 10, 1932 moved the Commission for a postponement to November 15, 1932 of the effective date of its order of July 5, 1932, as amended July 28, 1932. That was denied (R-1240).

A petition for further hearing in, and reconsideration of, the proceeding before the Commission was filed by the same intervenors on August 17, 1932 (R-1243). The State of Florida and the Florida Railroad Commission filed a like petition August 23, 1932 (R-1273); and these petitions were denied August 25, 1932 by the Interstate Commission (R-1278-9).

On September 9th, 1932, State of Florida, et al filed the bill in case No. 690 in the United States District Court (R-1). The Atlantic Coast Line intervened in said case (R-312) moved to dismiss same and answered the bill (R-312-13). The Interstate Commission filed its answer to said bill (R-328) and the United States filed its answer thereto (R-335).

On the same day Wilson Cypress Company and Wilson Lumber Company of Florida filed their bill of complaint in case No. 691 (R-419), in which the Atlantic Coast Line intervened (R-443). The Coast Line moved to dismiss that bill and answered the same (R-443). The Interstate Commission filed its answer to said bill (R-456) and so did the United States (R-462).

Hearing was had on said two bills on September 14, 1932. The court, acting upon its statutory authority, temporarily

suspended the order of the Interstate Commission of July 5, 1932 as amended by its order of July 28, 1932, for a period of sixty days (R-460).

On October 5, 1932 Wilson Cypress Company and Wilson Lumber Company filed with the Interstate Commission a petition for further hearing and reconsideration on the ground of newly discovered evidence (R-1280) to which the Atlantic Coast Line replied (R-1286).

On October 8, 1932 the State of Florida and Florida Railroad Commission filed a like petition (R-1293) to which the Coast Line replied (R-1309).

On October 10, 1932 a petition of intervention and for further hearing in this cause before the Interstate Commission was filed by F. S. Buffum, Inc. (R-1301) to which the Coast Line replied (R-1309).

During the sixty-day period of suspension by the court of the order of the Interstate Commission entered July 5, 1932, F. S. Buffum Company, Inc. on October 14, 1932 filed its bill in case No. 695 in the United States District Court (R-527). This bill sought to have said order of the Interstate Commission entered on July 5, 1932 set aside because it was alleged to have been "without warrant in law" (R-548). That bill remained, for the time being inactive.

On October 21, 1932 (R-1315-16) the Interstate Commission reopened the proceedings before it and ordered a further hearing

> "for the sole purpose of receiving evidence respecting any change in the rates on logs since the close of the

last hearing herein, the circumstances connected with and the conditions which occasioned such changes, and whether such circumstances and conditions, or any of them, are present with respect to the Florida intrastate log rates of defendant."

The Commission allowed F. S. Buffum Company to intervene and be treated as a party to the proceeding.

THIRD HEARING BEFORE THE COMMISSION—SECOND REOPENED HEARING.

Further hearing was had on this second reopened proceeding before the Commission and a great deal of evidence was received. This evidence begins at record p. 917 of Volume II and ends at page 1074.

The Commission filed its third report and order January 9, 1933 (R-361), stating (R-375-6):

> "We affirm all of the findings in our prior report on further hearing and will vacate our order suspending the operation of our order of July 5, 1932, as amended."

The Commission on that date revoked its order filed on October 21, 1932, suspending the order of July 5, 1932 as amended July 28, 1932, that revocation to take effect as of February 11, 1933, and ordered that:

> "Thereafter the aforesaid order of July 5, 1932, as amended by order of July 28, 1932, shall remain in full force and effect until the further order of the commission." (R-377).

On January 19th the Commission entered an order of clarification of the last above mentioned order (January 9, 1933),

directing, in substance, that its order of January 9, 1933 should go into effect February 25, 1933 (R-377).

State of Florida and its Railroad Commission, on February 4, 1933 filed a motion to set aside the last order of the Commission; that is, its order of January 9, 1933, as amended January 19, 1933, and which was to become effective February 25, 1933 (R-378). A like petition was filed by Wilson Cypress Company and Wilson Lumber Company of Florida (R-481). F. S. Buffum Co., Inc. filed a like petition (R-558). The Coast Line replied to those motions (R-1377) and so did the Georgia Public Service Commission (R-1378).

On February 13, 1933 the Commission denied those motions (R-1377).

SUPPLEMENTAL BILLS OF COMPLAINT.

(a) Supplemental bill in case No. 690 was filed by the State of Florida through its attorney-general, Railroad Commissioners, and special counsel on February 24, 1933 (R-339). Answer to this supplemental bill was filed by the United States Government (R-390). The Coast Line moved to dismiss that bill (R-394) and also filed an answer thereto (R-397). Georgia Public Service Commission filed a petition to intervene in said case (R-415) and a motion to deny the right to file the supplemental bill (R-415) and an answer thereto (R-417).

(b) On the same day Wilson Cypress Company and Wilson Lumber Company of Florida filed a like supplemental bill in case No. 691 (R-465) to which the United States re-

plied (R-491). The Interstate Commission replied to this supplemental bill (R-495) and it was agreed that the Commission's answer to this supplemental bill in case No. 691 should stand for its answer to the supplemental bills filed in cases No. 690 and 695 (R-494).

The Coast Line moved the court to deny the motion of the plaintiffs in this case to file the supplemental bill (R-504) and also filed its answer thereto (R-506).

The Georgia Public Service Commission intervened in this case (R-523); filed its motion to deny motion of plaintiffs to file supplemental bill (R-524) and filed its answer to said supplemental bill (R-525).

(c) On February 13, 1933 the F. S. Buffum Co. Inc. filed its supplemental bill in case No. 695 (R-551) to which the United States filed its answer (R-579). The Atlantic Coast Line Railroad Company intervened in said case (R-582) and filed its answer to said supplemental bill (R-600). The Coast Line also filed a motion to dismiss said supplemental bill of F. S. Buffum Co. Inc. (R-596) as well as a motion to deny motion of said Buffum Co. to file its supplemental bill (R-598).

The Georgia Public Service Commission filed its motion to deny and its answer to said supplemental bill (R-603-4).

These causes were consolidated on February 24, 1933 (R-389-90).

Hearing was then had on the original and supplemental bills consolidated as aforesaid. After the hearing, the court

stated that a conclusion on the original bills had been reached at about the time the Interstate Commission suspended its order of July 5, 1932, which was the subject matter of those bills; and that they had prepared their findings of fact and conclusions of law; and that they found nothing in the supplemental bills to change those conclusions. The court filed its findings of fact and conclusions of law (R-610) and entered its decree, holding among other things, that:

> "the orders of the Interstate Commerce Commission made July 5, 1932, and the order of the Interstate Commerce Commission confirming the same made January 9, 1933, as set forth in the pleading, be and are hereby sustained, and the prayer to annul and set aside and enjoin the same is refused, and that the respondents recover of the complainants their costs in this behalf to be taxed by the clerk." (4 Fed. Sup. 477).

IV.

THE ISSUES BEFORE THIS COURT

The issues which are presented to this court in this case are as follows:

1. (a) Are the intermediate findings of the Interstate Commerce Commission sufficient to sustain its conclusion that the scale of rates (known as the Cummer scale) for the transportation of logs over six feet in length, except walnut, cherry and cedar, in carload lots, in intrastate commerce over the lines of the Atlantic Coast Line Railroad Company in Florida for distances up to 170 miles, work, and for the future will work, unjust discrimination against interstate commerce?

(b) Was the evidence before the Interstate Commerce Commission sufficient to justify those findings and that conclusion?

2. (a) Was the State of Florida, in the court proceedings, entitled to a hearing upon an independent record made under the processes of the court because of the Tenth Amendment to the Constitution of the United States?

(b) Were the other complainants in the court proceeding entitled to a de novo hearing upon the record made before the Interstate Commerce Commission?

V.

SUMMARY OF THE COMMISSION'S FINDINGS IN THE FIRST HEARING (*Georgia Public Service Commission v. Atlantic Coast Line Rd. Co.*, 146 I. C. C. 717, August 2, 1928).

The Commission's first report may be summarized as having found:

(a) The Florida Commission appeared and defended the Cummer scale of rates.

(b) There was a large volume of traffic in logs which moved under the Cummer scale; and there was a very great amount of standing timber in the territory from which the logs had been moved; that one owner had a tract of timber containing 1,207,432,000 feet.

(c) That the Cummer scale of rates "which on the average are less than half of the proposed interstate rates, are less than reasonably compensatory."

(d) That the Cummer scale of rates worked unjust discrimination against interstate commerce; and rates were prescribed to remove that unjust discrimination.

(e) The Commission fixed a scale of rates to govern interstate transportation of logs from points on the lines of the Atlantic Coast Line in the State of Florida north of and including Jacksonville, Gainesville, Burnett's Lake, and High Springs, to destinations on its lines in Georgia for distances not exceeding 170 miles.

The intrastate rates fixed by the Commission, as aforesaid, are the same as those fixed for the interstate movements.*

* The Commission also found there was discrimination against persons and places, etc. This finding was not sustained by the United States District Court, nor by this court and was not brought forward in the subsequent reports of the Commission.

VI.

ANALYSIS OF THE FIRST REPORT OF THE INTERSTATE COMMERCE COMMISSION (*Georgia Public Service Com. v. Atlantic Coast Line Rd. Co.*, 146 I. C. C. 717).

The Commission's first report made August 2, 1928 [146 I. C. C. 717 (R-Vol. I, p. 16) of cases Nos. 493, 494 and 495, October term, 1930, 282 U. S. 194—this is referred to as the first record. (Complete copy of this report is set out beginning at p. 59 of the Statement of Atlantic Coast Line Railroad Company Opposing Jurisdiction and Motion to Dismiss or Affirm, filed in this cause)], was the basis of the court's decision in the case reported in 282 U. S. 194.

Not one of the findings of the Commission there made has been disturbed by any court. It was determined by this court that this first report did not contain sufficient basic findings to sustain the Commission's order. The findings in the original report of the Commission still remain findings in the case now at bar.

The Commission found that the Florida Railroad Commission filed no formal petition of intervention but appeared in defense of the Florida intrastate rates.

The Commission traced the history of the Florida intrastate rates involved here and which are known as the "Cummer" scale of rates (146 I. C. C. 719). This is summarized in the aforementioned opinion of this court—282 U. S. at page 205.

The findings of the Commission indicate the volume of traffic. For instance, on January 26, 1914, when a contract was

made between the predecessor of Brooks-Scanlon Corporation and Atlantic Coast Line Railroad Company, the Lumber Company owned standing timber in Lafayette and Perry Counties, Florida, of approximately 1,000,000,000 feet of pine. 128,163 carloads containing 700,000,000 feet of timber had been transported under that contract from 1915-1926, both inclusive; and on August 31, 1926 the Brooks-Scanlon Corporation owned in Wakulla, Jefferson, Madison, Taylor, Lafayette and Dixie Counties, Florida, timber tracts estimated to contain 1,207,432,000 feet. The Commission's findings as to the quantity of the timber affected did not adequately reflect the extent of such timber as shown by the record.

The Commission also found (146 I. C. C. 724):

> "It is manifest, we believe, that the intrastate rates assailed, which on the average are less than half of the proposed interstate rates are less than reasonably compensatory. The rate for 160 miles yields but 4.25 mills a ton-mile, and, based on a lading of 60,200 pounds, 12.8 cents a car-mile. They are approximately one-half the rates prescribed in *Rates on Chert, Clay, Sand and Gravel*, 122 I. C. C. 133, on sand and gravel in the southeast and less than one-half of the rates prescribed in the supplemental report in that case, 140 I. C. C. 85, to points in Florida south of the Jacksonville-River Junction line of the Seaboard Air Line."

It also found:

> "Sand and gravel are of unusual low value, it being doubtful whether any traffic moves which is worth less at point of production, load very heavily, and normally move in considerable volume without unusual switching

operations at either end and without anything in the nature of special services." (146 I. C. C. 724).

The Commission further found that:

> "The Florida intrastate rates assailed, which are lower than the interstate rates herein found reasonable for corresponding distances, result, and will result, in undue preference and advantage of shippers of intrastate traffic within the State of Florida, in undue prejudice to shippers of interstate traffic from points in the State of Florida to points in the State of Georgia, and in unjust discrimination against interstate commerce." (146 I. C. C. 724).

The Commission prescribed a scale of rates for the removal of that unjust discrimination.

The findings of undue preference and advantage of shippers of intrastate traffic and undue prejudice to shippers of interstate traffic were not sustained in the District Court and the case came to this court on the basis of unjust discrimination against interstate commerce.

The Commission also found that the Florida Commission advised the Atlantic Coast Line that "the rates (Cummer scale) themselves were too low and such as might be deemed confiscatory." (146 I. C. C. 720).

The evidence on which the findings of the Commission in its first report were made may be seen in exhibit 15 (first record 270, 271); exhibit 16 (first record, 272); exhibit 1 and evidence of the witness Price (first record, 232) which shows the difference between the Cummer scale and the interstate scale. For instance, at 50 miles the Cummer scale

yielded $10.50 revenue for a car of 50,000 pounds while the Georgia-Florida interstate scale yielded $25.00 for a like car; at 100 miles the Cummer scale yielded $13.00 and the interstate scale $35.00; at 170 miles the Cummer scale yielded $18.00 and the interstate scale $47.50.

Also sustained by exhibit 52 (first record, 394) witness Price, wherein comparisons are made between the Cummer scale of rates and rates over the Atlantic Coast Line in North Carolina and with rates in South Carolina, Georgia and Alabama. For instance, at 50 miles under the Cummer scale the rate was 2.10 cents per 100 pounds; under one scale in North Carolina the rate was 3.25 cents; under another scale in North Carolina, 2.7 cents; South Carolina, 5.33 cents; Georgia, 3.5 cents; and in Alabama, 4.5 cents; and interstate, 5 cents. The witness Price testified:

> "The Cummer scale is the lowest scale I have been able to locate." (First record, 706).

Mr. Price's exhibit 52 (first record, 394) is a very fair summary of the evidence given as to the comparative rates. It shows the Cummer scale of rates was always the lowest; and lower than the scales of rates interstate or intrastate in North Carolina, South Carolina, Georgia and Alabama.

Comparison of rates under the Cummer scale with rates on the Seaboard Air Line Rwy. Co. in Florida is shown in exhibit 2 (first record, 234)—the witness Abrams. At record 434 (first record) Mr. Abrams testified in substance that the Cummer scale is the lowest scale to be found and on the very lowest level; and lower even than that prescribed by the Georgia Commission but then under suspension. The Seaboard

Air Line's intrastate rates were more than twice as high as the Cummer scale of rates (Note column 4, exhibit 2, first record). The relation was even wider when compared with the interstate scales (first record, 436). The Seaboard Air Line operated about 1850 miles of road in Florida.

The same kind of results was shown in a comparison of rates on the Georgia, Southern & Florida (first record, 451) in exhibit 3 which is shown at first record, 327.

The witness Perrin (first record, 279) filed his exhibit 18 showing comparison of the Cummer scale of rates on logs with the rates on brick, sand, lime and cement. For instance, at 50 miles the rate on logs under the Cummer scale was 2.10 cents per 100 pounds; on brick, 5 cents; on sand and gravel, 4.30 cents; on lime, 7.90 cents and on cement, 8.45 cents. The Cummer scale was from one-third to one-half of the scales on those other low-grade commodities. At 50 miles the Cummer scale was only 40% of the corresponding interstate scale.

Exhibit 22 of the witness Perrin (first record, 287) shows that logs constituted 7.26% of all the tonnage on the Atlantic Coast Line in May, 1926 and under the Cummer scale they produced 2.05% of all the freight revenue; and that the revenue per ton from the log traffic was only seventy-two cents, which was about one-third of the revenue yield on fertilizer and cement; less than a fourth of the revenue from salt and asphalt; about sixty per cent of the revenue from stone; less than one-half of the revenue from cotton seed and cotton seed hulls. The average log haul was 109 miles and the revenue per ton mile was .0066. Perrin's exhibits begin with exhibit No. 10 (first record, 255) and end with No. 24 (first record,

291). His oral evidence begins at first record, 467 and ends at first record, 715.

We thus see that the findings of the Commission referred to were amply supported by the evidence. The case was not reversed by this court on account of the lack of evidence. It was reversed as we have seen, for the reason that what may be called intermediate findings of the Commission were not sufficient to sustain its final finding of unjust discrimination against interstate commerce. The findings of the Commission remain a part of the record on which this case was tried.

VII.

SUMMARY OF THE COMMISSION'S FINDINGS IN THE SECOND HEARING (*Georgia Public Service Commission v. Atlantic Coast Line R. Rd. Co.*, 186 I. C. C. 157, decided July 5, 1932).

The findings of the Commission in the second hearing may be summarized as follows:

1. Affirmance of every intermediate and basic finding made by the Commission in the first report (146 I. C. C. 717), except the finding of undue prejudice against persons and localities in interstate commerce, which finding the Commission held to be unnecessary (186 I. C. C. 189-90).

2. The *interstate* scale of rates prescribed heretofore as reasonable for the transportation of logs is affirmed (186 I. C. C. 160, 189).

3. The Cummer scale of intrastate rates for the transportation of logs in Florida is found to work *unjust and undue discrimination* against interstate commerce (186 I. C. C. 189).

(a) This scale of rates only involves distances up to and including 170 miles and is applicable only on the railroad of the Atlantic Coast Line (186 I. C. C. 161).

(b) The Southern Florida peninsula warrants a higher rate on all commodities than elsewhere, due to transportation conditions (186 I. C. C. 163-64).

(c) The Class P rates applicable on logs moving in Florida for 171 miles is twice as high as the Cummer

scale for 170 miles, the difference being 8.37 cents per 100 pounds and 3.70 cents per 100 pounds, respectively (186 I. C. C. 161 and 193).

(d) Comparisons of *intrastate* rates on other Florida railroads show the Cummer scale is only about 50 per cent. as high (186 I. C. C. 163 and 193).

(e) The *interstate* rate scale prescribed by the Interstate Commerce Commission applies over the Coast Line's lines throughout the entire southern territory in interstate commerce and is the same as the intrastate rates in Alabama and Virginia. It compares favorably with the *intrastate* rates in Georgia, North Carolina and South Carolina, and would be fully applicable but for this litigation (186 I. C. C. 162-63-67 and 193). This scale, or one that compares favorably with it, applies interstate over the lines of the other important carriers in the South (186 I. C. C. 163). It is lower than similar rates found reasonable for the Central territory (186 I. C. C. 164). There is no lower scale of rates on logs than the Cummer scale, intra or interstate (186 I. C. C. 165).

(f) The Cummer scale is lower than rates on other important low-grade commodities such as brick, sand, gravel, lime and cement (186 I. C. C. 165 and Appendix D, 195).

(g) The Cummer scale is "less than reasonably compensatory" (186 I. C. C. 165).

4. The *revenue* from the log traffic reflects "the small revenue burden borne by the log traffic" as compared with other traffic (186 I. C. C. 166-67—see table).

5. The decline in the log traffic during the period 1928-1930 is not solely due to increase of the rates above the Cummer scale (186 I. C. C. 168-69) but is partly due to

(a) Removal of certain of the mills to the timber, which was testified to be necessary because it was uneconomical for mills to be located so far from the timber even if the Cummer scale were in force (186 I. C. C. 169).

(b) General depressed conditions as they affected the lumber industry (186 I. C. C. 171).

(c) The decline in the system traffic and the decline in the lumber and other commodity traffic throughout the United States (186 I. C. C. 171-2).

6. There is a great quantity of timber in Florida yet to be cut and transported (more than 21,000,000,000 feet were accounted for) and the regrowth of Southern pine timber is very rapid (186 I. C. C. 172-76). The traffic for the future in this commodity will be large and much of it is adjacent to the lines of the Atlantic Coast Line (186 I. C. C. 176).

7. There is little likelihood of serious truck competition (186 I. C. C. 176).

8. The *revenue* from the Cummer scale does not cover the "*cost of the service*" (186 I. C. C. 176-187).

(a) Even when considering that the movement of considerable log traffic in Florida was in trainloads (186 I. C. C. 183 and 185), which was not approved even by the Florida Commission, as a basis for rates, (186 I. C. C. 161).

(b) The cost evidence introduced by the carrier was not contradicted, but only criticised by the shippers (186 I. C. C. 182).

(c) If the Cummer scale had been applicable on the log shipments moving in Florida from February 8, 1929, to January 31, 1931, the revenue would have been $290,283.19 less than that collected under the scale prescribed by the Interstate Commission applicable during that period. (186 I. C. C. 167). If the Cummer scale had been applicable on all the log movements over the Atlantic Coast Line during the years 1929 and 1930, the reduction in revenue would have been approximately $675,381.21 (186 I. C. C. 168).

9. *"Traffic moving under the Cummer scale does not pay its 'fair proportionate share' of operation and maintenance alone"* (186 I. C. C. 187).

10. An increase of the Cummer scale of rates would, and for the future will, produce additional income and remove the burden found to exist upon the carriers' interstate income (186 I. C. C. 189-90).

(a) "It is manifest that if the Cummer scale produces less revenue than the cost of service, declines in the traffic have the favorable effect of reducing defendants' losses, and that an increase in the traffic would only serve to augment those losses" (186 I. C. C. 176-77).

(b) The Commission also finds (186 I. C. C. 170) that the defendant asserts that the change in location of these mills from the vicinity of Jacksonville to Foley and Cross City has had a favorable effect upon its revenues in two respects, first, it has rendered unnecessary the transportation of the logs at

the inadequate remuneration yielded by the Cummer scale; second, the present location of the mills in the interior has resulted in producing tonnage of lumber rather than of logs, and the transportation of lumber from the standpoint of net revenue is vastly better than the transportation of logs under the Cummer scale. The Commission then proceeds to point out that the average weight of 983 cars of logs handled under the Cummer scale for the Brooks-Scanlon Corporation and the Putnam Lumber Company was 60,200 pounds per car, the average haul was 158 miles, and the revenue was $20.47 per car, or 12.9 cents per car-mile. In 1930, 90 per cent. of the lumber movement from Foley and 70 per cent. of the lumber movement from Cross City to destinations on defendant's lines went to Jacksonville. The rate on lumber from Foley to Jacksonville is 9.14 cents and based on the average per car weight of all lumber in the southern region of 52,000 pounds, the revenue per car from Foley to Jacksonville, 169 miles, is $47.53, which equals 28.1 cents per car-mile. The rate on lumber from Cross City to Jacksonville, 118 miles is 8 1/3 cents, producing revenue of $43.33 per car or 36.7 cents per car-mile.

11. Circumstances and conditions surrounding the log transportation *intrastate* in Florida are not as favorable as those *interstate* over the lines of the Atlantic Coast Line (186 I. C. C. 189).

12. The scale of *minimum* rates for intrastate transportation of logs in Florida for distances not over 170 miles, set forth in Appendix F, is found reasonable and sufficient to remove the unjust discrimination against interstate commerce caused by the application heretofore of the Cummer scale (186 I. C. C. 189, 190, 198).

VIII.

ANALYSIS OF THE SECOND REPORT OF THE INTERSTATE COMMERCE COMMISSION (*Georgia Public Service Com. v. Atlantic Coast Line Rd. Co.*, 186 I. C. C. 157).

The second hearing was had on the separate motions of the Georgia Public Service Commission and the Atlantic Coast Line Railroad Company to reopen the proceedings before the Interstate Commission. This is referred to in Volume I of the record, p. 9, ¶19, of the bill of the State of Florida in case No. 690. The Georgia Public Service Commission moved the Interstate Commission, as shown in the aforementioned bill, to reopen the proceedings and make the determinations required by the situation and to issue such report and make such findings and orders "as will result in removing the discriminations set out in the original petition." The motion also prayed the Commission to make such findings and issue such orders as it may deem requisite or necessary "to fully accomplish the purpose of the original petition and of this motion," and that the Interstate Commerce Commission prescribe just, reasonable, non-discriminatory and non-prejudicial interstate rates from all "points in Florida to all destinations in Georgia and that the measure of such rates be no higher than the rates concurrently in effect for the same kind of property moving in intrastate commerce in the State of Florida."

The motion of the Atlantic Coast Line Railroad Company is referred to on page 10 of volume I of the record. This motion prayed that the

"Commission proceed to make such further findings and issue such further reports and orders in this cause as it may deem to be requisite or necessary;

"That the Commission prescribe such intrastate rates in Florida for the transportation of logs over the lines of this movant, for distances up to 170 miles and for distances beyond said 170 miles, as may be lawful.

"That this Commission issue such other and further reports, findings and orders as this Commission may deem proper."

The point is made that the reopened proceeding before the Interstate Commission was not one in which it was asserted that the level of the State rates was so low as to constitute a revenue burden on interstate commerce.

The same point was made in the case of *Florida v. United States*, 30 Fed. (2d) 116, and in the reopened proceeding, *Florida v. United States*, 31 Fed (2d) 580. It was made in this court on the first appeal—*Florida v. United States*, 282 U. S. at page 209—and was disposed of against the contentions of the appellants.

In the court below in its conclusions of law and fact (R-610, at 614, and at page 38 of the Statement of the Atlantic Coast Line Railroad Company Opposing Jurisdiction and Motion to Dismiss or Affirm) the court adhered to its views expressed in the first two cases to which reference has been made; and also referred to and cited the opinion of this court in 282 U. S. at page 209, to the same effect.

We respectfully submit that there is no merit in the position taken by the appellants.

The State of Florida through its Attorney-General, and the Florida Railroad Commission, through its special counsel, appeared in the reopened case before the Interstate Commission (186 I. C. C. 157).

The Commission finds (186 I. C. C. 160) that the interstate rates which went into effect on February 8, 1929

> "have since remained continuously in force. No further evidence was introduced with respect to their reasonableness and they are apparently satisfactory to all interested parties."

This is undisputed.

The Commission found the principal issue in the reopened case to be as follows:

> "The principal issue upon rehearing was whether the Cummer scale causes unjust discrimination against interstate commerce and that issue will now be considered." (186 I. C. C. 160).

The interstate and intrastate rates prescribed applied for distances only up to and including 170 miles.

> "There was no occasion to prescribe either interstate or intrastate rates for greater distances, for the reason that the intrastate (Cummer scale) rates, which were alleged to cause the undue prejudice against shippers and localities in interstate commerce and unjust discrimination against interstate commerce, applied for distances of only 170 miles and less, beyond which the Florida intrastate rates were much higher, distance considered, and were only slightly less than the then prevailing interstate log rates for the same distance." (186 I. C. C. 160).

The Commission again briefly traced the history of the Cummer scale of rates and states:

> "The Cummer scale never has applied over other railroads nor elsewhere than in Florida on defendant's lines for distances of 170 miles and less." (186 I. C. C. 161).

The Commission in Appendix B to its report (186 I. C. C. 193) showed the Cummer scale which began with a rate of 1.71 cents per 100 pounds for 5 miles and ended with 3.7 cents for 170 miles. Above 170 miles, in column 1, the rates are Class P and they are very much higher than the Cummer scale. For instance at 170 miles the Cummer scale is 3.7 cents per 100 pounds and for 171 miles the Class P rate is 8.33 cents per 100 pounds, or "more than twice as high." (186 I. C. C. 161).

Transportation conditions in that portion of Florida south of the line of the Seaboard Air Line extending from Jacksonville to River Junction warrant a basis of class rates substantially 15 per cent higher than the rates in other parts of the South (186 I. C. C. 161).

Appendix B, referred to, makes comparisons of the Cummer scale of rates with the rates on so-called short logs; that is logs not over six feet in length, and rates on the Seaboard Air Line, Georgia, Southern & Florida and a number of other lines; and the great disparity between the Cummer scale and the other scales is shown.

The Alabama Commission had adopted the interstate scale for intrastate commerce within its boundaries.

"The Georgia Commission likewise adopted it for intrastate application in that State, but suspended its application because of the existence of the Cummer scale in Florida. The Corporation Commission of Virginia approved the scale for application on defendant's lines in Virginia and it is now in effect in that state. The scale, extended to cover distances up to 450 miles, was proposed by defendant for adoption in this case at the original hearings and defendant expressed willingness to establish it for interstate application over its entire system except south Florida. Although the former order prescribed the scale only from northern Florida to Georgia for distances of 170 miles and less, the defendant later voluntarily established it for uniform application on interstate traffic for all distances over its entire system except from points on its line south of the line of the Seaboard Air Line from Jacksonville to River Junction, from which it established rates 15 per cent higher than from points north of that line. In nearly all instances these rates were reductions from those previously in force." (186 I. C. C. 162).

The rates applying on logs intrastate in Florida on the Seaboard Air Line and the Georgia, Southern and Florida "are approximately twice as high as the Cummer scale." (186 I. C. C. 162, and appendix B).

The rates over the Atlantic Coast Line and the Seaboard Air Line on logs not more than six feet in length were substantially higher than the Cummer scale of rates. The Commission states:

"These rates were established to permit the movements of short logs which would otherwise go to waste, but which could be used by manufacturers of crates. This scale is somewhat lower than the scale prescribed in the

original report herein but is substantially higher than the Cummer scale." (186 I. C. C. 162).

The Commission finds (186 I. C. C. 163) that:

> "Some southern lines, particularly those operating in the Mississippi Valley, have two scales of log rates, one for ordinary local application, and the other, a scale of net transit or reshipping rates, applying when a certain proportion of the lumber or other manufactured product is shipped over the lines of the carrier delivering the logs. The net transit or reshipping rates are usually lower than the local rates. The interstate net transit scale of the Illinois Central and Mobile & Ohio is typical of such scales. It is shown in column 7 of Appendix B, and is considerably lower than the interstate local scales applying on those lines, which are shown in columns 8 and 9. This net transit scale, except for distances under 20 miles, is more than twice as high as the Cummer scale and compares favorably with the scale prescribed in the original report herein (column 5). The latter scale, hereinafter referred to as defendant's interstate scale, now applies interstate generally between points not only on defendant's lines but also on the Seaboard Air Line and the Southern, and as net transit rates on the Louisville & Nashville. It will thus be seen that this scale or one that compares favorably with it, applies interstate over the lines of the most important carriers in the South. In *Farris Hardwood Lumber Co. v. Louisville & N. R. Co.* 178 I. C. C. 671, division 4 prescribed gross (local) rates on logs from numerous origins in the South to destinations in Tennessee, which rates are considerably higher than defendant's interstate scale. The single-line scale prescribed in that case is shown in column 6 of Appendix B."

This finding of the Commission is sustained by the evidence of J. W. Perrin (R-650, vol. I; and by his exhibits 54,

R-1100a; 63, R-1110; 64, R-1111-12; 65, R-1112-13; 68, R-1119).

The Commission attaches appendix C to its report (186 I. C. C. 194) comparing the Cummer scale of rates with rates in Virginia, North Carolina, South Carolina, Georgia transit, Georgia local and in Alabama, and states:

> "In Appendix C the Cummer scale is compared with defendant's intrastate log rates in other southern states. It will be noted that the rates applicable in Virginia and Alabama, which were approved by the regulatory bodies of those states, are the same as defendant's interstate scale; that in Georgia the local rates are somewhat higher and the transit rates somewhat lower than defendant's interstate scale; and that the North Carolina and South Carolina rates are somewhat lower than defendant's interstate scale but average considerably higher than the Cummer scale. Applications are pending before the proper authorities to permit the establishment of defendant's interstate scale uniformly on intrastate traffic throughout those states, approval of which, it is testified, has been withheld because of the low intrastate rates in Florida." (186 I. C. C. 163).

There is no controversy over this statement and these conditions are dealt with and the finding of the Commission sustained by the evidence of the witness Perrin (R-651 and 664 and Perrin's exhibit 63). At R-664 Mr. Perrin showed that

> "the Cummer scale is 48.1% of the Virginia scale; 59% of the North Carolina scale; 52.8% of the South Carolina scale; 56.4% of the transit scale in Georgia; and 45.9% of the Alabama scale which is the same as our interstate scale."

This was a mathematical average of the scale for all distances.

The Commission then finds (186 I. C. C. 163) that:

> "Transportation conditions in Florida are not such as warrant a lower basis of rates on logs in that state than elsewhere on defendant's system. Transportation conditions on defendant's lines in Florida are not more favorable but on the contrary are less favorable than on defendant's system outside of Florida. The cost of service in Florida is higher than on the remainder of the system, as shown by cost evidence referred to in detail hereinafter. Density of traffic in Florida is much lighter than on defendant's lines elsewhere." (186 I. C. C. 164).

This is amply sustained as to the transportation conditions in Florida by the witness Perrin (R-652-3, 663-4; and 488, first record). As to the finding that the cost of rendering service in Florida is higher than for the remainder of the System that is shown by the witness Lamb in his exhibit 82 (R-1135) and by his evidence (R-692-3). For the calendar year 1927 the average number of revenue ton-miles in south Florida was 90.57% of the ton-miles in north Florida. In Lamb's exhibit 83 (R-1136-a) there is an elaborate statement as to traffic density statistics in the State of Florida as compared with the System and the System excluding Florida for the calendar years 1925-1930. The figures used by the Commission in its report 186 I. C. C. at page 164 dealing with the traffic density, are taken from Lamb's exhibit 83 and his evidence (R-693). For instance, in 1929 the miles of road operated in Florida were 2055.40 and those operated on the balance of the System, excluding Florida were 3096.20. The Florida mileage represented 66.44% of the System mileage, excluding Florida, yet the tons moving one mile in Florida represented only 33.4% of the System excluding Florida.

In 1930 the Florida mileage was 66.6% of the System mileage, excluding Florida and the ton-miles of revenue freight produced only 38% of the System excluding Florida and the tons moved one mile per mile of road in Florida were 369,979 as compared with 648,395 for the System, excluding Florida (R-693).

The witness Lamb testified:

> "These figures indicate the low density of traffic in Florida as compared with the system of the Coast Line outside of Florida."

The same kind of relationship appears in Lamb's exhibit 83½ (R-1136a) as to the Seaboard Air Line. The witness Lamb testified at R-694:

> "I have attempted to develop whether or not the cost of operation in Florida is really greater than the cost on other parts of the Atlantic Coast Line, and from this study it would appear that the cost on the third division, which operates exclusively in the State of Florida, is considerably higher per unit than the cost on the first and second divisions operated north of Jacksonville."

The witness then goes into an elaborate statement of accounting which will be hereinafter referred to.

The Commission then finds (186 I. C. C. 164) that:

> "In the Florida peninsula the traffic density is even lighter than in the northern part of Florida, that is, north of the Jacksonville-River Junction line of the Seaboard Air Line. In 1927 there were 894.54 miles of railroad in Florida north of that line that were operated for freight traffic, and 4,183.01 miles in Florida south of that line. The traffic density of the lines in Florida

north of that line was 615,318 revenue ton-miles per mile of railroad as compared with 557,286 revenue ton-miles per mile of railroad south of that line. The less favorable operating conditions in Florida south of that line have given rise to the general practice of permitting the addition of arbitraries to the rates on interstate traffic to and from points in that territory."

The Commission cites *Southern Class Rate Investigation*, 100 I. C. C. 513, 585, 626, 646; 128 I. C. C. 567, 594, 602.

The Commission then finds (186 I. C. C. 164-5) that:

"The Cummer scale is much lower than the basis of rates prescribed for application throughout central territory in *Indiana Public Service Commission v. A. A. R. Co.*, 85 I. C. C. 533. Rates equal to 65 per cent. of the sixth-class rates contemprancously in effect between the same points were there found to be reasonable rates. The order there entered resulted in rates on logs ranging from 5.20 cents for 5 miles to 20.80 cents for 560 miles, the rate for 170 miles being 12.35 cents, whereas the Cummer scale rates for 5 miles and 170 miles are 1.71 cents and 3.70 cents, respectively. The report in that case referred to 'the lower operating costs and the greater traffic density' in central territory than in southern territory."

This is sustained by defendant's exhibit 67 (R-1117) and testimony of the witness Perrin explaining that exhibit (R-668). To illustrate: as shown by this exhibit and the testimony, at 25 miles the Cummer scale was 1.71 cents per 100 pounds; the interstate scale 3.5 cents; in Central territory, 6.50 cents; and in Souther nterritory, when ascertained upon a basis equivalent to 65% of Sixth Class rates, 7.88 cents. (The witness testified that 17.875% of First Class in Southern

territory was equivalent to 65% of Sixth Class in Central territory).

It is also sustained by defendant's exhibit 68 (R-1119) where the Cummer scale is compared with the interstate scale and with the Lumber scale and with 65% of the Lumber scale. To illustrate: at 25 miles the Cummer scale is 1.71 cents per 100 pounds; the interstate scale, 3.5 cents; the Lumber scale, 6.5 cents and 65% of the Lumber scale, 4.23 cents. (See evidence of the witness Perrin R-664).

The Commission then finds:

> "So far as the record in this case shows there is no other scale of rates on logs as low as the Cummer scale." (186 I. C. C. 165).

This is borne out by comparison of the exhibits and the evidence. See also statement of the witness Price (first record, 706) and statement of Mr. Abrams (434; first record).

The Commission then finds (186 I. C. C. 165) that:

> "Defendant's interstate scale and the Cummer scale are compared with the rates on other important low-grade commodities in Appendix D. The freight charges per car under the rates shown are also compared. The rates shown on these other low-grade commodities are the rates applicable between Georgia and Florida, but substantially the same level of rates applies intrastate in northern Florida. Approximately 40 per cent of the total tonnage transported by defendant consists of these low-grade commodities, and a substantial portion of defendant's total freight revenues is derived from their transportation, as is indicated by the following results of a traffic test for the month of May, 1926:

Commodity	Percentage of all tonnage	Percentage of all freight revenue	Value per ton
Logs	7.26	2.05	$2.80
Brick and artificial stone	3.30	2.32	.....
Sand and gravel....	26.49	9.16	0.35 to 1.35
Lime and plaster....	.46	.39	.....
Cement	2.29	2.05	7.48

The above evidence warrants the conclusion that the Cummer scale rates are abnormally low. Upon similar evidence submitted at the original hearing division 4 found that they are 'less than reasonably compensatory.' We affirm that finding."

This finding is sustained by defendant's exhibits 69-76 beginning at R-1120 and by the witness Perrin's evidence beginning at R-669. The witness Perrin (R-669) introduced exhibits 69-77 both inclusive (these exhibits appear at R-1120 through 1132). These exhibits compare the Cummer scale of rates on logs showing the revenue per ton-mile in mills, the revenue per car in dollars and the revenue per car-miles in cents, with the same rates and returns on charcoal, cement, old bags, hay, fertilizer, cullet (broken glass), common brick, and sand and gravel. The rates under the Cummer scale and the revenue produced by application of that scale are very much lower than are the rates applicable to the movement of the other commodities and the revenues derived from such movements. To illustrate, at 50 miles the rates on logs under the Cummer scale was 2.10 cents per 100 pounds; on old bags, 15 cents; the per ton mile revenue on logs was 8.4

mills; on old bags, 53.3 cents; return per car of 60,000 pounds on logs under Cummer scale was $12.60; on old bags for 33,000 pounds, $49.50; the revenue per car-mile on logs was 25.2 cents; on old bags, 99 cents.

Mr. Perrin states (R-669) that:

> "On all of these commodities, except the old worn out bags, the rates prescribed by the Commission have general application throughout Southern territory. Without exception the comparison is as to rates, revenue per ton mile and per car mile applicable on commodities on which the Commission, because of low value or because of other considerations stated in the exhibits has made some very low rates."

PROPERTY VALUES OF ATLANTIC COAST LINE AND THE RETURN THEREON.

The Commission finds (186 I. C. C. 166) that the Atlantic Coast Line's total property investment at the end of the year 1926 was $287,758,229; 1929, $306,439,250; and 1930, 305,977,599. The investment in property included investment in road and equipment, materials and supplies and cash. The rate of return on this investment was in 1926 6.11%; in 1929, 4.20% and in 1930, 2.37%.

This is sustained by the witness Lamb, General Auditor for the Atlantic Coast Line, who is an experienced expert accountant and statistician, beginning at R-686, and exhibit 78 (R-1134a). At R-1134b exhibit 79 shows the Atlantic Coast Line's investment in the State of Florida which increased from $95,176,163.92 in 1926 to $102,759,627.23 in 1930. The rate of return on investment in Florida in 1930 (including material, supplies and cash) was 1.17%.

The court will take cognizance of the continued depression which has very greatly adversely affected railroads since the year 1930.

PERCENTAGE OF LOG TRAFFIC IN VOLUME AND REVENUE.

The Commission finds (186 I. C. C. 166) that:

> "During the 5-year period, 1926-1930, system log traffic averaged .7 per cent of the total system traffic. Nearly 50 per cent of the system log traffic was in Florida. For instance, in 1928, the defendant transported a total of 51,801 cars of logs on its system, of which 27,119 cars were in Florida."

The rate of return on investment found by the Commission is, of course, before the deduction of interest on funded or unfunded indebtedness, or any other non-operating charge.

The Commission's finding as to the logs handled by the Atlantic Coast Line Railroad Company is sustained by exhibit 80 (R-1134c) and by the evidence of the witness Lamb (R-688).

The percentage of log traffic to total traffic of the System in 1928 was 7.0% while the percentage of log revenue to total revenue for the System was 1.9%. In 1929 it represented 5% of the total volume of traffic and the revenue was 1.5% of the total revenue; in 1930 the volume of traffic was 4.0% of the total volume and the revenue was 1.3% of the total revenue. In 1928 the percentage of Florida log traffic to total Florida traffic was 9.4%; in 1929 4.3% and in 1930

3.6%. In 1928 the number of cars of logs represented 52.35 per cent of the System and the tons, 57.26 per cent. This percentage decreased in 1929 and 1930, 1930 being 35.43 per cent as measured by cars and 40.76 per cent based on tons handled (R-688 and exhibit 80, R-1134c).

The Commission finds (186 I. C. C. 166) that:

> "The above figures reflect the small revenue burden borne by the log traffic. In 1928, for instance, the system log tonnage constituted 7 per cent of the total system tonnage, whereas the revenue from the log tonnage was only 1.9 per cent of the total revenue."

The evidence and exhibits referred to fully sustain this finding.

The Commission found that from 1928 to 1930

> "the log traffic of the system declined more than 50 per cent but the system log revenue declined only 38 per cent. The smaller decline in the revenue was no doubt due to the fact that in 1928 the Cummer scale was in effect whereas throughout 1930 the increased rates prescribed by the former order herein were collected." (186 I. C. C. 167).

The former order referred to was the order entered by the Interstate Commission in this proceeding, 146 I. C. C. 717, which order was set aside by this court in its decision in 282 U. S. 194. Apparently if the Cummer scale had been in effect in 1930 the decline in the log revenue of the System would have been much greater than it was.

STATEMENT OF LOGS MOVING INTRASTATE IN FLORIDA OVER COAST LINE FROM FEBRUARY 8, 1929 TO JANUARY 31, 1931.

The Commission also found (186 I. C. C. 167) that the defendant submitted

> "a statement showing all shipments of the kinds of logs here in question which moved over its lines intrastate in Florida during the period from February 8, 1929, to January 31, 1931. This statement shows a total movement of 18,602 carloads in that period on which gross freight revenues of $571,508.94 were collected. If the Cummer scale had applied, this movement would have produced gross freight revenues of only $281,225.75, or $290,283.19 less than those actually collected."

This finding is sustained by exhibit 61 (R-1101) which shows the names of the points of origin and the points of destination, the miles travelled, the number of cars, the weight as billed and the weight, using carload minimum of 50,000 pounds; the revenue as collected from each point of origin to each point of destination and the rate which would have been collected if the so-called Cummer scale had been applied; and by the evidence of the witness Perrin (R-661). The points of origin and destination are shown on a map — exhibit 62. There were twenty points of destination. Mr. Perrin states at R-662-3:

> "During the years 1929 and 1930 the movement of logs on our system including the long length logs in Florida, consisted of 3,450,765,300 pounds, of which the interstate movement consisted of 456,134,800 pounds, leaving intrastate movement of 2,994,630,500 pounds. The revenues from all of these logs amounted to $1,483,424.37, of which the revenue on interstate

movements amounted to $266,654.12 and the intrastate earnings amounted to $1,216,770.75. If the Cummer scale had been applicable on all of our log movement the reduction in revenues would have been approximately as follows:

Virginia, intrastate	$ 2,926.20
North Carolina, intrastate	95,804.17
South Carolina, intrastate	89,933.48
Georgia, intrastate	29,068.53
Florida, intrastate long logs	290,283.19
Alabama, intrastate	13,245.47
Interstate	144,259.88

As a summary, if the Cummer scale had been uniformly applied, the earnings of the Atlantic Coast Line would have been reduced approximately $665,520.92. These figures represent approximate losses, and they are not based upon an actual re-rating of the tonnage, except upon the long length logs in Florida, the losses on the interstate movement and on the intrastate movement other than in Florida having been arrived at on basis of the percentage that the Cummer scale is of the actual scales applied.".

There was no contradiction of the evidence given by the witness Perrin as to this matter. Exhibit 61 was checked by plaintiffs' witness H. J. Flack (R-847, et seq., and his exhibits 111-123, R-1166a-1174). This checking found only minor errors. The Commission's finding is fully justified, and in all essential respects, required.

Conditions on Atlantic Coast Line's System Do Not Justify Higher Rates Elsewhere than in Florida.

The Commission found in substance that the Coast Line averred that no condition at any point on its lines existed that would justify higher rates on logs than those applicable within the State of Florida, submitted testimony showing that the existence of low log rates in one State has an influence upon the log rates in other states, stating:

> "The record in the present case shows the influence upon the Georgia rates of the intrastate rates in Florida. In South Carolina the State Commission at first approved defendant's present interstate rates for intrastate application but later reduced them because the rates in North Carolina were lower." (186 I. C. C. 167).

This finding of the Commission is borne out by the following references to the record: Evidence of the witness Perrin (R-652-3 and 663). The finding or statement as to the rates in South Carolina is sustained by the evidence of the witness Perrin (R-664).

The Commission also finds:

> "In the case that is now before the North Carolina Commission the existence of rates between points in Virginia on a line other than defendant's is one of the principal obstacles to securing the application of defendant's uniform scale in North Carolina." 186 I. C. C. 167).

This is sustained by the witness Perrin (R-664).

The evidence heretofore quoted to the effect that if the Cummer scale had been uniformly applied in 1929 and 1930

the reduction in the Atlantic Coast Line's revenues would have been in excess of $665,000. sustains the finding of the Commission (186 I. C. C. 168) as to the reduction in revenues.

INCREASE IN RATES NOT THE ONLY CAUSE OF DECREASE IN LOG TRAFFIC.

The Commission found (186 I. C. C. 168) that:

> "The Florida interveners contend that the increase in the Florida intrastate rates has had the effect of reducing the volume of the Florida log traffic and that as a consequence there has been a decrease in the defendant's revenue from that traffic. It is true that since the original hearings in this proceeding (October, 1926, and January, 1927) there has been a decrease in the volume of the Florida intrastate log movement."

The Commission follows this finding with a table showing the number of cars and the tonnage transported therein during the five years 1926-1930. In 1926 the number of cars hauled was 36,799; in 1927, 35,415; in 1928, 27,119; in 1929, 13,207; and in 1930, 9,376.

The peak year in railroad transportation in the southeast and also in the country was 1926. There was no change in the rates in 1927 and 1928. In 1929 the change in rates was effective on February 8. The general economic depression also began in 1929 and a part of the Wilson Cypress Company burned and was closed down in that year (R-729). The depression has continued since that time and the court will

take judicial notice that there has been a great decline in the construction of buildings and in the use of heavy manufactured products. Two of the large mills had plants in the suburbs of Jacksonville, Brooks-Scanlon Corporation at Eastport and Putnam Lumber Company at Milldale and Ortega and delivered their logs, usually in trainload lots from points on the Atlantic Coast Line's Perry branch, about 166 miles west of Jacksonville. Those two mills discontinued their trainload shipments and practically all their shipments almost immediately after February 8, 1929.

Cause of Manufacturers Moving Their Plants to the Timber.

The Commission continues its report with this finding:

> "The Putnam Lumber Company then indicated its intention to abandon those mills and to develop a plant in the timber. In 1926 it acquired a mill at Bond's Mill, about 85 miles south of Jacksonville, and in 1927 and 1928 it completed the construction of two mills at Cross City, on defendant's Perry Branch. Shortly after the intrastate rates were increased in February, 1929, the Brooks-Scanlon Corporation began the construction of a mill at Foley, about 5.5 miles southwest of Perry. Upon the completion of that mill the one at Eastport was abandoned." (186 I. C. C. 169).

This finding as to the Putnam Lumber Company is borne out by the witness Fleishell (Vol. II, pp. 596, 610, 615, first record). At page 610 of the first record Mr. Fleishell testified:

"In regard to moving our tidewater plant to the woods, we don't own any properties on tidewater. We have got them under a very favorable lease, a good deal less than one per cent of the value of the dirt alone. We are moving them because we can't pay the Cummer scale log rate. We are moving them 125 miles from Jacksonville. We are moving them out near Cross City, Florida. That is right in the timber."

At page 615 of the same record the same witness testified:

"The so-called Cummer log rates in Florida are not of such a nature as to make them especially desirable where you have to draw your logs one hundred and twenty or thirty or forty miles. They are too high, and for that reason we are going to the woods, and for the reason we have our weight net going to tidewater when we get out there. On forty per cent we get nothing back for on this haul."

The last sentences evidently mean that he ships lumber rather than logs to the tidewater when his mills are in the woods and that when the mills are located at tidewater the manufacturer ships logs; that the weight of the manufactured lumber is about one-third of the weight of the logs; that is, it takes three to three and one-half carloads of logs to make one carload of lumber.

The witness F. H. Wilson testified (Vol. II, p. 580, first record):

"I would put the mill into the timber because it would be an economical way of manufacturing the timber regardless of any log rates."

At page 581 the same witness testified:

> "As to whether if you go into the timber to put in your mill and saw it, you have got an added freight rate in getting it away from there, that is not on the lumber, you may have an added freight rate, but it will be a good deal less than the freight rate on logs."

The witness J. S. Foley, then Vice-President and General Manager of the Brooks-Scanlon Corporation testified at page 661, first record:

> "It is distinctly to the advantage of the owner of the timber to locate his mill at the timber."

At the same page he testified:

> "There are further reasons why it would be more practical to operate our timber tract by a mill in the woods. There are many other economies in being located in the woods, so far as logging supply is concerned, which constitutes a large part of the total cost of producing lumber."

The Cummer Lumber Company discontinued manufacturing and selling pine lumber at Jacksonville in 1916. Mr. Arthur G. Cummer testified at Vol. II, page 567 of the first record, that the Cummer Cypress Company in 1927 was operating a saw mill plant at Lacoochee, Florida, cutting about twenty million feet of lumber a year, and was located adjacent to one tract of timber containing about 268,000,000 feet of timber. That Company owned three other tracts of timber in the same general neighborhood, one containing 23,000,000 feet, one 29,298,000, and the other about 74,860,000 feet (R-568, first record).

Mr. M. J. Scanlon of the Brooks-Scanlon Corporation testified (Vol. II, p. 698, first record):

> "Once I am there in the woods and once having absorbed the loss, I am infinitely better off. I hate to face that loss, though; that is going to give me a good many head aches."

There was no departure from this evidence which very plainly sustains the finding of the Commission and shows the mill owners thought it was uneconomical for mills to be located 166 miles from the timber even when the Cummer scale of rates were in effect.

CAUSES OF SHRINKAGE IN LOG MOVEMENTS.

The witness Perrin contended that independently of the change in the Florida log rates much of the shrinkage in the volume of log traffic was properly chargeable to the general depressed conditions tending to reduce the volume of all traffic. (R-879-80). Mr. Perrin at this place identifies his exhibit 127 (R-1179) which shows for the years 1920 to 1930 both inclusive a record of cars and tonnage of lumber, laths, shingles and box, crate and cooperage stock for the United States as a whole and for the Southern District and the tons and revenue handled by the Atlantic Coast Line during the same years. 1923 was the best of those years. The Atlantic Coast Line's lumber tonnage in 1929 as compared with 1923 fell off 20 per cent or 775,480 tons and its revenue in 1929 as compared with 1923 was reduced approximately 24 per cent. The lumber industry continued the steady decline that had been in progress for several years until climaxed by the calamities in 1930 and 1931, but that decrease in the lumber

and log traffic applied to the country as a whole and was not peculiar to Florida and could not have been due entirely to the change in the log rates in Florida. This testimony was delivered in July, 1931.

Mr. Perrin states (R-881) in substance, that the Brooks-Scanlon Corporation moved its lumber plant to the interior and discontinued its trainload movement; that the Putnam Lumber Company likewise established mills at its timber holdings and discontinued its Atlantic Coast Line train movement of logs; and that it is of record that the move was made because the manufacture of lumber in the timber was considered more economical than to pay for the transportation of the logs even under the Cummer scale. Likewise the Cummer Cypress Company at Lacoochee shifted its logging operations to its own service, which was a combination of its own log train service over its own tram and thence over the Seaboard Air Line under a trackage right; and that

> "Because of the fact that the logs formerly handled by the Atlantic Coast Line for these three large manufacturers constituted a large proportion of logs used in lumber manufacture in Florida, it is, of course, true that the discontinuance of these log train operations on the Atlantic Coast Line substantially reduced its total volume of logs transported in Florida." (R-882).

He then testified that the loss was only as to gross revenue on logs, stating:

> "As a matter of common sense, no traffic is of value from a revenue standpoint unless it yields more revenue than the cost of its handling, and our study of the result of the operation under the Cummer scale is conclusive to us that such operation yields us no profit, but, on the

contrary, resulted in an actual loss on the log traffic as a whole." (R-883).

The Commission found (186 I. C. C. 169-70):

> "During the 6-year period from 1923 to 1928 the defendant's gross revenues from the movement to Eastport averaged $309,882.60 a year. Defendant's gross revenues from the movements to the Putnam mills averaged slightly more than $200,000 a year. This movement would have been discontinued even though the Cummer scale had remained in force, since the company had decided to move its mills to the timber prior to the rate increase."

The Commission's statement as to the Putnam Lumber Company's intention to move its mills is sustained by quotations from the evidence already made. The evidence justifies the statements as to the gross revenues from the movements from Eastport and Milldale.

VOLUME OF TIMBER AND PROBABLE FUTURE VOLUME OF LOG TRAFFIC.

The Commission (186 I. C. C. 172) then takes up this subject and finds there is a great volume of standing timber; that in 1927 there remained in the eleven chief pine-producing States of the South 12,650,000 acres of virgin pine, of which 5,450,000 acres, or 43 per cent were in Florida; that in addition to that area of virgin pine, there is an area of 12,550,000 acres of cut-over pine lands in Florida, of which 3,150,000 acres have been fully or partially restocked to saw timber, and 4,300,000 acres fully or partially restocked to saplings and cordwood.

This finding is supported and sustained by the evidence of the witness Perrin [R.887 and an official bulletin of the United States Department of Agriculture (Circular 124, October 1924) entitled "Rate of Growth of Second-Growth Southern Pines in Full Stands."] That circular relates to 1927, and is exhibit 129.

The finding of the Commission is also supported by exhibit No. 130 which is "Economic Conditions in Southern Pine Territory" presented to the United States Conservation Board by the Southern Pine Association, dated July 1, 1931.

The Commission finds (186 I. C. C. 173) that the 1924 survey showed that in Florida the pine-timber stand was 21.382 billion feet of longleaf and 2.966 billion feet of shortleaf, or a total of 24.348 billion feet of pine, that the production in Florida during the six years 1925-1930 totaled 4.564 billion feet, the regrowth in those six years was 2.129 billion feet, or a net depletion of 2.435 billion feet, leaving the pine-timber stand in July, 1931, in Florida of nearly 22 billion feet; that is 21.913 billion feet. Those figures applied to pine only and not to cypress. The order of the Commission in this case applies to all logs over six feet in length, except walnut, cherry and cedar.

The witness Foley, who was President of the Brooks-Scanlon Corporation, testified that from 1915 to 1929 his company had shipped 163,245 cars of logs. They were shipped from two points of origin, Carbur and Perry. One was 160 miles and the other 166 miles from Eastport, which was the destination (R-766). The total freight paid by the Brooks-Scanlon Corporation on those logs amounted to $3,182,-952.26.

Mr. Foley also testified (R-771) as an estimate that the timber owned by the Brooks-Scanlon Corporation and the Putnam Lumber Company "and some of your South Florida timber" is about two and one-half billion feet. "That includes only the timber owned by the people whom I have mentioned." He then adds: "These people do not own all the timber in Florida. My answer of two and one-half billion is what I know is on the Coast Line."

The Wilson Cypress Company made the following shipments:

In 1926	4,233 cars
In 1927	4,754 cars
In 1928	5,531 cars
In 1929	2,140 cars
In 1930	5,142 cars
A total of	21,800 cars

and a total of $562,295.38 freight. (See the evidence of C. R. MacPherson, R-779).

The witness Fleishel, President of the Putnam Lumber Company, testified that his company had approximately a billion feet of timber adjacent to the plants at Shamrock, in Dixie County, and Bond's Mill, in Volusia County (R-744). The Putnam Lumber Company paid to the Atlantic Coast Line in freights on logs (R-747)

In 1923	$245,257.43
In 1924	242,636.24
In 1925	221,908.86

In 1926	200,014.50
In 1927 (about half year)	107,324.38
Aggregating	$1,017,141.41

MOVEMENT OF MILLS TO THE TIMBER HAS HAD FAVORABLE EFFECT ON COAST LINE.

The Commission then found (186 I. C. C. 170) that:

> "The defendant asserts that the change in location of these mills from the vicinity of Jacksonville to Foley and Cross City has had a favorable effect upon its revenues in two respects, first, it has rendered unnecessary the transportation of the logs at the inadequate remuneration yielded by the Cummer scale; second, the present location of the mills in the interior has resulted in producing tonnage of lumber rather than of logs, and the transportation of lumber from the standpoint of net revenue is vastly better than the transportation of logs under the Cummer scale."

The Commission in some detail shows that the cars of logs handled under the Cummer scale from the Brooks-Scanlon Corporation and the Putnam Lumber Company on an average haul of 158 mills, with an average weight of 60,200 pounds yielded revenue of 12.9 cents per car-mile; and that in 1930 90 per cent of the lumber movement from Foley and 70 per cent of the lumber movement from Cross City to destinations on the Coast Line's lines went to Jacksonville. The rate on lumber from Foley to Jacksonville was 9.14 cents and based on the average per car weight of all lumber in the southern region of 52,000 pounds, the lumber yielded 28.1 cents per

car-mile; while the lumber which moved from Cross City to Jacksonville yielded 36.7 cents per car-mile.

That finding is based upon the evidence of the witness Perrin (R-883) who testified that during the slack business year of 1930 the revenue that accrued on lumber from the mills at Foley to destination, on Atlantic Coast Line, and to points of interchange with its connections, if destined beyond the Coast Line's rails, amounted to $173,350.69. And similarly, the revenue on lumber from Cross City was $175,587.95, these two aggregating $348,938.64; that of the lumber movement from Foley, 79.9 per cent moved to destinations reached by the Atlantic Coast Line; and 20.1 per cent to destinations beyond the Coast Line's rails; of this movement to Foley, 90 per cent went to Jacksonville, while that that moved beyond the Coast Line's rails 76 per cent moved to points beyond Richmond, Virginia; of the lumber from Cross City, 57 per cent moved to destinations on the Coast Line, and 43 per cent to destinations beyond the Atlantic Coast Line's rails; of the movement to destinations on the Coast Line 70 per cent went to Jacksonville and 16 per cent to Tampa; of the movement to points beyond Atlantic Coast Line rails, 21.5 per cent went beyond Virginia cities, 21.3 per cent beyond Montgomery, 18.4 per cent beyond Albany and Waycross and 17.9 per cent beyond Jacksonville or Palatka. The several last named hauls are reached by the Atlantic Coast Line.

CUMMER CYPRESS COMPANY MOVED FROM OTTER CREEK BEFORE CHANGE IN RATES.

The Commission continues its findings (186 I. C. C. 170) by dealing with the movement of the Cummer Cypress Com-

pany from Otter Creek to Lacoochee which began in January, 1926, and ended May 5, 1928, which was, of course, before the original order in this case of August 2, 1928 went into effect. The Commission finds:

> "This movement ended not because of the rate increase but because of the exhaustion of the company's timber near Otter Creek."

CUMMER CYPRESS COMPANY DISCONTINUED SHIPPING FROM HOMOSASSA BECAUSE OF EXHAUSTION OF TIMBER.

The Commission then refers to the fact that the Cummer Cypress Company in January, 1929 began to ship logs from Homosassa over the Atlantic Coast Line to Otter Creek, and continued this movement after the increased intrastate rates became effective on February 8, 1929. In February, 1930 the movement from Homosassa to both Otter Creek and Lacoochee ended, "and since then the Cummer Cypress Company has shipped no logs over the defendant's lines." The Commission finds:

> "These movements were stopped in February, 1930, not because of the rate increase, for the movements continued for a year after the increase became effective, but because the timber at Homosassa was practically cut out, although some additional logs of inferior grade would probably have been cut and shipped had the Cummer scale remained in force. Its present supply of logs from timber on the Withlacoochee River is hauled over its own logging road to the Seaboard Air Line and thence over that line under trackage rights for a short distance to its mill at Lacoochee." (186 I. C. C. 170-171).

This finding is sustained by the evidence of Arthur G. Cummer of the Cummer Cypress Company (R-726, et seq.)

DECLINE IN LOG MOVEMENT NOT WHOLLY CAUSED BY INCREASE IN RATES.

The Commission finds (186 I. C. C. 171) that:

> "The decline in the Florida log movement can not be ascribed wholly to the rate advance. Part of the decline has no doubt been due to that cause but a large part has been due to the change from mill locations uneconomical because too far from the timber and cessation of movements because of exhaustion of the timber. The generally depressed conditions throughout the country, in Florida, in the lumber industry generally and in the Florida log industry have also had a marked influence upon the volume of the log movement in Florida."

This finding is amply sustained by the evidence which has been discussed.

The Commission next deals (186 I. C. C. 172) with the decline in the total system traffic and in the system log traffic of the Coast Line during the five-year period, 1926-1930. In a table which the Commission sets out it shows that the total traffic of the Coast Line System decreased from 944,101 cars 27,025,422 tons in 1926 to 621,232 cars with 16,784,331 tons in 1931 and that the log traffic of the System decreased from 79,114 cars with 2,196,971 tons in 1926 (including posts, poles, and cordwood) to 25,738 cars with 667,612 tons in 1930. The Commission then points out the like decline in the lumber traffic throughout the United States, in the Southern District and on the Atlantic Coast Line's system, setting out a table showing that decline.

The lumber traffic declined in the United States from 48,617,871 tons in 1920 to 27,584,148 tons in 1930; in the Southern District it declined from 17,708,828 tons in 1920 to 11,395,877 tons in 1930; and on the Coast Line's system, it declined from 2,665,512 tons in 1920 to 2,211,258 tons in 1930. The Commission then finds:

> "Thus, while there has been a substantial decline in the Florida log traffic, there have also been declines in other traffic, and the same forces that operated to cause a decline in other traffic were also no doubt responsible for much of the decline in the Florida log traffic." (186 I. C. C. 172).

The evidence which we have heretofore discussed amply sustains the Commission's finding.

THE EFFECT OF THE CONTINUED USE OF THE CUMMER SCALE ON THE REVENUE OF ATLANTIC COAST LINE RAILROAD COMPANY.

The Commission quotes at length from the evidence of the defendant's freight traffic manager Perrin (186 I. C. C. 174). The quotation is taken from R-893. The traffic manager estimated that the difference in the amount of revenue derived under the two scales of rates would be $2,779,968 if the Atlantic Coast Line "can be assumed to transport 40 per cent of the logs to be produced in Florida from timber now standing." There were included in the timber estimate 2,800,000,000 feet of pine timber owned by the four chief companies—Brooks-Scanlon Corporation, Cummer Cypress Co., Wilson Cypress Company and Wilson Lumber Company of Florida, but that amount of timber is not to be taken as the only stand-

ing timber in Florida affected by these rates. The witness Perrin's estimate was only as to "timber now standing." The reproduction of timber in Florida is very rapid because of the climatic conditions.

Mr. Perrin in this calculation very greatly understates this loss to the Coast Line. If the standing timber in Florida is 21,913,000,000 feet and assuming the weight of ten pounds to the foot and the average weight of 56,754 pounds to the car, that standing timber would amount to 3,861,050 cars. If the Atlantic Coast Line should handle forty per cent. of that traffic, it would handle 1,544,420 cars. The difference between the revenues under the Cummer scale and the scale prescribed by the Interstate Commerce Commission is $18.16 per car. Multiplied by 1,544,420, the loss would be equivalent to $28,046,667.20. These figures deal only with pine. They do not include cypress or hardwoods. If this estimate of figures be overstated, it makes little difference how much, for the loss which would be entailed by the continued use of the Cummer scale would, at its lowest figures, be tremendous.

CURRENT MOVEMENT OF LOGS AT TIME OF THE HEARING.

The findings of the Commission as to this appear at 186 I. C. C. 174-176. There was a trainload movement from Hines to the point on the Atlantic Coast Line's Perry Branch in the northwestern part of the peninsula to the Wilson Cypress Company's manufacturing plant at Palatka, a distance of 119 miles. That haul was being continued at the time of the hearing before the Commission. The Commission finds:

"Although this intervener, as well as others, testified at the original hearing that it would be impossible to continue the movement of logs over defendant's lines if the Cummer scale were increased, it actually has done so. It appears that under normal conditions it will continue to ship these logs over the defendant's line until the timber adjacent to the Perry Branch is cut out. Under the normal rate of cutting, it appears this would occur in about one and one-half to two years after the time of the further hearing." (186 I. C. C. 174).

WILSON CYPRESS COMPANY'S SHIPMENTS INCREASED AFTER RATE INCREASE.

The further hearing referred to was had on July 20, 21, 1931. The Hines to Palatka movement actually increased under the increased rates. The Commission finds that during the four year period, 1926-1929 16,658 carloads were shipped, averaging 4,164 carloads a year; and

"During 1930, when the increased rates were in effect 5142 carloads were shipped," etc.

The Commission finds that a small number of cars moved over the lines of the Southern Railway and the Florida East Coast Railway; and there was a small movement of logs over the Coast Line from various other points in Florida. These statements are borne out by the evidence of the witness McPherson (R-778, 871 and by exhibit No. 32). Pine and cypress are not the only logs affected by the rates. All logs save walnut, cherry and cedar are affected. There are movements in those logs. The estimates mentioned above include only pine. The Wilson Lumber Company at Perry, for instance, is engaged in producing hardwood lumber and has

procured its hardwood logs from the forests of the pine and cypress operators. The Commission finds (186 I. C. C. 175) that:

> "There have been fairly large movements of ash, black gum and other hardwood logs from Hines, Cross City, Foley, Homosassa, Otter Creek and other points to Perry. There have also been some movements of hardwood as well as cypress to Jacksonville."

This is sustained by the witness Flack's exhibits 114-122, beginning at R-1168, and especially R-1173, 1174.

The Commission finds (186 I. C. C. 175) that:

> "As shown by the table set out above, 5,135 carloads of hardwood logs moved over defendant's lines in Florida during the period February 8, 1929 to January 31, 1931."

The table referred to appears at 186 I. C. C. 171.

The loss of revenue on hardwood logs is not estimated by the witness Perrin, his estimates being confined to pine, shipments of which constitute the much larger part of the log shipments in Florida.

In considering the loss caused by the Cummer scale it should be remembered that the Cummer scale prevented an increase of the Georgia intrastate rates and this case grows out of the fact that the Georgia Public Service Commission had, after a long investigation, determined that the rates on the transportation of logs should be on an equal level with the interstate rates fixed in this cause and which are substantially higher than the rates charged. That was finally rescinded over

the opposition of the shippers based on the Cummer scale of rates and the advantage which that scale gave to them.

It was found by the Commission and sustained by the evidence which we have pointed out that if the Cummer scale had been applied over the Atlantic Coast Line's territory during the years 1929 and 1930, the reduction in revenue would have been approximately $675,381.21 (186 I. C. C. 168). Exhibit 61 which showed the amount of logs handled during the period beginning February 8, 1929 to January 31, 1931, both inclusive, over the Atlantic Coast Line in Florida, showed that 18,602 carloads moved during that period and that the difference in the amount of revenue received by the Coast Line under the increased scale of rates as compared with the amount which would have been received if the Cummer scale had been applied was $290,283.19 (186 I. C. C. 167).

Exhibits 56, 57, 58, 59 and 60 filed by the witness Perrin (found in the volume of exhibits physically reproduced for reference under stipulation of counsel) illustrate graphically the application of the Cummer scale of rates as compared with the interstate scale. The points of origin shown on these exhibits are Perry, Jacksonville, Palatka and Loughman, respectively. 170 miles from Palatka, Jacksonville and Perry reach well into the State of Georgia and from Loughman barely touch the southernmost boundary of Georgia.

It will be seen from these exhibits that under the Cummer scale, 3.7 cents will move 100 pounds of logs 170 miles, while under the interstate scale prevailing throughout the southern territory, 3.5 cents will move 100 pounds of logs 30 miles. After 170 miles the Florida intrastate scale of rates (Class P) immediately expanded to 8.33 cents per 100 pounds for 171 miles.

On the record before it the Commission found (186 I. C. C. 176) that:

> "The record as a whole warrants the conclusion that there will be a large Florida intrastate movement of logs over defendant's lines in the future. The movement at present is at a low ebb, but in view of depressed conditions the present movement can not be taken as the criterion for the future. In view of the vast quantity of timber in Florida tributary to defendant's lines, the large number of mills located on defendant's lines at widely scattered points in Florida, and the probability of the establishment of new mills, large and small, we entertain no doubt that the log traffic will increase well above the present volume when economic conditions change for the better."

See evidence of Perrin (R-887, et seq.).

STATE-WIDE NATURE OF INVESTIGATION.

The shipments shown on exhibit 61 (R-1101) are from 113 points of origin to twenty points of destination and cover the period from February 8, 1920 to January 31, 1931.

Exhibit 62 (found in the volume of exhibits physically reproduced for reference) is a map showing the destinations in Florida to which the shipments moved during the period covered by exhibit 61. As stated there were twenty points of destination. The maximum hauls ranged from twenty to one hundred sixty-nine miles; and the lowest minimum haul was six miles.

Exhibit 128 (R-1180) shows the movement of logs intrastate in Florida over the Coast Line from February 1, 1931

to June 30, 1931, from fifty-two points of origin extending widely throughout the State; and the same may be said as to the points of destination to a somewhat less degree (Perrin's evidence R-888).

The witness Perrin introduced certain exhibits which throw a good deal of light on the State-wide extent of the investigation. Exhibit 157 (R-1360) shows the points of origin and destination of shipments of logs transported in Florida intrastate by the Atlantic Coast Line, except trainloads, month by month beginning with February, 1931, and ending with August, 1932. The depression was then in its second year. This exhibit shows how widely distributed were those shipments, especially the points of origin.

He also introduced exhibit 158 (R-1370) showing month by month for the years 1930, 1931, and through August, 1932, the number of carloads of logs more than six feet in length shipped over the Atlantic Coast Line intrastate in Florida. The number of cars shipped from July, 1930, to July, 1931, was 3,245; and from July, 1931, to August, 1932, 2,453. The second period showed a decline of 24.4%. Dealing with the same period as shown by his exhibit 159 (R-1370), the shipments of lumber are shown to have decreased in substantially greater percentages on all Class I railroads in the South; on all Class I railroads in the United States; and as to the total number of carloads transported by the Atlantic Coast Line. This is discussed by the witness Perrin at R-1049, et seq.

The witness Fleishell (R-753-758) gave evidence as to the mills which were being operated, referring (R-755) to the mill at Sears where 250,000,000 feet of timber is standing.

Sears is in the southern part of the State of Florida, near Fort Myers; that there was timber surrounding the Sherman mill to the extent of about six or seven million feet; timber in the neighborhood of Holopaw; a tract of timber in Lee County containing from two to five million feet; a tract known as the Michigan Trust tract that runs from a point east of Orlando with 92,000 acres supposed to cut about 150 million feet. He spoke again of the tract at Sears; said he meant to speak of tracts which had above ten or fifteen million feet (R-756). He then spoke of other mills on the southwest coast: the Slater mill; the Ellsberry Camp mill at Wynoma; the McGowan-Foshee; and the Roux Crate Company at Keysville. He states that the Roux Crate Company had recently contracted with the Babcock interests to cut their timber on a large acreage in back of Fort Myers and Punta Gorda. Those points are in the extreme southwestern part of the peninsular of Florida. He also mentions mills at Patterson, McGinnis and Gulf Hammock. He then speaks of the timber on the east coast owned by T. T. Scott at Kenansville and of the J. M. Griffin Lumber Company at Holopaw. The timber referred to by Mr. Fleishell does not include the large tracts owned by the very large mills.

It can well be said that the investigation extended over the entire State of Florida and as far as the territory touched or is contributory to the Atlantic Coast Line Railroad Company.

Findings of the Commission as to the Cost of Transporting Logs Intrastate in Florida Over the Atlantic Coast Line Rd. Co., as Compared with the Gross Revenues Derived from Such Transportation.

The average distance which the 18,602 cars of logs transported intrastate in Florida over the Atlantic Coast Line from February 8, 1929 to January 31, 1931 as shown by exhibit 61, moved was 81.36 miles. That mileage is used by Mr. Lamb, General Auditor of the Atlantic Coast Line and by the Commission as the average haul in the evidence and findings as to the cost accounting.

The Interstate Commission found that the total cost per car for this average haul was $24.69. That amount included taxes and 5.75% return on investment. The revenue derived under the Cummer scale of rates for a car of logs moving this average distance was $15.12. The Commission found that the total operating cost of this haul was $17.07 not including taxes and return on investment. The gross revenue of $15.12 is $1.95 less than the total operating expenses; and when taxes and return on investment are included the gross revenue under the Cummer scale is $9.57 per car less than the total cost (186 I. C. C. 186-7; R-63).

The findings of the Commission on the subject of cost begins at 186 I. C. C. bottom page 176 (R-51) and continue through part of page 189.

The Atlantic Coast Line Railroad Company's evidence as to the cost of transporting logs in Florida is furnished by the witness Lamb whose evidence begins at R-686. Mr. Lamb's

evidence, including the filing of his exhibits was given at the hearing in Jacksonville, Florida and was resumed at the adjourned hearing had in Washington on July 20 and 21, 1931 (R-801). He was recalled at that hearing (R-899). His exhibits begin with No. 78 (R-1134a) and continue successively through No. 99 (R-1153) and begin again with No. 131 (R-1182a) through 133 (R-1184).

The Commission's findings (186 I. C. C. 176) on the subject of cost begin with this statement:

> "The defendant urges that the revenues produced by the Cummer scale are insufficient to cover the cost of the service performed; that no traffic is of value from a revenue standpoint unless it yields more revenue than the cost of its handling; that its study of the result of the operation under the Cummer scale is conclusive to it that such operation yields it no profit, but, on the contrary, results in an actual loss on the log traffic as a whole. It is manifest that if the Cummer scale produces less revenue than the cost of the service, declines in the traffic have the favorable effect of reducing defendant's losses and that an increase in the traffic would only serve to augment those losses. In support of its contention that the Cummer scale results in losses, defendant submitted voluminous evidence bearing upon the cost of transporting logs in Florida. It is necessary to consider this evidence with a view to determining whether it shows that the Cummer scale rates do result in revenue losses."

The Commission correctly stated the position of the defendant. The Commission's findings of fact, amply supported by the evidence agree with the defendant's contention that the cost of transporting logs in Florida was more than the

revenue derived therefrom under the Cummer scale, whether in carload lots or in trainload lots.

We have stated the findings of the Commission as to the amount of loss on the carloads moving the average distance of 81.36 miles.

As we have seen only one trainload movement continued, except for a very short time, after February 8, 1929. The Commission found (186 I. C. C. 180) that the cost of transporting a trainload movement from Hines to Palatka—119 miles—including taxes and the proportionate share of return on investment at 5.75% amounted to $27.52 per car, while the gross revenue received therefrom under the Cummer scale was $19.96. That is, the loss on each car handled in the Hines to Palatka movement was $7.56 per car.

It becomes necessary for us now to review Mr. Lamb's evidence.

This evidence is very well expressed in the exhibits filed by Mr. Lamb, the result of some of which has been heretofore referred to.

Exhibit 78 (R-1134a) shows the property investment and operating income account of the Coast Line for the years 1926-1930, inclusive. The total property investment at the end of 1926 was $287,758,229; 1927, $303,271,358; 1928, $303,543,741; 1929, $306,439,250; 1930, $305,977,599. This investment increased from 1926 to 1930 by $18,219,370, while the rate of return on the investment which was 6.11% in 1926 decreased to 2.37% in 1930. It has continued to decrease.

Exhibit 79 (R-1134b) shows the same facts as to the State of Florida. Here we will show only the 1926 and 1930 figures. In 1926 the total property investment was $95,176,163.92 and in 1930 it was $102,759,627.23 or an increase of $7,583,463.31; while the rate of return on investment which was 5.41% in 1926 decreased to 1.17% in 1930. Since that time it has been more than entirely eliminated.

Exhibit 80 (R-1134c) is a statement of the logs handled and the revenue derived therefrom on the Coast Line's System and in Florida for the years 1926-1930 inclusive. It shows the ratio of the log traffic to the Total Traffic for the System and the ratio of the Florida log traffic to the System traffic in logs. We have heretofore referred to this exhibit. It shows the very small percentage of ratio between the revenue derived on the one hand and the number of cars hauled and tonnage handled, on the other.

Exhibit 81 (R-1134c) is a statement of freight revenues and revenue tons giving a comparison between Florida and the entire System, excluding Florida, for the years 1926 through 1930, with the percentages of relationship and the interstate and intrastate freight revenues derived from the freight handled in Florida during those years and the percentage of decrease as compared with 1926.

The intrastate revenue for the System excluding Florida decreased 26.38% from 1926 to 1930; while the intrastate revenue in Florida decreased during the same period 52.88%. The same exhibit shows the same items as to the number of tons handled with approximately the same results, except when measured by tons the System intrastate traffic, excluding Florida decreased 24.86% and in Florida the decrease was 56.66%.

Exhibit 82 (R-1135) shows the density of traffic for northern Florida as compared with southern Florida for the calendar year 1927. That has been dealt with heretofore.

Exhibit 83 (R-1136a) shows the traffic density statistics in the State of Florida as compared with the System and with the System excluding Florida for the years 1921 through 1930.

Exhibit 83½ (R-1136a) is the same kind of statement as to the Seaboard Air Line Railway which operates over about 1,850 miles in Florida and oftentimes close to the Atlantic Coast Line. The experience of that road is very much the same as that of the Coast Line. For instance, the percentage of revenue ton miles in Florida to the System on the Seaboard Air Line for the five-year average was 28.22%. On the Coast Line the percentage for the same five-year average was 28.6%. The Atlantic Coast Line's percentage of Florida ton miles to the System excluding Florida was 41.5%; while that of the Seaboard Air Line for the same five-year average was 40.90%. The Coast Line's percentage of Florida tons one mile per mile of road to the System for the five-year average was 72.8% while the Seaboard Air Line's was 71.10%.

Exhibit 84 (R-1137-38) is a statement showing freight proportion of yard accounts and other accounts eliminated, for the year ended December 31, 1929. The total amount eliminated was $9,629,744 including fifty-seven accounts. The purpose of this elimination was to take from his future calculations account which represented yard or terminal expenses.

The Interstate Commission found that the amount eliminated by Mr. Lamb was too great, stating (180 I. C. C. 179) that:

> "There were deducted, first, all freight yard accounts, 42 in all, the total of which aggregated $4,550,039. Then all amounts in 15 other accounts, aggregating $4,665,936, were completely eliminated. Many of these were obviously not directly attributable to the handling of logs, such as wharves and docks, paving, assessments for public improvements, floating equipment, outside agencies, advertising, traffic associations, and industrial and immigration bureaus. Some of the others were clearly attributable, at least in part, to the handling of logs but were entirely omitted because of the difficulty of ascertaining the proper proportion that should be allocated to that traffic. For example, station employees in the transportation block of expenses, account 373, shows charges to freight of $3,281,352.20. There would seem to be no doubt but that a portion of the charges to this account is properly attributable to the handling of logs. To this account are charged agents, clerks, and attendants, telegraph and telephone operators, station agents, etc., who handle the billing of log shipments and perform other services. But that account was entirely eliminated. Finally there was eliminated 4.4897 per cent of general expenses, amounting to $413,769. The grand total thus eliminated aggregated $9,629,744."

The reason why Mr. Lamb eliminated those accounts was two-fold: No accountant in this case claims, nor does the Commission claim, to be able to state with exactness the cost of handling a single commodity (R-695).

Lamb stated his ascertainment of costs, as we shall see in the examination of his exhibits, in two ways: One of the methods is expressed in column A and the other in column B

of his exhibits beginning with No. 86 going through 99. Column A expresses the cost ascertained with the elimination of the items referred to aggregating $9,629,744; and column B is the cost ascertained taking into consideration all the freight haulage expenses, making no eliminations of the above mentioned fifty-seven accounts aggregating $9,629,744.

Lamb stated that his ascertainment of cost under column A of his exhibits understated the actual cost and his ascertainment under column B overstated it; that the actual cost was between the two. (R-702).

Exhibit 85 (R-1139) is a statement showing the method of assigning taxes and 5¾% return on investment. There has been no controversy over this method.

We digress here to call attention to the fact that exhibits 86 through 99 have in them a common mistake. Note A in exhibit 86 reads: "Item 9 'A' equals 35.027% of total freight haulage expenses only." That percentage should have been 25.9405% and the note should read: "Item 9 'A' equals 25.9405% of total freight haulage expenses only."

In the same note, item B reads: "Item 9 'B' equals 23.5192% of total freight expenses." That percentage should be 19.069%. (See the Commission's report, 186 I. C. C. 178 and 179, notes thereto; and R-53-54.)

This change was recognized at the hearing in Washington. This works a change in all the figures on exhibits 86-99 from line 9 to line 16 in both columns A and B. Exhibit 86 should read, and was treated by the Commission as reading as follows:

Exhibit No. 86
Witness: Geo. W. Lamb

ATLANTIC COAST LINE RAILROAD COMPANY

Estimated Cost of Handling Logs in Florida, Based on "Out of Pocket" Expenses Actually Assigned to Third Division of the Atlantic Coast Line Railroad Company Operating Entirely Within the State of Florida.

BASED ON COST PER GROSS TON-MILE

Average Haul	"A"		"B"	So-called Cummer Scale
1. Miles		81.36		
2. Average Revenue per Car				$15.12
3. Average Billing Weight—pounds		56,754		
4. Average Tare Weight—pounds		33,000		
5. Average Tare Weight—Empty Haul—lbs.		33,000		
6. Gross Weight—pounds		122,754		
7. Gross Tons		61,377		
8. Gross ton miles—7x1		4,994		
9. Out of pocket expenses per gross ton mile			.0882888¢	
10. Out of pocket expenses per gross ton mile (100%)	.3406309¢a		.4632005¢b	
11. Operating Cost—8x10	$17.01		$23.13	
12. Income Taxes—3.00985% of 2—11#	x		x	
13. Florida Taxes—15.3950% of 11#	2.62		3.56	
14. Operating expenses—Taxes—11-12-13	19.63		26.69	
15. 5¾% Return on Investment—11x32.97536%	5.61		7.63	
16. Total Cost including Return on Invest.	25.24		34.32	

#See Exhibit No. .....

Note: a Item 9 "A" equals 25.9192% of Total Freight Haulage Expenses only.

b Item 9 "B" equals 19.0606% of Total Freight Expenses. Raised to 100% on line "A" and "B" respectively.

Corrected copies of Lamb's exhibits 87-99, both inclusive are attached hereto as appendices No. 1a-m, incl.

In exhibit 86 Mr. Lamb found that the operating costs for the average haul of 81.36 miles, based on cost per gross ton-mile was $17.01 per car. That is to be compared with the Commission's ascertainment of $17.07 (186 I. C. C. 186). The Commission found the operating costs for this movement to be six cents more than Mr. Lamb found it. Mr. Lamb found this cost plus the Florida taxes and return on investment at 5¾% to be, under column A, $25.24 against the revenue derived under the Cummer scale of $15.12. The Commission found, as we have seen, the total cost per car to be $24.69—a difference of fifty-five cents when compared with Mr. Lamb's ascertainment. The Commission said as to its own finding of this cost (186 I. C. C. 187):

> "The above figures undoubtedly understate the cost of transporting logs in Florida for several reasons. One of these is that costs per unit in Florida are higher than the average for the entire road or system including Florida." Etc.

Mr. Lamb in column B of his exhibit 86 ascertained the cost per car at $34.32 against the revenue of $15.12.

As we have stated the difference between the cost ascertainments in columns A and B is that in column A no consideration was given to the $9,629,744 of expenses eliminated by Mr. Lamb while in column B all the expenses, including those eliminated items were taken into consideration.

We ask the Court to bear in mind that Mr. Lamb stated that his ascertainment of the cost of this transportation serv-

ice under column A was too little and under column B too great; and then to bear in mind that the Commission has said that all of the $9,629,744 should not have been eliminated. (186 I. C. C. 179); and then to note the above quoted finding of the Commission to the effect that its own figures, to which we have referred "undoubtedly understate the cost of transporting logs in Florida for several reasons." (186 I. C. C. 187).

If we give effect to that quotation, the result will be a confirmation of Lamb's statement that his cost as ascertained in column A of his exhibits is too little, while under column B is too great, and that the actual cost lies between the two ascertainments.

Mr. Lamb's cost is ascertained on two bases: One, cost per gross ton-mile; and the other, cost per loaded and empty car mile. The Commission used the plan based on the ton-miles. The Commission did not make an ascertainment of cost in other brackets as to carloads. It did make another ascertainment, using 119 miles with which we will deal later.

In exhibit 87 [Appendix 1(a) hereto] Mr. Lamb ascertains the cost per car for the average haul on the basis of loaded and empty car miles and shows the cost under column A to be $27.49 and under column B $37.39, against the revenue of $15.12 under the Cummer scale.

In exhibit 88 [Appendix 1(b) hereto] Mr. Lamb ascertains the cost per car for 169 miles on basis of cost per gross ton-mile. Under column A he ascertains the cost to be $53.69 per car; and under column B $73.03 per car, against

revenue derived under the Cummer scale of $22.10. The 169 mile haul was from Perry to Eastport and included a large percentage of the hauls made.

Exhibit 89 [Appendix 1(b) hereto] shows the cost based on cost per gross ton-mile per car for 152 miles. Under column A it is $48.28 and under column B $65.65, against revenue of $20.30 under the Cummer scale.

Exhibit 90 [Appendix 1(d) hereto] shows the cost per car for 130 miles based on cost per gross ton-mile. Under column A it is $42.76 and under column B $58.16 against revenue of $20.62 under the Cummer scale. That haul was from Homosassa to Perry and constituted a substantial one.

We pass over exhibit 91—from Hines to Palatka—119 miles—but will return to it later.

Exhibit 92 [Appendix 1(f) hereto] estimates the cost per car for 99 miles. Under column A it is $29.02 and under column B, $39.45 against revenue per car of $13.78.

Exhibit 93 [Appendix 1(g) hereto] estimates the cost per car for 68 miles—Homosassa to Lacoochee. Under column A the cost is $20.16; under column B, $27.41, against revenue per car of $12.44.

Exhibit 94 [Appendix 1(h) hereto] estimates the cost per car for 52 miles—Homosassa to Otter Creek. Under column A the cost is $16.03 and under column B, $21.81 against revenue per car of $12.02.

Lamb's exhibits 95-99, both inclusive, deal with the estimated cost of these various movements on the basis of loaded and empty car miles, which basis was not used in this case.

IT COSTS MORE TO OPERATE IN FLORIDA THAN ON THE OTHER PARTS OF THE COAST LINE'S SYSTEM.

Mr. Lamb stated (R-694):

> "I have attempted to develop whether or not the cost of operation in Florida was really greater than the cost on other parts of the Atlantic Coast Line. And from this study it would appear that the cost on the third division, which operates exclusively in the State of Florida, is considerably higher per unit than the cost on the first and second divisions operated north of Jacksonville. I base this statement on an analysis made showing certain 'out-of-pocket' expenses in Florida, for the third division, as compared with similar expenses on the first and second divisions. The accounts selected were as follows:
>
> "392. Road Enginemen.
> "394. Road Locomotives—Fuel.
> "397. Road Locomotives—Water.
> "398. Road Locomotives—Lubrication.
> "399. Road Locomotives—Supplies.
> "400. Engine House Expenses—Road.
> "401. Road Trainmen.
> "402. Train Supplies and Expenses."

Out-of-pocket expenses consist of accounts which may be accurately ascertained.

Mr. Lamb continues:

> "This analysis was made for the twelve-month period July 1, 1928, to June 30, 1929, inclusive. The costs for these 'out-of-pocket' expenses for the third division and for the first and second divisions, respectively, were as follows:

	Cost per freight-car-mile loaded and empty.
Third Division	2.95176 cents
First and Second Divisions.....	1.717496 cents

"Ratio of Third Division to First and Second Divisions, 171.85 per cent."

Mr. Lamb further states that the cost per thousand gross ton-miles on the Third Division was 88.288 cents; on the First and Second Divisions, 53.26312 cents; the ratio of Third Division to First and Second Divisions being 155.62 per cent. He continues:

> "These comparisons clearly demonstrate the difference in the cost of operation in the State of Florida, where the density of traffic is low, as compared with the balance of the system having a much higher density of traffic. Exhibits previously filed by me indicate the considerable difference in the traffic density of the State of Florida as compared with the balance of the system excluding Florida. The above 'out-of-pocket' costs were developed from an actual analysis of vouchers, payrolls, material and supply issues, etc., for each of the months, July 1, 1928, to June 30, 1929, both inclusive." (R-695).

Mr. Lamb finds that the ratio between the out-of-pocket expenses and the freight haulage expenses, eliminating the accounts heretofore referred to which aggregated $9,629,744 was 25.9191%; and when the total freight expenses were included that percentage was 19.069%.

Mr. Lamb defines the Third Division (R-705) as being "all of Florida, south of Jacksonville, and from High Springs to the south, and then Fincher to Thomasville, all south of

there. It does not include Florida north of High Springs." That statement reduced to mileage means all of Florida except 126 miles.

Mr. Lamb explains at some length how he ascertains the items making up the out-of-pocket expenses for the Third Division (R-708).

The Commission finds (186 I. C. C. 183) that:

> "There appears to be no doubt that the operating costs per unit are generally higher in Florida than the average for the defendant's system as a whole either including or excluding Florida. This is clearly indicated by various things. Using the year 1929 as illustrative, freight-traffic density in Florida, expressed in terms of revenue ton-miles per mile of road operated, was 62.8 per cent of that for the system including Florida, and 50.4 per cent of that for the system excluding Florida. Using a 5-year average, 1926-1930, inclusive, which included the boom period, freight-traffic density in Florida was 72.8 per cent of that for the system including Florida, and 63.9 per cent of that for the system excluding Florida. Also using the year 1929 as illustrative, freight-service train-miles in Florida were 30.63 per cent of those for the system including Florida, and freight-service locomotive-miles in Florida were 30.92 per cent of those for the system, including Florida, while loaded freight car-miles in Florida were 21.25 per cent of those for the system including Florida; loaded and empty freight car-miles in Florida were 22.43 per cent of those for the system including Florida, and revenue ton-miles in Florida were 25.05 per cent of those for the system including Florida. In 1929 the trains operated in freight service hauled an average of 18.16 loaded cars or 31.69 loaded and empty cars per train in Florida, as compared with 26.17 loaded cars or

43.28 loaded and empty cars per train on the system, including Florida."

These findings are amply sustained by the evidence and exhibits to which we have already referred.

MOVEMENT HINES TO PALATKA.

Hines is situated in the northwestern part of the peninsular of Florida in Dixie County. Palatka is in a southeasterly direction 119 miles away. It is on the Florida East Coast Railroad, the Georgia Southern & Florida Railway Co. which is a part of the Southern Railway System, and on the Atlantic Coast Line. It is also on the St. John's River. This movement continued during the entire time the interstate rates were in effect (February 8, 1929 to March, 1931) except for a time when a part of the consignee's mill had been destroyed by fire.

The Interstate Commission found that the cost of this movement was $27.52 per car (186 I. C. C. 182). The revenue derived therefrom under the Cummer scale was $19.96 per car. This was $7.56 per car more than the gross revenue derived therefrom.

Mr. Lamb found [Exhibit 91 corrected, see Appendix 1(e) hereto] that the cost under his column A was $38.59 and under his column B $52.48. In making these ascertainments Mr. Lamb used the same out-of-pocket expenses per gross ton mile (see line 9 of exhibit 91) as he had used for single car lots which was somewhat too large for this movement. That out-of-pocket expenses is expressed in the exhibit as being .0882888 cent, while the Commission used the

figure 0.0620831 cent per gross ton miles in ascertaining the cost of this movement to be $27.52 per car. The Commission found that this "is below the average out-of-pocket cost of the Florida log transportation" (186 I. C. C. 183). The Commission's calculation on the basis of the reduced out-of-pocket expense per gross ton mile does not take into consideration any of the eliminated items including yard expenses, and station agents which aggregate $9,629,744 but leaves all of those expenses wholly unaccounted for. Some of them ought to have been included. Certainly all of them ought not to have been eliminated, for the Commission has held that Lamb in his calculations eliminated too much. So that, it is clear that $27.52 per car is not a sufficient statement of the cost of this movement. It is not claimed that $38.59 is the actual cost but it is claimed that the cost on the basis used by the Commission as to the out-of-pocket expenses per gross ton mile is out of line for two reasons, to-wit: It does not take into consideration any part of the expenses which Lamb eliminated aggregating $9,629,744; and it does not take into consideration the fact that the cost of doing business in Florida is greater than on other parts of the Coast Line's system. The Commission states (186 I. C. C. 184) that:

> "The operating expenses allocated by defendant to Florida are not actual but constructive expenses, and that they are understated to an unknown extent. In view of this fact, system figures including Florida, which are not in question, may be utilized as the basis for approximating the cost of transporting logs in that state."

But the Commission's ascertainment of this cost is sufficient to sustain its findings that the Cummer Scale of rates works

an unjust discrimination against interstate commerce; though we believe that is greater than the Commission found.

THE USE OF THE SYTEM UNIT COST.

After the Commission had stated that its ascertainment of the expenses of this transportation in Florida was understated to an unknown extent; and after it had determined that the operating costs per unit were "generally higher in Florida than the average for the system as a whole, either including or excluding Florida" (186 I. C. C. 183); and also, after it had found that the traffic density in Florida was very much less than that for the system, including Florida; and that the freight-service train-miles in Florida were 30.63% of those for the System, including Florida; and that the freight-service locomotive-miles in Florida were 30.92% of those of the System, including Florida; while loaded freight car miles in Florida were 21.25% of those for the System, including Florida; and that loaded and empty car miles in Florida were 22.43% of those for the System, including Florida; that in 1929 the trains operated in freight service hauled an average of 18.16 loaded cars or 31.69 loaded and empty cars per train in Florida as compared with 26.17 loaded cars or 43.28 loaded and empty cars per train on the System, including Florida (186 I. C. C. 183-4); it then found:

> "System figures including Florida, which are not in question, may be utilized as the basis for approximating the cost of transporting logs in that State. Ordinarily it would be unsound to use a system unit cost to determine the cost in a particular State, but since it is indisputable

that unit costs are higher in Florida than elsewhere on the system, it seems clear that system unit costs may be used to find a cost *that may be said to be less than the cost in Florida.*" (186 I. C. C. 184 Italics added).

This statement of the Commission adds to the strength of our argument that the full cost of this movement has not been ascertained by the Commission; and we may assert, with certainty, that the cost used by the Commission was, as it states, "less than the cost in Florida."

The use of system unit cost in ascertaining the cost in Florida was beneficial to the complainants.

Notwithstanding the facts which we have recited in this paragraph the Commission in making its appendix E to its report made further deductions, to-wit: It deducted one item of $1,281,069 as representing items which it classified as "expenses not involved in handling log traffic." It did not stop there. It then deducted $2,555,778 as representing "the excess terminal expenses (platform and clerical) incurred for less than carload over that incurred for carload freight estimates at 75% of account 373 'station employees' and 376 'station supplies and expenses' ($3,407,704 x 75%). (See 186 I. C. C. 196).

It is not accurate to say that the Commission used the System average at all for the reason that it made the deductions mentioned. It is all the more inaccurate to say that the System average was used as representing the cost of handling those high-priced commodities which usually move in less than carload quantities.

Criticism of the Accounting by the Atlantic Coast Line.

We have seen that the Commission held (186 I. C. C. 184) that the operating expenses found by it "are understated to an unknown extent."

We have also seen that the Commission does not claim that it is able to state with exactness the cost of moving any single commodity; and that neither of the accountants make any such claim.

The Commission finds (186 I. C. C. 184) that:

> "The operating expenses allocated by the defendant to Florida are not actual but constructive expenses."

That statement is placed, as nearly as we can analyze it, upon two bases:

One of these is that the witness Lamb used the average expenses of the Third Division in ascertaining the cost of the log movement; that about 25% of the traffic in that Division consists of perishables such as citrus fruits, etc., which requires handling at high speed and more Terminal Expenses than logs and is therefore more expensive.

We answer this criticism by saying that if it stood by itself there would be a measure of correctness in it; that it affected only 25% of the business in Florida and the effect was to the extent that it cost more to handle those perishables than to handle the logs. What that difference is our adversaries have not undertaken to show. We make another answer which appears to us to be entirely complete. It will be re-

membered that Lamb in taking the quantities for his accounting first took the total freight operating expenses of $36,308,813 and then subtracted from them $9,629,744 which he treated as representing terminal expenses and certain other expenses not attributable in their entirety to log traffic. The Commission, as we have seen found that Mr. Lamb eliminated too much. Mr. Lamb intended that the deductions or eliminations made by him should more than equalize any overcharge in the expenses that might have been due to the fact that the perishables transported in Florida required higher expenses than the log traffic; and he used the result of that in ascertaining his final figure under column A of his exhibits ascertaining the cost of transporting the logs.

The Commission ascertained its own cost figures which came to practically the same, as we have seen, as those in column A of Mr. Lamb's exhibit for the average distance of 81.36 miles (exhibit 86), and further stated that its figures "undoubtedly understate the cost of transporting logs in Florida;" etc. (186 I. C. C. 187).

The other is that Operating Expenses were assigned to the State of Florida on a Revenue or System Operating ratio basis. As the cost of service per unit is greater in Florida than on the balance of the system this method favors Florida in this assignment of expenses.

The Commission also found that:

> "The Florida interveners presented no affirmative evidence tending to show the cost of transporting logs in Florida but criticized defendant's cost evidence," etc. (186 I. C. C. 182).

The Commission gave no further thought to the criticizing evidence of the Florida Commission's witness, Mr. Pettijohn. Mr. Pettijohn did not undertake to state the cost of doing this transportation business. The normal reason to be attributed to this action on his part is that he could not make a statement more favorable to the Florida Commission's interest than was made by Mr. Lamb. It is plain he did not withhold his statement for lack of study because his evidence showed he had made an extended study. He injected into the situation some irrelevant statistics. He fell into the great error of taking into account income from certain lines without taking into account investment in those lines.

He based his criticisms as to gross and net revenue largely on a comparison between the years 1921 and 1930. As everybody knows, 1921 was a year of great depression, especially in the transportation business, and a comparison of 1930 with 1921 is scarcely likely to lead to satisfactory results, especially so when a comparison with all other years shows 1930 to have been far below any of them. In the meantime, according to Mr. Pettijohn's own statement (Exhibit 102) the grand total investment of the Atlantic Coas Line had increased approximately $67,000,000.

THE MOVEMENT OF LOGS INTERSTATE FROM FLORIDA TO GEORGIA.

The point is made by the complainants that the evidence shows no actual movement of logs from Florida to Georgia. The Commission refers to this (186 I. C. C. 189) saying:

> "The evidence introduced at the original hearing did not show any actual movement of logs from Florida to

Georgia. The then existing interstate rates were more than twice as high as the Cummer scale. The evidence was conflicting as to whether there were logs available in northern Florida that could be economically purchased and transported over defendant's lines to Georgia, but was not convincing that logs could not or would not so move if the interstate and intrastate rates were on the same level. As a result of the former order entered herein the rates from northern Florida to Georgia were reduced and the rates within Florida were increased and both were on the same level from February 8, 1929, to about April 10, 1931. Notwithstanding this parity of rates, it appears from the evidence introduced at the further hearing that there was no movement of logs from Florida to Georgia during that period, except possibly an occasional carload. Whether an interstate movement from Georgia to Florida will develop after the interstate and intrastate rates are again put on a parity and the rate situation finally settled, it is impossible to say at the present time."

There were many things which militated, during the period involved and which continue to militate, against such movement and these include the following:

The timber in the vast tracts of land owned by the large shippers, who are complainants in this case, is not for sale. There are many scattered tracts and it was so found in the court below [30 Fed. (2d) 116, at 120], and there is ample evidence in this regard to justify the finding by the Commission and the court below.

The times make against the manufacture and sale of what the economists call non-consumptive goods, chief among which are house building materials.

The rate situation has been, during the whole of this time, very unsettled. During the period when the interstate scale was in effect, from February 8, 1929 to March or April, 1931 there was litigation over the order of the Commission and of the court which put the increased rates into effect. That litigation succeeded in restoring the Cummer scale of rates about April, 1931. The increased scale of rates, fixed by the Interstate Commission, did not go back into effect until February 25, 1933.

The period when the interstate scale of rates was in effect—February 8, 1929 to March or April, 1931—which is frequently referred to as the two-year period, was one of poor economic conditions. The effect on the shipments of logs and lumber has been shown by the findings of the Commission which have been quoted and by the evidence to which we have heretofore referred. These are circumstances of such wide import that the court may take note of them. In addition to that, the order of the Interstate Commission fixing the rates was in litigation and of course, that created a great uncertainty over the subject; and finally the rates fixed by the Interstate Commission were overthrown in this court. Those were not times nor circumstances which made for the development of new mills or the reversing of the course of commerce in logs as between northern Florida and Southern Georgia. The Cummer rate structure when applied to logs moving from Florida woods to Florida mills was only from one-half to one-third as much as the rate structure applicable to logs moved from Florida woods to Georgia mills though the distance was the same, or practically the same. Of necessity, this resulted in the establishment of large mills in Florida and in completely stopping the movement of logs

from Florida woods to Georgia mills in so far as that movement was over the Atlantic Coast Line Railroad Company. It will take much time to overcome that condition; and such condition is not to be overcome or removed in times when the basis on which it was established is still in litigation. The economic conditions have been, and are, such that the private initiative in business is all but benumbed.

The logs not owned by the large mills must rearrange their selling arrangements and that was not likely to have been done in the unsettled circumstances then at hand.

The lower court in its first decision [*State of Florida v. United States*, 30 Fed. (2d) 116, at 120] dealt with this condition, and refers to the contention that there was evidence to disclose such complete ownership of the sources of logs in Florida by Florida mills as to insure their moving to their owners and leaving no substantial amount which could move to Georgia on the interstate rates fixed, with the result that in no real or fair sense could it be held that the low intrastate rates did prejudice or discriminate against interstate shippers or interstate commerce. The court holds:

> "This contention is well supported so far as concerns large tracts of timber, logs from which would move in train loads, as do most of those in Florida now handled by the Coast Line Railroad. But the rate assailed is not a trainload rate, but a carload rate, and the evidence abundantly justifies the conclusion that there is an indefinite quantity of what is called 'scattered timber,' not yet cut, in north Florida, which is not owned by Florida mills and which the Commission could find would be as likely to move to Georgia as to Florida points if a rate parity were afforded."

The argument of our opponents on this subject seems to reverse the reasoning processes, for the very accumulation of logs in northern Florida to which they refer is an effect caused by the Cummer scale of rates.

This case is not confined to discrimination against logs though the Cummer scale of rates had largely eliminated interstate traffic in logs between Florida and Georgia. This case involves discrimination against *interstate commerce* and that discrimination is worked by an unjust, unreasonable, disparity in the charges for intrastate commerce of logs in Florida as compared with interstate transportation of logs from Florida to Georgia.

The State of Florida has fixed and is earnestly endeavoring to maintain a rate structure for the transportation of these logs which produces to the carrier a gross revenue less than the cost of rendering the service, and which has the effect of largely eliminating the transportation of logs out of the State of Florida into the State of Georgia.

The Florida Commission foretold this result at the time the Cummer scale of rates was introduced (See 186 I. C. C. 190, 191 and 192 where there is reproduced correspondence from the officers of the Florida Commission). The condition is inimical to interstate commerce. It is as though the State of Florida were trying to hold one of the natural resources to itself by its railroad rates.

CONCLUSIONS AND FINDINGS OF THE COMMISSION.

The Commission finds (186 I. C. C. 187) that:

> "In determining whether the Cummer scale results in unjust discrimination against interstate commerce the

fundamental question, in the language of the Supreme Court in *Wisconsin R. R. Comm. v. C. B. & Q. R. R. Co.*, 257 U. S. 563, 568, and in *Florida v. United States*, 282 U. S. 194, 211, is whether the traffic moving on that scale pays 'a fair proportionate share' of the cost of maintaining defendant, or whether it causes an undue revenue burden upon the interstate traffic of defendant."

This is followed with this statement by the Commission:

"The record shows the low earnings of defendant; the low earnings on its log traffic as compared with its earnings on other low-grade commodities; the much lower earnings on its Florida log traffic than on its interstate log traffic; and the much lower level of the Cummer scale than of other scales applicable interstate and intrastate throughout the South. *These facts and the cost evidence clearly warrant the conclusion that the traffic moving under the Cummer scales does not pay its 'fair proportionate share' of operation and maintenance alone.*" (Italics added).

Attention is called to the fact that the Commission concludes that this traffic does not bear its fair proportionate share of *operation and maintenance alone.* By that it means to exclude return on investment and taxes.

We submit that the "subordinate findings" or what we have heretofore called the "intermediate" findings of the Commission clearly sustain that conclusion.

The Commission continues its findings on the next page (186 I. C. C. 188) and shows that the average movement of logs over the Coast Line for the two-year period minus the number of cars included in the discontinued trainload movements was 7,431 cars; and finds:

"That the movement will not be less than this under normal conditions is confirmed by the fact during the five months immediately preceding the last hearing in this case, February to June, 1931, when conditions were abnormal, there were shipped over defendant's lines in Florida a total of 2,765 cars of logs. This movement was at the rate of 6,636 cars a year. We believe that the movement of logs intrastate in Florida over defendant's lines will not be materially curtailed under the rates which we here prescribe, which are the same or substantially the same as the rates generally in effect and under which logs freely move throughout the South."

The Commission proceeds to

"affirm the finding of division 4 that the interstate rates previously in force on logs over 6 feet in length, except walnut, cherry, and cedar, in carloads, from points in northern Florida to destinations in Georgia were unreasonable to the extent that they exceeded those prescribed in the report of division 4, and we find that the rates therein prescribed, which are now in effect, are reasonable." (186 I. C. C. 189).

Those interstate rates then in effect and found to be reasonable were the interstate rates which were prescribed by the Commission in its first report of August 2, 1928 (146 I. C. C. 717). There is no evidence that there was no movement over the Seaboard Air Line and the Georgia, Southern and Florida Railway both of which operated in the States of Florida and Georgia.

The Commission further finds (186 I. C. C. 189) that:

"We further find that the intrastate rates on logs over 6 feet in length, except walnut, cherry, and cedar, applicable between points on the Atlantic Coast Line in

Florida for distances of 170 miles and less are, and for the future will be, unjustly discriminatory against interstate commerce, and that such unjust discrimination can be and should be removed by the establishment between all points on the Atlantic Coast Line in Florida for distances of 170 miles or less of rates not less than the rates shown for such distances in Appendix F hereto, which are the rates found reasonable for interstate application from northern Florida to Georgia."

The Commission continues its findings at page 190 of 186 I. C. C., and after referring to the fact that with the possible exception of "an occasional carload" there was no movement of logs from Florida to Georgia during the period from February 8, 1929 to March or April, 1931, said:

> "Inasmuch as we find that the Cummer scale of rates cause unjust discrimination against interstate commerce from a revenue standpoint and our order herein removes that discrimination by increasing those rates on defendant's lines throughout the State of Florida to the level of the interstate rates previously prescribed and now in effect, no finding in reference to undue prejudice against persons and localities in interstate commerce is necessary and we make no finding in that regard. Any such undue prejudice as now exists because of the disparity in the intrastate and interstate rates will be removed by compliance with the order which we here enter for the purpose of removing the unjust discrimination against interstate commerce."

The evidence before the Commission clearly showed that the disparity between the Cummer scale of rates in Florida and the interstate scale of rates and the rates applied intrastate in Georgia had the effect of shutting out the Georgia mills from many markets in the entire northeastern part of the United States.

IX

SUMMARY OF THE COMMISSION'S FINDINGS IN THE THIRD HEARING (*Georgia Public Service Commission v. Atlantic Coast Line Railroad Company*, 190 I. C. C. 588-January 9, 1933)

The findings of the Interstate Commission made after the District Court's order suspending the order of July 5, 1932 and its own order of October 21, 1932 reopening the cause for limited consideration, may be summarized as follows:

1. The cause was reopened solely to consider any changes in log rates, the reasons for such changes, and whether the same conditions and circumstances applied in Florida (190 I. C. C. 589).

2. Every finding made by the Commission in its previous reports in this case is affirmed (190 I. C. C. 600).

3. The new rates were on basis of *per car regardless of weight*, applicable first west of the Mississippi and later in the *western* part of the Southern territory; most of them limited to a maximum distance of 100 miles; all of them not applicable to *all points* on the railroads filing the tariffs; most of them carrying transit obligations on the outbound product. (190 I. C. C. 589, 590, 591). The method of rate-making on basis of per car regardless of weight was declared to be unlawful because it opened the door to unfair and unjust discriminations, in the cases of *Louisville & Nashville Rd. Co. v. Speed-Parker Co.*, 103 Fla. 439, in the 18th Div. of the opinion, p. 459, and *Seaboard Air Line Rd. Co. v. Lumberman's Co.*, 168 Ga. 851, 855.

4. These rates were expressly limited so as to expire on a named date. (190 I. C. C. 590).

5. These rates were established *experimentally* for the sole purpose of meeting *truck*, and in some few instances, railroad *competition* in that territory. The *experiment was not successful.* (190 I. C. C. 592).

6. The conditions and circumstances surrounding these *unsuccessful experimental* rates were not applicable to the transportation of logs in Florida. (190 I. C. C. 592, et seq. and 599).

7. The Commission thought that these new rates gave no cause for changing its opinion and orders theretofore made. The order which the Commission had previously entered suspending the operation of its order of July 5, 1932, as amended, was vacated. (190 I. C. C. 600).

X.

ANALYSIS OF THE THIRD REPORT OF THE COMMISSION—(*Georgia Public Service Commission v. Atlantic Coast Line Rd. Co.* 190 I. C. C. 588).

The Commission ordered its second order (186 I. C. C. 157) into effect on September 15, 1932. Bills have been filed by complainants to enjoin it. Hearing had been had thereon on September 14, 1932, and the Court had suspended the order of the Commission under the provisions of the Interstate Commerce Act, for a period not exceeding sixty days. A motion was made to the Interstate Commission to reopen the case because of newly discovered evidence which consisted of certain extraordinary schedules of rates which had been filed in certain parts of the territory west of the Mississippi River and which had crossed over the Mississippi into the western part of the southern territory.

The Commission suspended its order of July 5, 1932, as amended, until further order, and reopened the proceeding before it for further hearing

> "for the sole purpose of receiving evidence respecting any change in the rates on logs since the close of the previous hearing, the circumstances connected with and the conditions which occasioned such changes, and whether such circumstances and conditions, or any of them, are present with respect to the Florida intrastate log rates of defendant." (190 I. C. C. 589).

Report of the hearing in this reopened proceeding begins at R-917. The hearing was had at Jacksonville on November 21 and 22, 1932. A large number of witnesses were exam-

ined; and on January 9, 1933 the Commission handed down its report on this reopened proceeding; and found (190 I. C. C. 589):

> "The evidence introduced at the further hearing shows that certain carriers that operate in southwestern and southern territories have in recent months established rates on logs, bolts, billets, rough staves, and heading in amounts per car regardless of weight, which rates are on substantially the same level as the Cummer scale referred to. These rates were first established by certain railroads operating west of the Mississippi River, following a meeting held March 29, 1932, between their representatives and certain shippers, at which meeting it was agreed that rates of $12.50 for distances of 25 miles or less, $15 for distances of 25 but not over 50 miles, $17.50 for distances of 50 but not over 75 miles, and $22.50 for distances of 75 but not over 100 miles should be established in Arkansas, Louisiana, and Missouri experimentally in an effort to meet truck competition, and that they should expire by limitation December 31, 1932."

The tariffs establishing those rates are shown by the witness Green in his exhibit 134 (R-1318). He refers to and discusses this exhibit at R-920.

It will be noted that the Commission finds that those rates were applicable for the maximum distance of 100 miles, and first established in three States west of the Mississippi—Arkansas, Louisiana, and Missouri; and that they were established experimentally in an effort to meet truck competition; and that they were to expire at a specific time.

The Commission finds (190 I. C. C. 590) that on or about the same time some of the roads east of the Mississippi estab-

lished similar rates. This finding is sustained by the witness Green's exhibits Nos. 135, 136 and 137 (R-1319, 1320) and by the evidence of Mr. Green (R-920-930).

The Commission finds (190 I. C. C. 590) that:

> "Generally these rates are published to expire in one year unless sooner canceled, changed, or extended."

The Commission then found (190 I. C. C. 590) that:

> "The rates of these southern lines are not uniform and also vary somewhat from those referred to above as agreed upon by the southwestern carriers. Like those of the southwestern carriers, all are in amounts per car regardless of weight."

Those tariffs are generally limited to a maximum distance of 100 miles though some of them extend as high as 170 miles. (190 I. C. C. 590). *Those rates did not apply to all points on any of the lines using them.* In fact, they applied to relatively few points. For instance, the Commission finds (190 I. C. C. 590) as follows:

> "The per car rates of the Illinois Central System apply to approximately 30 manufacturing points east of the Mississippi River, 2 of which are in Tennessee, 2 in southern Louisiana, and the remainder in Mississippi; those of the Seaboard Air Line and the Central of Georgia to Montgomery only; those of the Western of Alabama to Montgomery and Selma; those of the Southern to Mobile, Selma, and York, Ala., Chattanooga and Memphis, Tenn., and Laurel and Corinth, Miss.; those of the Mobile & Ohio to Columbus, Corinth, and Meridian, Miss., Humboldt and Jackson, Tenn., and Mobile and Whistler, Ala.; those of the Columbus & Greenville

to Columbus, Greenville, Grenada, and West Point, Miss.; and those of the Gulf, Mobile & Northern, St. Louis-San Francisco east of the Mississippi River, and Nashville, Chattanooga & St. Louis to all points on those lines, although in practical effect those of the Gulf, Mobile & Northern and St. Louis-San Francisco apply only to manufacturing points, their application being dependent upon an outbound movement of manufactured products, as will be later explained. It will be noted that all of these rates apply in the western portion of southern territory and none in the eastern portion."

From this statement, which is amply supported by the evidence of J. O. Gill (R-976); H. P. Norden (R-1014, 1016); E. R. Gardner (R-1026); M. W. Thomas (R-1032, 1035, 1036); C. D. Thomas (R-1040), and R. I. Miles (R-1044, 1047), it will be seen that these rates were put in by these railroads to meet some particular circumstance and in an effort to recover traffic which had been lost to trucks or to competing roads or to a combination of trucks and other rail carriers, and that they were put in to only a very limited effect. Local rates to those points were not cancelled.

MAPS INTRODUCED BY APPELLANTS.

In this connection we desire to call attention to certain maps which were introduced in this cause:

First, to the map appearing in the volume marked "Exhibits physically reproduced for reference under stipulation of counsel." This map is marked "Railroad Junction Points Map," is unnumbered but appears immediately after exhibit No. 130. The map marks in color the entire lines of certain railroads east of the Mississippi and parts of lines of those and other railroads west of the Mississippi. That marking

may very well define, for instance, the Illinois Central System, but the marking should not be construed as indicating that these rates apply between all points on that System. As we have shown above, the rates applied to approximately thirty manufacturing points on the Illinois Central System which, of course, includes as well the Yazoo and Mississippi Valley Railroad. All the roads east of the Mississippi are marked in red. This marking includes the Illinois Central, while these rates applied on that road east of the Mississippi to only thirty manufacturing points and those were widely scattered. On the other roads these rates applied to only a few of the points, so that this map should be taken not as illustrating railroads which adopted these rates over their entire lines but rather as railroads which adopted the rates to a limited extent. The reason why the extent of the application of the newly reduced rates was limited was that they were intended to apply only to the extent of the evil to be cured.

The last exhibit in the aforementioned volume is exhibit 163 and is a map of the territorial United States showing a good many lines marked in green and in red; and what has been said as to the exhibit just above mentioned, applies to exhibit 163.

THE ORDER OF THE COMMISSION OF OCTOBER 21, 1932 REOPENING THE CASE, HAD THREE PRONGS.

1. The further hearing was for the sole purpose of receiving evidence respecting any change in the rates on logs since the close of the previous hearing;

2. The circumstances connected with and the conditions which occasioned such changes; and

3. Whether such circumstances and conditions, or any of them, are present with respect to the Florida intrastate log rates of Atlantic Coast Line.

(Statement of Examiner Hoy (R-917).

The Commission finds (190 I. C. C. 591) that:

> "The per car rates of these southern lines, like those of the southwestern lines, were established primarily as an experiment to meet actual truck competition which the carriers' investigations showed to exist. While the extent of this truck competition is not shown, it apparently was sufficiently compelling, in the judgment of the managers of these railroads, to warrant the establishment of these rates as an experiment. With some of these southern carriers, particularly the Mobile & Ohio and the St. Louis-San Francisco, carrier competition also had a considerable influence in the establishment of these rates. For example, a representative of the St. Louis-San Francisco testified that that road had decided not to establish these rates east of the Mississippi River, but was later forced to do so to meet the competition of other carriers, it having found that logs were being trucked from its rails to competing railroads which had previously established the per car rates. In this connection it should be remembered that the carrier transporting the logs to the manufacturing point at these per car rates is also assured of the outbound movement on the manufactured products, except in the case of the Nashville, Chattanooga & St. Louis, and, in some instances, the Southern.

"It is clear from the record that the object of the Southern lines in establishing these per car rates was not merely to

meet the truck competition on the logs, but was to be assured at the same time of receiving the outbound movement of the manufactured product," etc.

C. D. Thomas (R-1037-1042), Assistant General Freight Agent of the Southern Railway System, testified that his road had established truck competitive log rates at Chattanooga and certain other stations for distances of 100 miles and under for single line application; that the initial publication of those rates was surrounded with a transit arrangement; that the truck competitive scale was published upon request of two concerns operating at Chattanooga. Mr. Thomas states:

> "Their argument was that if the proper scale were established it would eliminate the movement of logs for short distances by truck."

The traffic officials of the Southern confirmed the statement that there was a substantial movement of logs by truck to Chattanooga. The witness states that a like arrangement was made at Laurel, Mississippi (R-1039); that for the four months, March, April, May and June a total of 50 cars from stations within 100 miles of Laurel moved under those rates; and for the four months July, August, September, and October, 50 cars moved. The witness stated:

> "Like the Chattanooga scale that is published as an experiment, to expire approximately twelve months after the date of publication, or July 26, 1933."

He stated that the same truck competitive scale was established to Memphis, Tennessee, from Southern Railway stations within 100 miles of Memphis, effective September 15, 1932, for both interstate and intrastate application; that the

movement of logs by rail to Memphis from stations on the Southern's line within 100 miles of Memphis was 5 cars in July, 1 car in August, 1 in September and 18 in October; that they established a truck-competitive scale to Corinth, Miss., but no movement into Corinth, Mobile, Selma or York, for the period June 1, 1932, through October 31, 1932, was shown by their investigation. He further stated:

> "In each of the instances where we have established truck competitive rates on logs, investigation through our division traffic officers has indicated actual truck competition, and representations have been made to us that the establishment of the truck-competitive scales would regain all or a substantial portion of the traffic." (R-1040).

Like evidence was given by the witness R. I. Miles (R-1043-1047), Commerce Agent of the Illinois-Central System.

Exhibit 155 (R-1359) shows the rates which were being applied over the Illinois Central and Yazoo and Mississippi Valley Railroad and the reshipping rates in Tennessee, Mississippi and Louisiana, east of the Mississippi River. The local rates, that is, the rates not there shown as the reshipping rates were much higher than the Cummer scale; and the reshipping rates; that is the rates after the products manufactured from the lumber, were reshipped, are higher than the Cummer scale. The last column of exhibit 155 shows a rate called "Truck Competitive Reshipping rates per car" for those two roads and are at $12.00, $15.00, $17.50, and $20.00 per car regardless of weight, the maximum distance being 100 miles.

The distances over which the traffic moved under these new rates on the Illinois Central were from 11 to 98 miles and

the large preponderance of the movement was between 35 and 50 miles (R-1045).

The witness J. O. Gill (R-974-980), general freight agent of the Gulf, Mobile & Northern Railroad, gave testimony as to the effect of these truck competitive rates, and states:

> "I am disappointed at the results although unquestionably we have regained some business from the trucks. I cannot say how much. However, our records show that for the short distances, that is, distances under 25 miles, by comparison, using 3-month period prior to the establishment of the truck competitive rates, and a 3-month period since the establishment of the rates, that at Jackson, Mississippi, we handled two cars on the truck competitive rates for distances under 25 miles as against none prior to the establishment of these truck competitive rates. Into Jackson, Tennessee, using the same period and the same distance, we handled two cars prior to the establishment of these rates, and none during the period since the effective date of the rates. In Laurel, Mississippi, for the three-months period prior to the establishment of the truck competitive rates for distances under 25 miles, we handled 10 cars as against 17 during the period since the effective date." (R-976).

The same witness continues: (R-977)

> "Going back to Jackson, Mississippi, we had an increase of 18 cars for distances 50 miles and over 25; and at Jackson, Tennessee, we had 39 cars as compared to 25 cars prior to the effective date. Laurel, Mississippi, shows up better. We had a movement of 355 cars as compared to 31 for distances 50 miles and over 25. For distances 75 miles and over 50 into Jackson, Mississippi, we had an increase of 5 cars; Jackson, Tennessee, 25 cars; Laurel, Mississippi, 21 cars. The aver-

age loading for the same periods into Jackson, Mississippi, was 65,470 pounds as compared to 69,000 pounds since the effective date of the changes."

It must be remembered that the local rates continued in effect (R-1040). *They have never been removed from any of the lines.*

The witness M. W. Thomas (R-1036-1037) assistant general freight agent for the Central of Georgia, testified to the general decline in the log traffic since 1927 and that competition was particularly effective on log traffic. He testified (R-1032) to the circumstances under which his road published tariffs to meet truck competition at Montgomery. He offers exhibits 150-154 (R-1350, et seq.). The Central of Georgia had handled a good deal of these logs and the lumber manufactured therefrom. Mr. Thomas looked upon the rates published to meet truck competition as an experiment and hoped for additional regulation of trucks in Alabama. The general movement of logs over the Central of Georgia Railway, except as to Montgomery, was being transported at the usual rates (R-1036).

Mr. E. R. Gardner (R-1024-1030), freight traffic manager of the Mobile & Ohio Railroad Company, stated that his road is paralleled a part of the way by other railroads; that on August 1, 1932 manufacturing or transit rates on logs, billets, bolts and handle material to the important manufacturing points on its line such as Columbus, Mississippi, Corinth, Miss., Humboldt, Tenn., Jackson, Tenn., Meridian, Miss., Mobile, Ala., Whistler, Ala. and Cario, Ill. were established by the Mobile & Ohio. Those rates were per car regardless of weight. There were two reasons which prompted

that road to put those rates into effect, the first was to meet competition created by its "neighbors" (R-1025), meaning no doubt, the paralleling lines; and the second reason was the loss of that particular traffic to unregulated trucks. He refers to the rates thus put in as experimental. He states his road had cross-country competition, meaning by that that logs were cut in such localities as to haul them ordinarily to his road but could be hauled by trucks to competing roads, and that the competing roads' rates were sufficiently low to induce the traffic to move to them. He thought that the rates had not been sufficiently tested but if he were called on to express an opinion, he would say they were unsuccessful (R-1027).

The Commission reviewed all this testimony (190 I. C. C. 592, 593) and then found:

> "Since the establishment of these per car rates the mill at Chattanooga, referred to above, will accept only cars that have a loading capacity of about 125,000 pounds and that its average loading ranges from 105,000 to 110,000 pounds; and that mills at Montgomery and Memphis have received cars loading over 90,000 pounds and a mill at Laurel has received cars loading as high as 122,000 pounds." (190 I. C. C. 593).

This is supported by the evidence at R-936, 941, 942.

The Commission further found:

> "Such truck competition as has been shown in the movement of logs in Florida is generally to the smaller lumber mills and between points where the rail hauls are 25 miles or less. A witness employed by the Florida intervener to make an investigation of the extent of the movement of logs by truck in Florida specified 23 mills

located at 19 different points in Florida to which all or substantially all of the logs cut were transported by truck. Most of these mills were cutting less than 10,000 feet of lumber a day, only four were cutting more. The 23 mills were cutting a total of less than 200,000 feet a day, which is less than the capacity of a single large Florida mills such as that of intervener Brooks-Scanlon Corporation at Foley, and is a very small percentage of the total lumber cut in Florida." (190 I. C. C. 593).

That finding is borne out by the witness Flack (R-1000 through 1010).

The Commission continues its findings as follows:

"This witness testified as to the range of the hauls by truck to nearly all of these mills, but did not know what the average hauls were, the location of the logs, or how far they were from a railroad. The maximum hauls were 10 miles or less to three of the mills, between 10 and 15 miles to two, between 15 and 20 to five, between 20 and 25 miles to four, between 25 and 30 miles to two, and between 30 and 45 miles to five. The length of the hauls to two of the mills were not known. Of the 23 mills, 7 were located on defendant's lines exclusively, 3 on the lines of defendant and the Seaboard Air Line, 1 on the lines of defendant and the Southern, 9 on the Seaboard Air Line exclusively, 1 on the Florida East Coast, 1 on the Georgia, Southern & Florida, and 1 on the Live Oak, Perry and Gulf. The 11 mills located on defendant's lines were cutting a total of approximately 87,500 feet a day, and the maximum haul by truck was 10 miles to two of the mills, between 10 and 15 miles to two, between 15 and 20 miles to two, between 20 and 25 miles to three, and between 25 and 30 miles to one. The length of the hauls to two were not known. The record does not show whether any of the

logs moved by truck to these 11 mills could have moved over defendant's lines. A cut of 87,500 feet a day represents approximately 20 carloads of logs, based on 4,231 board feet, to the carload, the average of one intervener as will hereinafter appear." (190 I. C. C. 593-4).

This finding is borne out by the evidence of the witness Flack (R-1000, et seq., especially at 1006).

The Commission after stating the limited application of the rates to the roads over parts of which they apply said:

> "It will be noted that all of these rates apply in the western portion of the southern territory and none in the eastern portion." (190 I. C. C. 590-1).

We desire to emphasize that the putting in of these rates by these railroads did not supplant the rates per 100 *pounds.*

The witness H. P. Norden (R-1012-1024) assistant general freight agent for the St. Louis-San Francisco Railway, testified:

> "Prior to the publication of these rates on a per car basis the Frisco Railroad along with other West Side lines had in transit rates on logs and rough material on a per 100 pounds basis; and as a matter of fact those rates on per 100 pounds basis still remain in effect. They alternate with the per car rates." (R-1013).

The rates per 100 pounds have never been taken out. For instance, we have seen that the per car rates on the Illinois Central applied to only two points in Tennessee and two points in southern Louisiana and to only thirty points east of the Mississippi River, while that road operates east of the

Mississippi River in Tennessee, Mississippi and in Louisiana. The rates which were in effect and applicable on all its other points were not the per car rates regardless of weight but were the rates per 100 pounds. This testimony was not disputed.

The Commission found (190 I. C. C. 591) as we have heretofore pointed out:

> "The per car rates of these southern lines, like those of the southwestern lines, were established primarily as an experiment to meet actual truck competition which the carriers' investigations showed to exist."

This is sustained by the evidence heretofore referred to of the various representatives of the railroads.

The Commission in its report, 190 I. C. C. beginning at page 593 summarizes much of the testimony given at the second reopened hearing and shows that the truck traffic for the particular distances of 25 miles to 50 miles was not being recaptured by the railroads as a result of the experimental rates.

Logs are cut in the woods and brought out from the woods and mills to the railroad or the highway. The distance to the mills then is relatively short. The unloading of the logs from the trucks to the trains makes it unlikely that the railroads will ever regain that kind of transportation. The evidence shows that the officials of the roads recognized that but it is beyond peradventure that the rates which were put into effect first on the western roads and then in the western part of the Southern territory, were, as the Commission states, "established primarily as an experiment to meet actual truck

competition which the carriers' investigations showed to exist."

The Commission then finds (190 I. C. C. 599) that:

"Transportation conditions are not substantially similar throughout southern territory. In our prior report on further hearing we specifically found that the circumstances and conditions surrounding the transportation of these logs intrastate in Florida were not on the whole as favorable as the circumstances and conditions surrounding the interstate movement of logs over defendant's lines. Therein we also pointed out that the less favorable operating conditions in the Florida peninsula than in the remainder of southern territory have given rise to the general practice of permitting the addition of arbitraries to the rates on interstate traffic to and from points in that territory. . . . . .

Even if transportation conditions were similar in Florida as on the lines of the carriers that have established the per car rates, competitive conditions are not similar, as has been pointed out. The carriers that have established the per car rates have done so voluntarily as an experiment in an endeavor to regain traffic that was moving by truck and thereby increase their revenues, not only on the logs to the mills but on the outbound manufactured products from the mills, their per car rates being conditioned upon an outbound movement of the manufactured products in nearly all instances.

"In Florida, on the other hand, the movement of logs has not been shown to have gone to the trucks to any substantial extent where the hauls are over 25 miles and this record warrants the conclusion that truck-competitive rates for distances under 25 miles would regain

little, if any, traffic, and that to require defendant to continue to maintain the Cummer scale to meet what little truck competition could be met would greatly decrease the revenues of defendant and would not be warranted. Logs in single carloads are now moving by rail over defendant's lines throughout Florida in substantially the same volume as at the time of the previous hearing and for the six months prior thereto, and the movement has not decreased to as great an extent as the outbound movement of lumber from Florida. The monthly movement since February 10, 1931, when the Cummer scale was reestablished, has been substantially the same as from the latter part of 1930, when the main depression in the lumber business in Florida began, to February 10, 1931, indicating that the reestablished substantially lower Cummer scale has had no effect on the volume of rail movement." (190 I. C. C. 599, 600).

The Commission holds that generally they do not approve of rates published in amounts per car regardless of weight and "nothing contained herein should be considered as an approval of rates so published on logs." (190 I. C. C. 600).

The Commission then affirms all the findings in its prior report on further hearing and vacates its order suspending the operation of its order of July 5, 1932, as amended.

XI

FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THE UNITED STATES DISTRICT COURT, (Decided February 24, 1933, 4 Fed. Supp. 477. R-610).

These findings are also found as an appendix to the Statement of Atlantic Coast Line Railroad Company Opposing Jurisdiction and Motion to Dismiss or Affirm. The decree appears at page 33 of that document and the findings of fact and conclusions of law begin at page 34. The decree is also found at R-620.

The findings of fact make a resumé of the history of the case, and after stating the history of the cases through the proceedings in this court (282 U. S. 194), states:

> "Thereupon the Georgia Public Service Commission and the Atlantic Coast Line R. R. Company on due notice to all parties, including the present complainants, moved the Interstate Commerce Commission to reopen the case before it, which over objection was done, and much new evidence was added to that previously taken. A motion was made by the present complainants at the beginning of the hearing to dismiss the proceedings as respects any issue of burden on the revenues of the carrier, and to exclude all evidence directed to that contention. The motions were overruled by the examiner, and again by the full Commission, which after argument made an elaborate and lengthy report of its findings, put aside the question of undue prejudice by the State rates to persons and places in Georgia as unnecessary to be decided, but held the rates to be burdensome on the interstate carrier's revenues and thus a discrimination against interstate commerce, which it removed by again

prescribing under §13(4) of the Act future State rates to conform to the interstate rates which it had established as reasonable." (R-611-612).

The court finds that the conclusions of fact made by the Commission are well supported by the evidence, and

"*such as we would ourselves make therefrom.*" (R-612, Italics added).

The court summarizes the ultimate facts, and finds that:

"In 1928 and in 1932 comparisons of these rates (Cummer scale) with other rates on logs and on similar traffic in the same and neighboring territories showed them to average less than half of most other comparable interstate and intrastate rates, and to be much the lowest of any of them. They are about one-half the rates fixed by the Interstate Commerce Commission for interstate traffic on the same logs in substantially the same territory." (R-612).

The court also found that: (R-612-613).

"It appeared that the cost of the service in Florida was probably higher than elsewhere. It was found that there was no profit but an out-of-pocket loss to the carrier in log traffic under these rates, not considering taxes and return on the investment, and that consequently there was no contribution to the maintenance of the carrier as an efficient instrumentality of commerce, but a drain upon it. The total amount of this drain before 1929 was not found, nor could it be approximated from the evidence. But for the two years, 1929 and 1930, when the interstate rates fixed by the Interstate Commerce Commission were enforced, the log traffic under them was 18,602 cars and the gross revenue from this intrastate traffic was $571,508.94, whereas if the Cummer scale had been applied it would have been $281,225.75."

The falling off of the log traffic during that period was found

> "to be more due to the universal depression in business and to the moving of mills to the timber than to the raise in rates, because there was no substantial increase after the Cummer rates were restored following the decision of the Supreme Court above referred to. Abundant available timber still exists in Florida, and is being rapidly reproduced, so that the future traffic will likely amount to at least 7,431 cars per year, and the average gross revenue on it under the new rates will be more than $100,000.00 per year greater than the Cummer scale would yield, thus converting a loss on the business into a profit of that approximate amount. As showing that the carrier as an instrumentality of interstate commerce cannot afford to absorb the loss under the Cummer scale, or to forego the support to be derived from the new scale, it is found that the carrier's net return on its investment is steadily falling from year to year, and in 1930 was only 2.54%." (R-613).

The court might also have stated that return was only an operating return, before interest and other non-operating charges.

The court continues:

> "On these findings the general finding was made that the Cummer rates are and in the future will be unjustly discriminatory against interstate commerce, and that such unjust discrimination can and should be removed by rates not less than the scale prescribed for interstate commerce." (R-613).

The court refers to the reopening of the proceeding by the Commission in October, 1932, and the taking of further evi-

dence in November, showing that many voluntarily reduced rates had been established, and then finds as follows:

> "It (the Commission) found, and the evidence well warranted the finding, that the reductions were a temporary experiment made in the effort to recapture traffic which had been taken away by trucks, and generally the lowered rates carried an obligation that the manufactured article should also be moved by the carrier making the rate. The experiment has met with but little success. No such rates exist in the Florida territory here involved, nor is truck competition there such as to make unremunerative rates judicious as likely to improve net revenues. On January 9th, 1933, the Commission reaffirmed its order of July 5, 1932." (R-613-614).

CONCLUSIONS OF LAW BY THE COURT (R-614, ET SEQ., P. 38 OF THE COAST LINE'S STATEMENT OPPOSING JURISDICTION, ETC.).

The court's conclusions of law open with this statement:

> *"We are of opinion that the particular findings are sufficient to support the general finding of un ust discrimination by the State rates against interstate commerce by undue burden on the interstate carrier's revenues, and to justify an order removing the discrimination by establishing the new rate prescribed."* (R-614, italics added).

The court discusses the contention that the pleadings in this case did not invoke the power of the Commission on the basis that a burden by the State rates was placed on the revenue of the carrier, and disposes of that adversely to complainants' contentions. We have heretofore referred to that. The court

adhered to its views expressed in the cases of *Florida v. United States* [30 Fed. (2d) 116, and 31 Fed. (2d) 580] and also refers to the fact that this court disposed of that contention in the case of *State of Florida v. United States* (282 U. S. 194, at 209).

The court also refers to the contention of the complainants that the Commission erred in not requiring the Coast Line to produce a statement supported by individual car-record movements, showing certain details as to cars of logs moving on its lines between points in Florida and Georgia for each of the years 1926, 1927, 1928, 1929 and 1930, a like statement showing cars moving within the State of Florida for each of those years, and a statement showing the gross earnings from both interstate and intrastate shipments of such logs for each of those years. The court states:

> "The Railroad Company in answer stated that it expected to furnish certain appropriate data about its log traffic, but could not get up the statements requested for lack of time and because its records did not show the distinctions in log traffic required. The Railroad Company did produce details of its log traffic since 1928, but not before. The Commission refused to compel further compliance. It will be noted that no specified books or papers were asked to be produced, nor any specified witness called on to tell what he might know." (R-615).

The court, after making those statements, holds:

> "We are aware of no rule of law or practice which would require a litigant laboriously to compile information for his adversary, even if it were in his power to do so. Certainly it would lie in the discretion of the tribunal to decline to compel it. We find in such refusal

no cause to upset an order founded on evidence which was duly produced before that tribunal." (R-615-616).

The court states this point was further pressed on the ground that the information demanded was essential to a finding of unjust discrimination, the revenue before 1929 under the State rates being one of the things mentioned by the Supreme Court as necessary to be established. The court holds:

> "We do not understand that the revenue, either gross or net, produced by the State rates must be exactly established, but only that the operation of those rates and their effect upon the carrier must be investigated and found. It was here established that the State rates produced a loss, and were a drain on the carrier. It might have been desirable to show the extent of the loss, but if that be impracticable, and if it appear that the loss will be in the future substantial and the carrier is not in position to absorb it without detriment to his service and support as an interstate carrier, a sufficient case is made to find an unjust discrimination against interstate commerce, and to require its correction." (R-616).

The court then disposed of the argument that the System averages of cost were extended to certain instances, finding:

> "The ascertainment of the general fact of loss is said to be unlawful because the witnesses and the Commission dealt in part with the average cost of similar service over the Coast Line System and the general cost of hauling freight in the division which substantially embraces the State of Florida, rather than the actual cost of hauling logs in Florida. But it was shown that the latter information could not be gotten; that the cost of service in Florida for reasons given was greater than elsewhere in the System, so that average costs for the System really

showed a less cost than the Florida costs if they could have been separately ascertained. The difference in cost between hauling logs and other carload freight was also given attention. Not infrequently the best evidence obtainable has to be used as a basis for inferences, and conclusions of fact made therefrom with due allowance or possible inaccuracies are not invalidated because the best evidence logically possible was not at hand." (R-616).

The court then disposes of the claim that Appendix E to the report of the Commission (186 I. C. C. 196) entitled, "Estimated Costs of Transporting Logs in Florida for the Average Distance of 81.36 miles based on A. C. L. Average Costs per Unit for Calendar Year 1929 Applied to the Average Units Involved in Hauling Logs in that State," is wrong because it was evidence considered by the Commission which was not introduced in the proceeding, and correctly holds that Appendix E is not evidence but that it is

> "the Commission's conclusion as to the cost of hauling logs in Florida for the distance shown to be the average under the Cummer scale." (R-616-617).

There is no quantity in Appendix E which was not taken from the evidence [See Lamb's exhibits 78-85 incl. (R-1134*a*-1139); exhibit 86 as corrected, copy of which is in this brief; Perrin's exhibit 61 (R-1101) and its several sheets; and the evidence as to the average mileage the logs were hauled, R-700].

The court next deals with the appellants' contention which it states is strongly urged that

> "the direct prescription by the Interstate Commerce Commission of an intrastate rate is prima facie an un-

constitutional invasion of the province of the State, so that the burden is on the defendants here to justify it before the court, and that in order to justify it the facts of justification, to-wit, those showing the State rate to be an unjust discrimination against interstate commerce, must clearly appear to this court, the findings of the Commission not being conclusive, nor in themselves weighty on the very point of the Commission's jurisdiction." (R-617).

The court holds:

"It is not doubted that the power of the Commission to make an order is a judicial question, and that the court may examine it independently. When, however, the very fact upon the existence of which the power to act depends has been contradictorily tried before the Commission itself, its conclusion fully expressed upon its record affirming the existence of the fact is certainly sufficient to put the burden upon those who deny it. While at one time all findings of the Commission were declared by the statute to be only prima facie evidence of their correctness, that language has now been retained only with reference to money awards and to valuations of property by the Commission, and it is well established that under the enlarged and positive powers with which the Commission is now vested its findings of fact *within the scope of its powers* will not be reviewed by the courts if supported by evidence. *Merchants Warehouse Co. v. United States*, 283 U. S. 501. Where the matter examined relates to its power to act at all the decisions are perhaps not so explicit, but we may refer to the following expressions of the court as bearing directly upon it: In *I. C. C. v. Northern Pacific R. R. Co.*, 216 U. S. 538, 544, it was said: 'We are of the opinion that the Commission had no power to make the order if a reasonable and satisfactory through route already existed, and that the existence of such a route may be inquired into by

the courts. How far the courts should go in that inquiry we need not now decide. No doubt in complex and delicate cases great weight should be attached to the judgment of the Commission.' In *Interstate Commerce Commission v. Union Pacific R. R. Co.*, 222 U. S. 541, 547, in discussing fundamental questions of the Constitutional and statutory power of the Commission it was said: 'In determining these mixed questions of law and fact the court confines itself to the ultimate question whether the Commission acted within its power . . . Its conclusion, of course, is subject to review, but when supported by evidence is accepted as final; not that its decision, involving as it does so many and such vast public interests, can be supported by a mere scintilla of proof, but the courts will not examine the facts further than to determine whether there was substantial evidence to sustain the order.'

"In *Interstate Commerce Commission v. L. & N. R. R. Co.*, 227 U. S. 88, the court held that the power of the Commission to alter rates depended upon the fact of their unreasonableness, but that the Commission having found no evidence that they were excessive, its order was not to be disturbed. In *United States v. L. & N. R. R. Co.*, 235 U. S. 314, 320, the language held is: 'It is not disputable that from the beginning the very purpose for which the Commission was created was to bring into existence a body which from its peculiar character would be most fitted to primarily decide whether, from facts disputed or undisputed, in a given case, preference or discrimination existed, and the amendments by which it came to pass that the findings of the Commission were made not merely *prima facie* but conclusively correct in case of judicial review, except to the extent pointed out in the Illinois Central and other cases supra, show the progressive evolution of the legislative purpose and the inevitable conflict which exists between giving that purpose effect and upholding the view of the statute

taken by the court below. It cannot be otherwise since if the view of the statute upheld below be sustained the Commission would become but a mere instrument for the purpose of taking testimony to be submitted to the courts for their ultimate action.'

"We need not decide whether in this case the Commission's finding of unjust discrimination is entitled to any less weight because it is a prerequisite of its jurisdiction as well as the meritorious basis for its exercise, because we have examined the evidence independently and are led to the same conclusion that the unjust discrimination exists. (R-617-619, italics added).

The court then deals with the evidence as to the lower voluntary rates made by other carriers, that is the rates referred to in the Commission's third report (190 I. C. C. 588) and holds:

"We find nothing to require a different conclusion." (R-619).

The court then makes this crucial finding:

"If log traffic done in Florida on the Cummer scale is all an out-of-pocket loss, the less of it done the better. The destruction of it would help by stopping a loss. If but a little business be done on remunerative rates so much profit would be substituted" (R-619, italics added).

The court further holds:

"The findings and the evidence show the Cummer scale of rates to constitute such a substantial revenue burden on the interstate carrier and on interstate commerce as to cause a discrimination against the latter and to give the Commission power to remove it under Inter-

state Commerce Act, §13(4). The action to be taken in removing it is left by the section to the judgment of the Commission. It having power in this case to prescribe a proper intrastate rate, its judgment as to the level of the rate to be established in order to accomplish the desired revenue result ought not to be overriden when sustained by evidence and violative of no law. We uphold the orders of the Commission." (R-619).

PART TWO

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I

LAW OF THE CASE

The law of this case appears to have been fixed in the decision of this court when the case was before it on the first appeal—*State of Florida v. United States*, 282 U. S. 194. In that opinion the power of the Interstate Commerce Commission to act on the particular facts involved was established beyond dispute.

The court there held (282 U. S. 210):

> "The power of the Congress to authorize the Interstate Commerce Commission to establish intrastate rates in order to remove an unjust discrimination against interstate commerce is not open to dispute."

Many authorities are cited.

The court stated (282 U. S. 211):

> "The question in the present cases then, is not one of authority but of its appropriate exercise. The propriety of the exertion of the authority must be tested by its relation to the purpose of the grant and with suitable regard to the principle that whenever the federal power is exerted within what would otherwise be the domain of state power, the justification of the exercise of the federal power must clearly appear."

The Commission had that opinion before it when it tried this case. The Commission and counsel treated that case as the yardstick by which this case should be tried.

The intermediate findings, or the findings which may otherwise be called basic, were ascertained and made by the Commission in the greatest detail and in the final analysis those findings depend not only on substantial evidence, but practically all of them are based on undisputed evidence.

II

NO CONFLICT OF EVIDENCE

This statement of the lack of conflict of evidence applies throughout all, or practically all, of the case.

There was no controversy over the evidence of the comparisons which showed that the revenue from the application of the Cummer scale of rates on logs in Florida was only about one-half to one-third of that from the application of the interstate scale, which was being contemporaneously applied throughout the Southern territory and which had been found to be reasonable.

There was no conflict of evidence given to prove that the Cummer scale of rates was only about one-half of the rates prescribed by the Interstate Commission on sand and gravel in the southeast, and less than half of the rates prescribed on the same commodity to points in Florida south of the Jacksonville-River Junction Line.

There was no evidential dispute that it cost more to do transportation business in Florida than elsewhere on the Atlantic Coast Line's System, because of the lack of density of traffic and the shortness of hauls.

There was no evidential dispute as to the lack of density of traffic in Florida as compared with other parts of the Atlantic Coast Line's System.

There was no dispute as to the comparison of the Cummer scale of rates with the scales of rates on logs applicable on other roads throughout the southern territory, showing always that the Cummer scale was very much lower; nor was there

any conflict over the fact that the Cummer scale of rates was and is the lowest scale of rates in existence.

The Commission found that the Cummer scale of rates was "less than compensatory."

We do not contend, nor did the Commission claim, that the mere unreasonableness of intrastate rates gave to the Commission jurisdiction to supplant those intrastate rates with rates prescribed by it.

We do contend that the Interstate Commission has the right to remove intrastate rates which are inimicable to interstate commerce; and we likewise contend that intrastate commerce should bear its fair proportionate part of the expense of maintaining the transportation system used for interstate and intrastate commerce. We contend that the Cummer scale of rates applied to the Florida log traffic did not carry its fair proportionate part of the cost of maintaining the railroad's system which was used for both interstate and intrastate commerce. The amount of this log traffic intrastate in Florida was very great and it made a burden upon interstate commerce. *Wisconsin R. R. Comm. v. C. B. & Q. R. R.* 257 U. S. 589; *Minnesota Rate cases*, 230 U. S. 352; *United States v. Louisiana*, (decided Nov. 6, 1933) 78 L. Ed. 51; *Florida v. United States*, 282 U. S. 194.

III

STATUTORY LAW RELIED UPON

The Atlantic Coast Line relies upon:

§2 of the Interstate Commerce Act, which is as follows:

> "That if any common carrier subject to the provisions of this Act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property or the transmission of intelligence, subject to the provisions of this Act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation or transmission of a like kind of traffic or message under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful."

§3, so much of which is necessary to the matter under consideration, is as follows:

> "(1) That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

§13(4) which is as follows:

"Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding."

And §15(a), (2), (3), and (4), which are as follows:

"(2) Except as otherwise provided in this Act, all orders of the Commission, other than orders for the payment of money, shall take effect within such reasonable time, not less than thirty days, and shall continue in force until its further order, or for a specified period of time, according as shall be prescribed in the order, unless the same shall be suspended or modified or set aside by the Commission, or be suspended or set aside by a court of competent jurisdiction.

"(3) The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its

own initiative without a complaint, establish through routes, joint classifications, and joint rates, fares, or charges, applicable to the transportation of passengers or property, or the maxima or minima, or maxima and minima, to be charged (or, in the case of a through route where one of the carriers is a water line, the maximum rates, fares, and charges applicable thereto), and the divisions of such rates, fares, or charges as hereinafter provided, and the terms and conditions under which such through routes shall be operated; and this provision, except as herein otherwise provided, shall apply when one of the carriers is a water line. The Commission shall not, however, establish any through route, classification, or practice, or any rate, fare, or charge, between street electric passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business, and railroads of different character; nor shall the Commission have the right to establish any route, classification, or practice, or any rate, fare, or charge when the transportation is wholly by water, and any transportation by water affected by this Act shall be subject to the laws and regulations applicable to transportation by water.

"(4) In establishing any such through route the Commission shall not (except as provided in section 3, and except where one of the carriers is a water line), require any carrier by railroad, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini of such proposed through route, unless such inclusion of lines would make the through route unreasonably long as compared with another practicable through route which could otherwise be established: *Provided*, That in time of shortage of equipment, congestion of traffic, or other emergency declared by the Commission it may (either

upon complaint or upon its own initiative without complaint, at once, if it so orders without answer or other formal pleadings by the interested carrier or carriers, and with or without notice, hearing, or the making of filing of a report, according as the Commission may determine) establish temporarily such through routes as in its opinion are necessary or desirable in the public interest."

IV

THE CUMMER SCALE OF RATES WAS INIMICAL TO THE PROPER INTERESTS OF INTERSTATE COMMERCE

This court held in the first case (282 U. S. 210):

> "It was not the fact that the rate was affirmatively prescribed by the State, but that it was maintained as an intrastate rate and *as such was inimical to the proper interests of interstate commerce* that led the Congress to give to the Interstate Commerce Commission express authority to take cognizance of that rate and to prescribe the intrastate rate that should be charged thereafter in order to remove the undue discrimination." (Italics added).

The Florida Railroad Commissioners, as we have seen, appeared throughout this litigation in an effort to maintain the Cummer scale of rates.

The intrastate rates in Florida on logs (Cummer scale) as we have seen, were found by the Commission not only to be "less than compensatory," but also far less than other rates on similar products, from one-half to one-third of the rates found to be reasonable by the Interstate Commerce Commission for interstate traffic on the same commodity between Florida and Georgia and also throughout the Southern territory.

The Commission also found that these intrastate rates did not bear their fair proportionate share of operation and maintenance alone. (186 I. C. C. 187).

V

HOW THE INTRASTATE RATES MANIFEST THE QUALITY OF BEING INIMICAL TO THE INTERSTATE RATES

The court has not laid down limitations as to the manner in which intrastate rates may be inimical to interstate rates so far as these writers know. When this case was first before this court, the court said (282 U. S. 210):

> "The Commission has no general authority to regulate intrastate rates and the mere existence of a disparity between particular rates on intrastate and interstate traffic does not warrant the Commission in prescribing intrastate rates."

The court has never held that disparity between rates can not be so great that the rates through that disparity or otherwise will not work unjust discrimination against interstate commerce.

The court in the Wisconsin case has made utterances very much to the contrary (257 U. S. 586) where the court, after reviewing the circumstances under which §§13(4) and 15 (a) of the Interstate Commerce Act were enacted, and also referring to the fact that the purpose of Congress was to maintain an adequate national railway system, said:

> "The effective operation of the Act will reasonably and justly require that intrastate traffic should pay a fair proportionate share of the cost of maintaining an adequate railway system."

And then says:

"If that purpose is interfered with by a disparity of intrastate rates, the Commission is authorized to end the disparity by directly removing it, because it is plainly an 'undue, unreasonable, or unjust discrimination against interstate or foreign commerce,' within the ordinary meaning of those words." (257 U. S. 586).

An undue disparity between intrastate and interstate rates is worked for that it increases the proportion which the interstate traffic must bear to maintain the transportation system while it decreases the proportion which intrastate traffic bears for that purpose.

The court in the Wisconsin case (257 U. S. 589) said:

"Congress in its control of its interstate commerce system is seeking in the Transportation Act to make the system adequate to the needs of the country by securing for it a reasonable compensatory return for all the work it does. The States are seeking to use that same system for intrastate traffic. That entails large duties and expenditures on the interstate commerce system which may burden it unless compensation is received for the intrastate business reasonably proportionate to that for the interstate business. Congress as the dominant controller of interstate commerce may, therefore, restrain undue limitation of the earning power of the interstate commerce system in doing state work. The affirmative power of Congress in developing interstate commerce agencies is clear."

This court has said nothing to the contrary. On the other hand when this case was first before it the court (282 U. S. 211) said:

"As intrastate rates and the income from them must play a most important part in maintaining such a system,

the effective operation of the Act requires that intrastate traffic should pay 'a fair proportionate share' of the cost of maintenance. And if there is interference with the accomplishment of the purpose of the Congress because of a disparity of intrastate rates as compared with interstate rates, the Commission is authorized to end the disparity by directly removing it."

The findings of the Commission in its second report in this case have amply covered all the requirements of the decision of this court.

VI

THE FLORIDA LOG TRAFFIC UNDER THE CUMMER SCALE DID NOT BEAR ITS FAIR PROPORTIONATE SHARE OF THE COST OF MAINTENANCE

The Commission has specifically so found. (186 I. C. C. 187). We again quote the Commission's finding on this point:

> "In determining whether the Cummer scale results in unjust discrimination against interstate commerce the fundamental question, in the language of the Supreme Court in *Wisconsin R. R. Comm. v. C. B. & Q. R. R. Co.*, 257 U. S. 563, 568, and in *Florida v. United States*, 282 U. S. 194, 211, is whether the traffic moving on that scale pays 'a fair proportionate share' of the cost of maintaining defendant, or whether it causes an undue revenue burden upon the interstate traffic of defendant. The record shows the low earnings of defendant; the low earnings on its log traffic as compared with its earnings on other low-grade commodities; the much lower earnings on its Florida log traffic than on its interstate log traffic; and the much lower level of the Cummer scale than of other scales applicable interstate and intrastate throughout the South. These facts and the cost evidence clearly warrant the conclusion that the traffic moving under the Cummer scales does not pay its 'fair proportionate share' of operation and maintenance alone."

This finding was made after a detailed accounting which showed that the income of the Atlantic Coast Line Railroad Company from operations was extremely small; that it had been declining year by year. The accounting evidence showed a statement of the earnings, expenses and resulting income through the year 1930 when the return on investment from

operations of the road was only 2.37%, and that was before interest and other charges which are not classified as operating expenses had been taken into account. (Taxes and uncollected revenue were taken into account).

The Commission found that the gross receipts from the log transportation in Florida were "insufficient under all the circumstances and conditions to cover the full cost of the service." (186 I. C. C. 187).

The Commission made that finding after its own ascertainment of the cost had been made, of which it said:

> "The above figures undoubtedly understate the cost of transporting logs in Florida for several reasons." (186 I. C. C. 187).

The Commission's findings no longer stop with a bare determination that the Cummer scale of rates is unjustly discriminatory against interstate commerce. They find that (186 I. C. C. 189) and they make the basic findings to sustain that finding.

VII

THE DISCRIMINATION IN THIS CASE WAS FOUND BY THE COMMISSION TO HAVE BEEN SUBSTANTIAL

An accurate account was taken of the movements of logs intrastate in Florida over the Atlantic Coast Line from February 8, 1929 to January 31, 1931 (Exhibit 61, R-1101). The amount of revenue which would have been received had the Cummer scale of rates been applied during that period was ascertained and aggregated and the revenues which were actually received under the rates fixed by the Interstate Commerce Commission as the minimum rates necessary to remove the unjust discrimination against interstate commerce, were also ascertained and aggregated. The Commission dealt with exhibit 61 at 186 I. C. 167, and found that the total movement of such logs during that period was, as we have shown, 18,602 carloads; that the gross revenues from this movement were $571,508.94; that if the Cummer scale had been applicable the movement would have produced gross freight revenues of only $281,225.75, or $290,283.19 less than those actually collected.

In other words, the disparity between the Cummer scale of rates and the rates prescribed by the Interstate Commission for intrastate application on logs in Florida was more than 100%.

We must recollect that the scale of rates prescribed by the Commission for application on logs in Florida and which was in effect during that period, was the same scale of rates as the interstate scales which applied on all logs moving interstate during the same period in the entire southern territory.

The Commission found and there was evidence to support the finding, as we have heretofore pointed out, that the cost of doing transportation business over the Atlantic Coast Line was greater in Florda than on any other part of the System.

It then found that if the Cummer-scale of rates had been applicable for the movement of logs over the entire System of the Atlantic Coast Line during the years 1929 and 1930, the result would have been a loss of $657,381.21. (186 I. C. C. 168); that the movement of logs over six feet in length, during 1929 and 1930, consisted of 3,450,764,300 pounds of which the interstate movement was 456,134,800 pounds and the intrastate 2,994,630,500; that the revenues from all of those logs amounted to $1,483,424.87 of which the revenue on interstate movements amounted to $266,654.12 and on intrastate to $1,216,770.75. As we have seen the interstate movement was on a uniform scale of rates; that is, on the same scale of rates which the Commission ordered into effect in Florida in its order of August 2, 1928, and which was also in effect in Alabama and in Virginia and for a part of the time in South Carolina. It was ordered into effect in Georgia but the order was cancelled because of the Florida situation.

The figures as to the loss of revenue were ascertained after the mills at Milldale, Ortega and East Port (the first two were operated by the Cummer Cypress Co. and the last one by Brooks-Scanlon Corporation) had stopped shipping logs. They ceased to ship logs either immediately with the going into effect of the order of the Commission of August 2, 1928 to-wit February 8, 1929 or within a few days thereafter. If those companies had continued to ship logs—the transporta-

tion of the logs to them was in train-load lots—the difference in the amount of revenue would have been much greater.

It is not as though we were dealing alone with the present, for the quantity of timber still standing in Florida is, as we have stated, tremendous. The four large mills owned at the time of the Commission's second report (July 5, 1932) 2,800,000,000 feet and the entire amount of standing timber in Florida amounted to about 22,000,000,000 feet. If the Cummer scale should continue in effect, the result would be to practically destroy the Atlantic Coast Line Railroad Company.

Certainly there was substantial unjust discrimination against interstate commerce worked by the Cummer scale of rates.

From another part of the brief, under the discussion of exhibit 61 (p. 44 of this brief) we have seen that for the period beginning February 8, 1929 and ending January 31, 1931, the gross revenues received from the Florida log shipments by the Atlantic Coast Line were $571,508.94; and if those logs had been transported under the Cummer scale of rates, the revenues would have been $281,225.75, or $290,283.19 less than what they were and what the Commission determined to be reasonable.

We then turn to page 102 of appellants' brief and find that for the year 1926, which was the year in which this proceeding was started, four of the lumber companies paid for their shipments of logs intrastate in Florida over the Atlantic Coast Line, under the Cummer scale of rates, $652,311.87. From R-766 we may see that in that year the Brooks-Scanlon

Corporation alone moved 15,889 cars of logs and for the period 1926-1930 the same company shipped 163,245 cars. The very large shipments of Cummer Cypress Company are shown at R-731. At R-744 we may find the large shipments of Putnam Lumber Company and at R-779 we may find from the evidence of Mr. C. R. MacPherson that the Wilson Cypress Company shipped 4,333 cars in 1926; 4,754 cars in 1927; 5,531 cars in 1928; 2,140 cars in 1929 and 5,142 cars in 1930 or a total of 21,800 cars with total freight revenues of $562,295.38.

The court below held:

> "We do not understand that the revenue, either gross or net, produced by the State rates must be exactly established, but only that the operation of those rates and their effect upon the carrier must be investigated and found. It was here established that the State rates produced a loss, and were a drain on the carrier. It might have been desirable to show the extent of the loss, but if that be impracticable, and if it appear that the loss will be in the future substantial and the carrier is not in position to absorb it without detriment to his service and support as an interstate carrier, a sufficient case is made to find an unjust discrimination against interstate commerce, and to require its correct." (4 Fed. Supp. 477, 480; R-616).

VIII

THE EFFECT OF THE DECREASE IN SHIPMENTS

There is no doubt but that the shipment of logs in Florida decreased; that a percentage of the decrease was due to the increase in rates; another percentage was due to the general business depression; and another percentage was due to the economic propriety of the change from the standpoint of the shipper and of the railroad.

The Commission makes no finding as to what percentage is to be attributed to each of the above causes of decline in log traffic, but it does find (190 I. C. C. 600) that:

> "Logs in single carloads are now moving by rail over defendant's lines throughout Florida in substantially the same volume as at the time of the previous hearing and for the six months prior thereto, and the movement has not decreased to as great an extent as the outbound movement of lumber from Florida."

The gross revenues to the Atlantic Coast Line Railroad from the intrastate log traffic in Florida are not, at the present time, so great as they were prior to the Commission's order. This decline was already under way for one of the large mills had moved from tidewater to the timber or to the near vicinity of the timber. The record shows, as we have pointed out that the evidence of the complainants shows that it was not economical to operate mills at tidewater even under the Cummer scale on the long hauls being made. The shortest haul on trainload movements was 119 miles—Hines to Palatka; and the hauls to the mills in the vicinity of Jacksonville (Milldale, Ortega and Eastport) were about 169

miles. The only advantage of the mills being located at tidewater was that they might have the ocean-going rates on the outbound products but on shipments which moved inland and westward, they did not get ocean-going rates.

Under the findings of the Commission, supported by the evidence, each pound of logs hauled intrastate in Florida over the Atlantic Coast Line under the Cummer scale caused a loss of income (the word "income" is here used in contradistinction to "revenue," revenue meaning the gross earnings from operations, and "income" meaning those gross earnings less the expenses incurred in making them.) The result of this was that each carload of logs transported by the Atlantic Coast Line under the Cummer scale worked confiscation which had to be made up out of its other sources of revenue. The Commission found that this traffic, in the great quantities described, worked and for the future would work unjust discrimination against interstate commerce.

The effect of the finding by the Commission was that the Cummer scale of rates maintained by the State of Florida for intrastate transportation of logs over the Atlantic Coast Line up to 170 miles was "inimical to the proper interests of interstate commerce." (282 U..S. 210).

IX

THE EFFECT WHICH IS TO BE GIVEN TO THE FINDINGS OF THE INTERSTATE COMMERCE COMMISSION

Over and over again it has been held by this court that the findings of fact by the Interstate Commerce Commission will not be disturbed by the courts if supported by evidence.

See *Virginian Rwy. v. United States*, 272 U. S. 658, where the court stated the rule as follows:

> "Whether a rate is unjustly discriminatory is a question on which the finding of the Interstate Commerce Commission supported by substantial evidence is conclusive, unless there has been some irregularity in the proceeding or some error in the application of rules of law."

In the same case the court at page 663 held:

> "To consider the weight of the evidence before the Commission, the soundness of the reasoning by which its conclusions were reached, or whether the findings are consistent with those made by it in other cases, is beyond our province."

See also:

I. C. C. v. D. L. & W. R. R., 220 U. S. 235;

Los Angeles Switching case, 234 U. S. 294, 311;

Western Paper Makers' Chemical Co. v. United States, 271 U. S. 268, 271;

Skinner & Eddy Corp. v. U. S. 249 U. S. 557, 562;

New England Divisions case, 261 U. S. 184, 204;

Tagg Bros. & Moorhead v. U. S. 280 U. S. 420.

Notwithstanding this often announced principle of law, a large part of our opponents' brief is taken up in undertaking to uphold their theories of accounting against the ascertainments of the Interstate Commission, all of which, we respectfully submit, are entirely out of order.

X

(A) CLAIM OF STATE OF FLORIDA THAT IT IS ENTITLED TO A DE NOVO INVESTIGATION UNDER THE PROCESSES OF THE COURT

The basis of this claim is stated to be the Tenth Amendment to the Constitution of the United States, which is as follows:

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

The power to regulate commerce with foreign nations, among the several states and with the Indian tribes was completely delegated to the United States Government. In its sphere, it is supreme; it acknowledges no superior and that includes the States. Along with the Constitutional power to regulate interstate commerce is the general power in Congress to make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by the Constitution in the Government of the United States or in any department or office thereof. Article I, §8, sub §17.

From the beginning this court has declared that these constitutional grants gave to Congress the power to regulate such internal commerce as may be necessary to give full force and effect to the essential provisions of the Constitution.

In this case when here before, the court held (282 U. S. at 210) that it was not necessary to first go to the State gov-

ernment to ask that they sit in judgment on the issue of the lawfulness of the intrastate rates. That would be to impose a limitation not required by the terms of the statute and repugnant to the grant of authority.

The making of a rate for future application is a legislative process. *Great Northern Rwy. v. Merchants Elevator Co.*, 259 U. S. 285, 291.

The United States Government having the legislative power over interstate commerce and over that intrastate commerce which discriminates against interstate commerce has the right to say in what manner that power shall be exercised. It has created the Interstate Commerce Commission to pass upon that question. It has given the State regulatory bodies having jurisdiction over these subjects, power to sit with its Commission to determine the relation between the state and interstate rates. The Florida Commission has not exercised that power. It has preferred to take the position of an adversary litigant and it has maintained that position from the beginning, and is now maintaining it. The Congress has given to the Commission created by it the power to regulate internal commerce within a State in so far as that is essential to prevent discrimination against interstate commerce.

> "When, however, the State in dealing with its internal commerce undertakes to regulate instrumentalities which are also used in interstate commerce, its action is necessarily subject to the exercise by Congress of its authority to control such instrumentalities so far as may be necessary for the purpose of enabling it to discharge its constitutional function."
>
> *The Minnesota Rate cases*, 230 U. S. at 411.

In dealing with the relation of the intrastate and interstate rates, it is the Government, and not the State, which exercises the supreme authority. *Houston and Texas Ry. v. United States,* (*Shreveport case*) 234 U. S. 342.

> "Where matters falling within the state power, as above described, are also by reason of their relation to interstate commerce within the reach of the Federal power, Congress must be the judge of the necessity of Federal action; until Congress does act, the States may act.
>
> "The paramount authority of Congress enables it to intervene at its discretion for the complete and effective government of that which has been committed to its care, and, for this purpose and to this extent, in response to a conviction of national need, Congress may displace local laws by substituting laws of its own." *Minnesota Rate cases,* 230 U. S. 353.

As to those intrastate matters which affect interstate commerce, the States "are subject to its (Congress') authority," etc. *Crowell v. Benson,* 285 U. S. at 50.

The State of Florida derived no power from the Constitution of the United States to enforce intrastate rates for a transportation system used in both interstate and intrastate commerce which discriminate against interstate commerce.

The claim of our opponents is based more immediately upon the case of *Crowell v. Benson,* 285 U. S. 22, which is not a commerce case at all, but concerns the maritime jurisdiction.

The court has recognized that in certain cases the owner of property devoted to a public use who claims his property is

being taken without due process of law under improper rate structures, is entitled to have the issue submitted to a judicial tribunal upon its own independent judgment as to both facts and law. Such cases are referred to in *Crowell v. Benson* at page 60 of the opinion and include *Ohio Valley Water Co. v. Ben Avon Borough*, 253 U. S. 287; *Prendergast v. New York Telephone Co.*, 262 U. S. 43, 50; *Tagg Bros. & Moorhead v. United States*, 280 U. S. 420, 443, and *Phillips v. Commissioner*, 283 U. S. 589, 600.

At page 50 of the opinion, the court states in *Crowell v. Benson*:

> "As to determinations of fact, the distinction is at once apparent between cases of private right and those which arise between the Government and persons subject to its authority in connection with the performance of the constitutional functions of the executive or legislative departments."

A State in the regulation of its commerce, in so far as that commerce interferes with the regulation of interstate commerce, is subject to the authority of the United States Government.

The court in the Benson case divided private rights and these public matters into two classes which it called "categories," and stated that the case then at bar was concerned with the right of Benson to recover under the Longshoremen's and Harbor Workmen's Compensation Act of March 4, 1927 and does not fall within the category concerning public rights;

> "but is one of private right, that is, of the liability of one individual to another under the law as defined." (285 U. S. 51).

It had previously held that:

> "There are matters involving public rights, which may be presented in such form that the judicial power is capable of acting on them, and which are susceptible of judicial determination, but which Congress may or may not bring within the cognizance of the courts of the United States, as it may deem proper."

The court cites to support this *Murray's Lessee v. Hoboken Land and Improvement Co.*, 18 Howard, 272, 284.

The court appends a note numbered 13 which cites a large number of cases, including *Virginian Rwy. Co. v. United States*, 272 U. S. 658, and a number of other familiar cases.

The case of *Crowell v. Benson* falls into that category which concerned private rights. The case at bar falls into that category which concerns public rights. Congress has provided means for the determination by the States and others at interest as to whether that right is invaded by its legislative action. That method includes the taking of individual hearings before the Interstate Commission, and a trial before a court of competent jurisdiction.

In the case at bar the court did not reach its opinion only on the theory that the decision of the Interstate Commerce Commission was supported by evidence; but it has given to the complainants, including the State of Florida, the benefit of a *de novo* hearing on the record presented before the Interstate Commerce Commission. It has determined that the judgment of the Commission is such as it, the court would itself have made.

(B) THE CLAIM OF THE APPELLANTS OTHER THAN THE STATE OF FLORIDA THAT THEY WERE ENTITLED TO A DE NOVO HEARING ON THE RECORD

Our first answer to this is that they had a *de novo* hearing on the record, as will be seen from the findings of fact and conclusions of law of the court below, to which we have already referred.

Our next answer is that what we have said in reference to the somewhat similar claim of the State of Florida applies to the corporate appellants.

They claim the violation of no Constitutional right.

The many decisions which we have cited as to the conclusive effect which the court gives to findings of the Interstate Commerce Commission dealing with the claims of shippers that rates are unjust or unreasonable apply here. Shippers have no constitutional right to service from a public service corporation, including railroads, at specified rates. They have the right to require the service of railroads at only rates which are fixed by the railroad or by public authority having jurisdiction thereover. *United States Light & Heat Corp. v. Niagara Falls Gas and Elec. Light Co.*, 47 Fed. (2d) 567, certiorari denied, 283 U. S. 864.

XI

DISCUSSION OF THE THIRD REPORT OF THE INTERSTATE COMMERCE COMMISSION

(*Georgia Public Service Commission v. Atlantic Coast Line Rd. Co.*, 190 I. C. C. 588, decided January 9, 1933).

This hearing very largely turned on the comparison of rates. That is, the comparison of rates made on the per-car basis without regard to weight, with other rates. As we have pointed out the newly reduced rates introduced at the third hearing before the Commission, did not supersede other rates established by the same railroads between the same points. They were established at relatively few points on each railroad; they were not system-wide rates on any railroad. They were put into experimental effect to meet truck and rail competition, all of which we have shown.

In determining the issue of the reasonableness of rates the Commission has the right

> "to compare the rates assailed with other rates *which in its judgment* formed a proper basis of comparison."

Northern Pac. Ry. Co. v. United States, 60 Fed. (2d) 302, 308. (This was a three-judge case, Judges Sanborn, Cant and Nordbye presiding). The court cited *I. C. C. v. L. & N. R. R. Co.*, 227 U. S. 88, 98. The court meant that the very fact of determining that rates used in comparison are proper rates for that purpose is a duty of the Commission and requires the exercise of the Commission's skill and judgment. Rates

which are forced by competition and by circumstances beyond the control of the carrier may be so low as to destroy their value for the purposes of comparison. The Northern Pacific case above referred to cites and quotes from *Louisville & Nashville Rd. Co. v. United States,* 238 U. S. 1, 12, as follows:

> "The same is true of determining, by comparison, the reasonableness of freight charges. Until some standard is adopted they may prove nothing . . . even where the two hauls are over the same mileage. For the rate attacked may tend to show that the others are too low—while they in turn might be relied on to prove the first is too high. Both may be unreasonably high, or too low, *because compelled by conditions over which the carrier had no control. Water competition, rail competition, and competition of markets, enter so largely into the establishment of rates that mere distance is not necessarily a determining factor;* indeed, the statute itself recognizes that there may be circumstances under which it is lawful to charge less for a long haul than for a short haul over the same road. But while all this be true, it is, nevertheless, a fact that a comparison of rates between two points on the same road, or with the charges on other roads, may furnish evidence of probative value." (Italics added).

In the case at bar the interstate rates were established and were not under attack. They might very well have been accepted by the Commission as the measure of reasonableness of the intrastate rates for the transportation of logs in Florida over the Coast Line.

CONCLUSION

The Interstate Commerce Commission, as we have seen, had three lengthy hearings on this subject, and three times it has made findings thereon.

The Interstate Commission has time and again, on the motions of complainants, refused to reopen this case.

After these hearings and after considering every rate structure submitted to them or mentioned in appellants' briefs, and after considering the record of pleadings and evidence, which should be described as stupendous, the Commission has determined that the rates under the Cummer scale did not bear their fair proportionate share of the cost of maintaining the transportation system used in interstate and intrastate commerce; and that they unjustly discriminated against interstate commerce. The District Court has upheld the Commission's findings.

The effect of the Cummer scale of rates has been to hold to Florida a commerce in logs which, after the cutting of a great many years, is still estimated at about twenty-two billion feet of standing timber, with a reproduction power of four hundred feet to the acre per year.

The Cummer scale of rates was the lowest scale in existence. As compared with rates on other lines in Florida such as the Seaboard Air Line, Florida East Coast and Southern Railway (Georgia, Southern & Florida Ry. Co.), they represented much less than the charges of either of those roads for the same service.

If the Cummer scale of rates should be applied to the transportation of even a fair part of the vast amount of logs proximate to the Atlantic Coast Line Railroad in Florida, the difference between the revenues which they would produce and those which would be produced from such transportation under a normal scale of rates would be stupendous, amounting to a great many millions of dollars.

If the rates under the Cummer scale are restored, long hauls under them may be again expected. The appellant, F. S. Buffum Company, began the operation of its mills at Jacksonville during the period when the rates were under investigation.

Every finding of the Interstate Commission is amply supported by the evidence. Any claim to the contrary evaporates under the slightest examination of the facts.

We respectfully submit, therefore, that the decree of the District Court appealed from, should be affirmed.

Respectfully submitted,

Carl H. Davis

W. E. Kay

Robert C. Alston

Attorneys for Atlantic Coast Line Railroad Company.

February 5, 1934.

APPENDIX I-a

Exhibit No. 87
(corrected)
Witness: Geo. W. Lamb
I. C. C. Docket 18361.

ATLANTIC COAST LINE RAILROAD COMPANY

Estimated Cost of Handling Logs in Florida, Based on "Out of Pocket" Expenses Actually Assigned to the Third Division of the Atlantic Coast Line Railroad Company Operating Entirely Within the State of Florida.

BASED ON COST PER LOADED AND EMPTY CAR MILE

Average Haul	"A"		"B"	So-called Cummer Scale
1. Miles		81.36		
2. Average Revenue per Car				$15.12
3. Empty Haul—Miles		81.36		
4. Total Car Miles—1 plus 3		162.72		
5. Out of pocket expenses per loaded and empty car mile			2.95176¢	
6. Out of pocket expenses per loaded and empty car mile (100%)	11.388314¢a		15.486186¢b	
7. Operating Costs—4x6	$18.53		$25.20	
8. Income Taxes—3.00985% of 2—7#	x		x	
9. Florida Taxes—15.3950% of 7#	2.85		3.88	
10. Operating Expenses—Taxes—7 plus 8 plus 9	21.38		29.08	
11. 5¾% Return on Investment—7x32.97536%	6.11		8.31	
12. Total Cost including Return on Invest.	27.49		37.39	

#See Exhibit No. .....

Note: a Item 5 "A" equals 25.9192% of Total Freight Haulage Expenses only.

b Item 5 "B" equals 19.0606% of Total Freight Expenses. Raised to 100% on line 6, "A" and "B" respectively.

APPENDIX I-b

Exhibit No. 88
(corrected)
Witness: Geo. W. Lamb
I. C. C. Docket 18364

ATLANTIC COAST LINE RAILROAD COMPANY

Estimated Cost of Handling Logs in Florida, Based on "Out of Pocket" Expenses Actually Assigned to the Third Division of the Atlantic Coast Line Railroad Company Operating Entirely Within the State of Florida.

BASED ON COST PER GROSS TON-MILE

From: Perry to Eastport	"A"	"B"	So-called Cummer Scale
1. Miles	169.00		
2. Average Revenue per Car			$22.10
3. Average Billing Weight—pounds	59,743		
3. Average Tare Weight—pounds	33,000		
5. Average Tare Weight — Empty Haul—lbs.	33,000		
6. Gross Weight—pounds	125,743		
7. Gross Tons	62.871		
8. Gross ton miles—7x1	10,625		
9. Out of pocket expenses per gross ton mi.		.0882888¢	
10. Out of pocket expenses per gross ton mi. (100%)	.3406309¢a	.4632005¢b	
11. Operating Costs—8x10	$36.19	$49.22	
12. Income Taxes—3.00985% of 2—11#	x	x	
13. Florida Taxes—15.3950% of 11#	5.57	7.58	
14. Operating expenses—Taxes—11+12+13	41.76	56.80	
15. 5¾% Return on Investment—11x32.97536%	11.93	16.23	
16. Total Cost including Return on Investment	53.69	73.03	

#See Exhibit No.

Note: a Item 9 "A" equals 25.9192% of Total Freight Haulage Expenses only.

b Item 9 "B" equals 19.0606% of Total Freight Expenses. Raised to 100% on line 10, "A" and "B" respectively.

APPENDIX I-c

Exhibit No. 39
(corrected)
Witness: Geo. W. Lamb
I. C. C. Docket 18364.

ATLANTIC COAST LINE RAILROAD COMPANY

Estimated Cost of Handling Logs in Florida, Based on "Out o Pocket" Expenses Actually Assigned to the Third Division of the Atlantic Coast Line Railroad Company Operating Entirely Within the State of Florida.

BASED ON COST PER GROSS TON-MILE

From: Carbur to Eastport	"A"	"B"	So-called Cummer Scale
1. Miles	152.00		
2. Average Revenue per Car			$20.30
3. Average Billing Weight — pounds	59,717		
4. Average Tare Weight — pounds	33,000		
5. Average Tare Weight — empty haul lbs.	33,000		
6. Gross Weight — pounds	125.717		
7. Gross Tons	62.858		
8. Gross ton miles —7x1	9,554		
9. Out of pocket expenses per gross ton mi.		.08832888¢	
10. Out of pocket expenses per gross ton mi. (100%)	.3406309¢a	.4632005¢b	
11. Operating Costs—8x10	$32.54	$44.25	
12. Income Taxes— 3.00983% of 2—11#	x	x	
13. Florida Taxes— 15.3950% of 11#	5.01	6.81	
14. Operating expenses— Taxes—11+12+13	37.55	51.06	
15. 5¾% Return on Investment 11x32.97536%	10.73	14.59	
16. Total cost including Return on Investment	48.28	65.65	

#See Exhibit No. _____

Note: a Item 9 "A" equals 25.9192% of Total Freight Haulage Expenses only.

b Item 9 "B" equals 19.0606% of Total Freight Expenses. Raised to 100% on line 10, "A" and "B" respectively.

APPENDIX I-d

Exhibit No. 90
(corrected)
Witness: Geo. W. Lamb
I. C. C. Docket 18364

ATLANTIC COAST LINE RAILROAD COMPANY

Estimated Cost of Handling Logs in Florida, Based on "Out of Pocket" Expenses Actually Assigned to the Third Division of the Atlantic Coast Line Railroad Company Operating Entirely Within the State of Florida.

BASED ON COST PER GROSS TON-MILE

From: Homosassa to Perry	"A"	"B"	So-called Cummer Scale
1. Miles	130.00		
2. Average Revenue per Car			$20.62
3. Average Billing Weight—pounds	64,179		
4. Average Tare Weight—pounds	33,000		
5. Average Tare Weight Empty haul—lbs.	33,000		
6. Gross Weight—pounds	130,179		
7. Gross Tons	65.089		
8. Gross ton miles—7x1	8,462		
9. Out of pocket expenses per gross ton mi.		.0882888¢	
10. Out of pocket expenses per gross ton mi. (100%)	.3406309¢a	.4632005¢b	
11. Operating Costs—8x10	$28.82	$39.20	
12. Income Taxes—3.00985% of 2—11#	x	x	
13. Florida Taxes—15.3950% of 11#	4.44	6.03	
14. Operating expenses—Taxes—11+12+13	33.26	45.23	
15. 5¾% Return on Investment—11x32.97536%	9.50	12.93	
16. Total Cost including Return on Investment	42.76	58.16	

#See Exhibit No. .....

Note: a Item 9 "A" equals 25.9192% of Total Freight Haulage Expenses only.
b Item 9 "B" equals 19.0606% of Total Freight Expenses. Raised to 100% on line 10, "A" and "B" respectively.

APPENDIX I-e

Exhibit No. 91
(corrected)
Witness: Geo. W. Lamb
I. C. C. Docket 18364

ATLANTIC COAST LINE RAILROAD COMPANY

Estimated Cost of Handling Logs in Florida, Based on "Out of Pocket" Expenses Actually Assigned to the Third Division of the Atlantic Coast Line Railroad Company Operating Entirely Within the State of Florida.

BASED ON COST PER GROSS TON-MILE

From: Hines to Palatka	"A"	"B"	So-called Cummer Scale
1. Miles	119.00		
2. Average Revenue per Car			$19.96
3. Average Billing Weight—pounds	62,325		
4. Average Tare Weight — pounds	33,000		
5. Average Tare Weight — Empty haul—lbs.	33,000		
6. Gross Weight—pounds	128,325		
7. Gross tons	64.162		
8. Gross ton miles—7x1	7,635		
9. Out of pocket expenses per gross ton mi.		.0882888¢	
10. Out of pocket expenses per gross ton mi. (100%)	.3406309¢a	.4632005¢b	
11. Operating Costs—8x10	$26.01	$35.37	
12. Income Taxes—3.00985% of 2—11#	x	x	
13. Florida Taxes—15.3950% of 11#	4.00	5.45	
14. Operating Expenses—Taxes—11+12+13	30.01	40.82	
15. 5¾% Return on Investment—11x32.97536%	8.58	11.66	
16. Total Cost including Return on Invest.	38.59	52.48	

#See Exhibit No.

Note: a Item 9 "A" equals 25.9192% of Total Freight Haulage Expenses only.

b Item 9 "B" equals 19.0606% of Total Freight Expenses. Raised to 100% on line 10, "A" and "B" respectively.

APPENDIX I-f

Exhibit No. 92
(corrected)
Witness: Geo. W. Lamb
I. C. C. Docket 18364

ATLANTIC COAST LINE RAILROAD COMPANY

Estimated Cost of Handling Logs in Florida, Based on "Out of Pocket" Expenses Actually Assigned to the Third Division of the Atlantic Coast Line Railroad Company Operating Entirely Within the State of Florida.

BASED ON COST PER GROSS TON-MILE

From: Astor to Groveland

	"A"	"B"	So-called Cummer Scale
1. Miles	99.00		
2. Average Revenue per Car			$13.78
3. Average Billing Weight—pounds	49,983		
4. Average Tare Weight — pounds	33,000		
5. Average Tare Weight — Empty haul—lbs.	33,000		
6. Gross Weight—pounds	115,983		
7. Gross Tons	57.991		
8. Gross ton miles—7x1	5,741		
9. Out of pocket expenses per gross ton mi.		.0882888¢	
10. Out of pocket expenses per gross ton mi. (100%)	.3406309¢a	.4632005¢b	
11. Operating Costs—8x10	$19.56	$26.59	
12. Income Taxes—3.00985% of 2—11#	x	x	
13. Florida Taxes—15.3950% of 11#	3.01	4.09	
14. Operating Expenses—Taxes—11+12+13	22.57	30.68	
15. 5¾% Return on Investment—11x32.97536%	6.45	8.77	
16. Total cost including Return on Investment	29.02	39.45	

#See Exhibit No.

Note: a Item 9 "A" equals 25.9192% of Total Freight Haulage Expenses only.

b Item 9 "B" equals 19.0606% of Total Freight Expenses. Raised to 100% on line 10, "A" and "B" respectively.

APPENDIX I-g

Exhibit No. 93
(corrected)
Witness: Geo. W. Lamb
I. C. C. Docket 18364

ATLANTIC COAST LINE RAILROAD COMPANY

Estimated Cost of Handling Logs in Florida, Based on "Out of Pocket" Expenses Actually Assigned to the Third Division of the Atlantic Coast Line Railroad Company Operating Entirely Within the State of Florida.

BASED ON COST PER GROSS TON-MILE

From Homosassa to Lacoochee	"A"	"B"	So-called Cummer Scale
1. Miles	68.00		
2. Average Revenue per Car			$12.44
3. Average Billing Weight—pounds	51,320		
4. Average Tare Weight—pounds	33,000		
5. Average Tare Weight—Empty haul—pounds	33,000		
6. Gross Weight—pounds	117,320		
7. Gross Tons	58.66		
8. Gross Ton Miles—7x1	3,989		
9. Out of pocket expenses per gross ton mi.		.0882888¢	
10. Out of pocket expenses per gross ton mi. (100%)	.3406309¢a	.4632005¢b	
11. Operating Costs—8x10	$13.59	$18.48	
12. Income Taxes—3.00985% of 2—11#	x	x	
13. Florida Taxes—15.3950% of 11#	2.09	2.84	
14. Operating Expenses—Taxes—11+12+13	15.68	21.32	
15. 5¾% Return on Investment—11x32.97536%	4.48	6.09	
16. Total Cost including Return on Investment	20.16	27.41	

#See Exhibit No. _____

Note: a Item 9 "A" equals 25.9192% of Total Freight Haulage Expenses only.

b Item 9 "B" equals 19.0606% of Total Freight Expenses. Raised to 100% on line 10 "A" and "B" respectively.

APPENDIX I-h

Exhibit No. 94
(corrected)
Witness: Geo. W. Lamb
I. C. C. Docket 18364

ATLANTIC COAST LINE RAILROAD COMPANY

Estimated Cost of Handling Logs in Florida, Based on "Out of Pocket" Expenses Actually Assigned to the Third Division of the Atlantic Coast Line Railroad Company Operating Entirely Within the State of Florida.

BASED ON COST PER GROSS TON-MILE

From: Homosassa to Otter Creek	"A"		"B"	So-called Cummer Scale
1. Miles		52.00		
2. Average Revenue per Car				$12.02
3. Average Billing Weight—pounds		56,053		
4. Average Tare Weight—pounds		33,000		
5. Average Tare Weight—Empty haul—pounds		33,000		
6. Gross Weight—pounds		122,053		
7. Gross Tons		61.027		
8. Gross ton miles—7x1		3,173		
9. Out of pocket expenses per gross ton mi.			.0882888¢	
10. Out of pocket expenses per gross ton mi. (100%)	.3406309¢a		.4632005¢b	
11. Operating Costs—8x10	$10.81		$14.70	
12. Income Taxes—3.00985% of 2—11#	x		x	
13. Florida Taxes—15.3950% of 11#	1.66		2.26	
14. Operating Expenses—Taxes—11+12+13	12.47		16.96	
15. 5¾% Return on Investment—11x32.97536%	3.56		4.85	
16. Total Cost including Return on Investment	16.03		21.81	

#See Exhibit No.

Note: a Item 9 "A" equals 25.9192% of Total Freight Haulage Expenses only.

b Item 9 "B" equals 19.0606% of Total Freight Expenses. Raised to 100% on line 10, "A" and "B" respectively.

APPENDIX I-i

Exhibit No. 95
(corrected)
I. C. C. Docket 18364
Witness: Geo. W. Lamb

ATLANTIC COAST LINE RAILROAD COMPANY

Estimated Cost of Handling Logs in Florida, Based on "Out of Pocket" Expenses Actually Assigned to the Third Division of the Atlantic Coast Line Railroad Company Operating Entirely Within the State of Florida.

BASED ON COST PER LOADED AND EMPTY CAR-MILE

From: Perry to Eastport.	"A"	"B"	So-called Cummer Scale
1. Miles	169.00		
2. Average revenue per car.			$22.10
3. Empty haul—miles	169		
4. Total haul—1+3	338		
5. Out of pocket expenses per loaded and empty car mile		2.95176¢	
6. Out of pocket expenses per loaded and empty car mile (100%)	11.3789¢a	15.4862¢b	
7. Operating costs—4x6	$38.46	$42.37	
8. Income taxes—3.00985% of 2—7#	x	x	
9. Florida taxes—15.3950%# of 7#	5.92	8.06	
10. Operating expenses—taxes—7+8+9	44.38	60.40	
11. 5¾% return on investment—7x32.97536%	12.68	17.26	
12. Total cost including return on investment	57.06	77.66	

#See Exhibit No.

Note: a Item 5 "A" equals 25.9405% of Total Freight Haulage Expenses only.
b Item 5 "B" equals 19.0606% of Total Freight Expenses. Raised to 100% on line 6, "A" and "B" respectively.

APPENDIX I-j

Exhibit No. 96
(corrected)
I. C. C. Docket 18364
Witness: Geo. W. Lamb

ATLANTIC COAST LINE RAILROAD COMPANY

Estimated Cost of Handling Logs in Florida, Based on "Out of Pocket" Expenses Actually Assigned to the Third Division of the Atlantic Coast Line Railroad Company Operating Entirely Within the State of Florida.

BASED ON COST PER LOADED AND EMPTY CAR-MILE

From: Carbur to Eastport.	"A"		"B"	So-called Cummer Scale
1. Miles		152.00		
2. Average revenue per car.				$20.30
3. Empty haul—miles		152.00		
4. Total car miles—1+3		304		
5. Out of pocket expenses per loaded and empty car mile			2.95176¢	
6. Out of pocket expenses per loaded and empty car mile (100%)	11.3789¢a		15.4862¢b	
7. Operating costs—4x6	$34.59		$47.08	
8. Income taxes—3.00985% of 2—7#	x		x	
9. Florida taxes—15.3950% of 7#	5.33		7.25	
10. Operating expenses—taxes—7+8+9	39.92		54.33	
11. 5¾% return on investment—7x32.97536%	11.41		15.52	
12. Total cost including return on investment	51.33		69.85	

#See Exhibit No._____

Note: a Item 5 "A" equals 25.9405% of Total Freight Haulage Expenses only.
b Item 5 "B" equals 19.0606% of Total Freight Expenses. Raised to 100% on line 6, "A" and "B" respectively.

APPENDIX I-m

Exhibit No. 99
(corrected)
I. C. C. Docket 18364
Witness: Geo. W. Lamb

ATLANTIC COAST LINE RAILROAD COMPANY

Estimated Cost of Handling Logs in Florida, Based on "Out of Pocket" Expenses Actually Assigned to the Third Division of the Atlantic Coast Line Railroad Company Operating Entirely Within the State of Florida.

BASED ON COST PER LOADED AND EMPTY CAR-MILE

From: Homosassa to Otter Creek.	"A"		"B"	So-called Cummer Scale
1. Miles		52.00		
2. Average revenue per car.				$12.02
3. Empty haul—miles		52.00		
4. Total car miles—1+3		104		
5. Out of pocket expenses per loaded and empty car mile			2.95176¢	
6. Out of pocket expenses per loaded and empty car mile (100%)	11.3789¢a		15.4862¢b	
7. Operating costs—4x6	$11.83		$16.11	
8. Income taxes—3.00985% of 2—7#	x		x	
9. Florida taxes—15.3950% of 7#	1.82		2.48	
10. Operating expenses—taxes—7+8+9	13.65		18.59	
11. 5¾% return on investment—7x32.97536%	3.90		5.31	
12. Total cost including return on investment	17.55		23.90	

#See Exhibit No.

Note: a Item 5 "A" equals 25.9405% of Total Freight Haulage Expenses only.
b Item 5 "B" equals 19.0606% of Total Freight Expenses. Raised to 100% on line 6, "A" and "B" respectively.

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No. 342

In the Supreme Court of the United States

OCTOBER TERM, 1933

STATE OF FLORIDA ET AL., APPELLANTS

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND ATLANTIC COAST LINE RAILROAD COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

FEBRUARY 1934.

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I. The order in question, etc.—Continued. Page

2. Upon rehearing the Commission made findings amply demonstrating the unremunerativeness of the intrastate rates, the revenue losses that had resulted and would result from their maintenance, and the substantial character of the burden upon and discrimination against interstate commerce. These findings fully meet the test laid down in *Florida v. United States*, 282 U.S. 194 36

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ARGUMENT—Continued.

I. The order in question, etc.—Continued.

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In the Supreme Court of the United States

OCTOBER TERM, 1933

No. 342

STATE OF FLORIDA ET AL., APPELLANTS

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION AND ATLANTIC COAST LINE RAILROAD COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

OPINIONS

The opinion of the specially-constituted District Court (R. 610), *State of Florida et al.* v. *United States et al.*, is reported at 4 F.Supp. 477. The reports of the Commission, (R. 27 and 361) entitled No. 18364, *Georgia Public Service Com.* v. *Atlantic Coast Line Railroad Company*, are published at 186 I.C.C. 157 and 190 I.C.C. 588.

Opinions relating to the validity of the Commission's first order in this proceeding, dated August

2, 1928, are *Florida* v. *United States*, 282 U.S. 194, 30 Fed. (2d) 116, 31 Fed. (2d) 580. The Commission's original report, also dated August 2, 1928, is published at 146 I.C.C. 717.

JURISDICTION

Appellants duly submitted their Rule 12 statement as to jurisdiction. Appellee Atlantic Coast Line Railroad Company thereafter submitted a statement opposing jurisdiction and a motion to dismiss the appeal or to affirm the decree of the court below. August 14, 1933, appellants filed a brief opposing the motion. October 9, 1933, this Court found probable jurisdiction and ordered that further consideration of the motion be postponed to the hearing on the merits.

QUESTIONS PRESENTED

After the decision of this Court in *Florida* v. *United States*, 282 U.S. 194, holding invalid the order of the Interstate Commerce Commission of August 2, 1928, insofar as it required increases in the Florida intrastate rates, on the ground that this part of the order was not supported by proper findings, the Commission reopened the case, held further hearings, and issued a new report and order, dated July 5, 1932. (R. 78–79.)

The main question presented is whether this order, directed solely against the Atlantic Coast Line Railroad Company, and requiring increases in the intrastate rates in question to the level of the

reasonable interstate rates, in order to remove unjust discrimination against interstate commerce resulting from the fact that the intrastate rates were so low that they cast an undue burden upon the revenues of the interstate carrier, was a valid exercise of the authority conferred upon the Commission by Section 13 (3) and (4) of the Interstate Commerce Act.

The principal subordinate questions are:

Whether the amendment of section 15a of the Interstate Commerce Act, made by Emergency Railroad Transportation Act, 1933, approved June 16, 1933, subsequently to the issuance of this order, has stricken down the Commission's power under section 13 (3) and (4) to remove unjust discrimination as against interstate commerce because of an undue burden upon the revenues of an interstate carrier resulting from unduly low intrastate rates.

Whether the Commission's order is adequately supported by findings, especially those relating to the past and present effect upon the revenues of the carrier resulting from the intrastate rates in question.

Whether, in view of the fact of temporary, experimental reductions in certain log rates elsewhere than in the Florida peninsula, by a number of southern carriers other than the Atlantic Coast Line, down to a basis as low as the Atlantic Coast Line's Florida intrastate (Cummer scale) rates in

question, in an effort to meet truck competition, it was beyond the Commission's power to order increases in the Coast Line's Cummer scale in Florida to a reasonable, nondiscriminatory level, notwithstanding the findings that the Cummer scale rates were noncompensatory, unremunerative, and below the cost of the service, and that their continued maintenance to meet what little truck competition could be met would greatly decrease the Coast Line's revenues and would not be warranted.

Whether the court below erred in denying a trial *de novo* to determine independently whether the intrastate rates in fact caused unjust discrimination against interstate commerce.

STATUTES INVOLVED

Pertinent statutory provisions are set forth in the Appendix.

STATEMENT

This is an appeal from a final decree of the court below refusing prayers in three bills to annul, set aside and enjoin the order entered July 5, 1932, by the Commission in a proceeding entitled No. 18364, *Georgia Public Service Commission* v. *Atlantic Coast Line Railroad Company*.

The proceeding was begun by complaint filed May 3, 1926, by the Georgia Public Service Commission, alleging that the Atlantic Coast Line's interstate log rates from Florida to Georgia were unreasonable and discriminatory, in violation of

sections 1, 2, and 3, and that its intrastate log rates in Florida were unduly preferential of intrastate shippers in Florida, unduly prejudicial to interstate shippers from Florida to Georgia, and unjustly discriminatory against interstate commerce, in violation of section 13 (3) and (4), of the Interstate Commerce Act.

The alleged violations of section 13 grew out of the maintenance by the Coast Line of a very low scale of intrastate log rates in Florida, known as the Cummer scale. This scale originated in a contract entered into many years ago between a railroad, later acquired by the Coast Line, and the Cummer Lumber Company, when both the railroad and the lumber company were controlled by the same interests. At first the scale applied only between the points specified in the contract and only upon trainload shipments of logs. Later it was made to apply on single carloads and between any two points on the Coast Line in Florida for distances of 170 miles and less. (Report, R. 32; see Appendix A of report, R. 68–71.) The Coast Line was the only railroad in Florida that maintained this low scale and even on that line the scale was inapplicable for distances greater than 170 miles. Beyond that distance its Florida intrastate log rates were on a much higher basis and were not alleged to be violative of section 13.

In its original report and order, dated August 2, 1928, 146 I.C.C. 717, the Commission found that

the interstate rates from northern Florida to Georgia for distances of 170 miles and less were unreasonable, and, in lieu thereof, prescribed and ordered slightly lower rates which it found to be reasonable. The Commission also found that the Cummer scale rates, which were approximately 50 percent lower than the rates found reasonable for interstate application for the same distances, resulted in undue preference of intrastate log shippers in Florida, in undue prejudice to interstate shippers of logs from Florida to Georgia, and in unjust discrimination against interstate commerce. The order required the removal of the undue preference, prejudice, and discrimination by increasing the Cummer scale rates throughout Florida to the level of the rates found reasonable for similar distances in interstate commerce.

In suits to enjoin the order to increase the intrastate rates the District Court sustained its validity, and the prescribed intrastate rates, as well as the prescribed interstate rates, were put into effect February 8, 1929. Upon appeal to this Court it was held that the order was not sustainable on the ground of undue prejudice against persons and localities in interstate commerce, because the evidence did not show such prejudice at all points on the Coast Line in Florida, nor could the order be sustained on the ground of unjust discrimination against interstate commerce caused by revenue losses from the intrastate rates because the Com-

mission failed to make findings respecting the past and future revenue effect of the existing and prescribed intrastate rates. The opinion rendered by the Chief Justice concluded "that the portion of the order of the Commission which is now under review, with respect to intrastate rates, is not supported by the findings of the Commission and this part of the order must be set aside. *Florida* v. *United States*, 282 U.S. 194, decided January 5, 1931. In so concluding, however, the Court stated, page 215, that

> If the facts as to the intrastate transportation of logs in Florida are such as to justify an order as to intrastate rates in order to end an unjust discrimination as against interstate commerce either as between persons and localities, or because of an undue burden upon the revenues of the carrier, the Interstate Commerce Commission is still at liberty, acting in accordance with the authority conferred by the statute, to make such determinations as the situation may require.

After the mandate of this Court and the issuance of the injunction, the Atlantic Coast Line was compelled by the Florida Commission to restore the Cummer scale (R. 1081, 1091), and that scale again became effective April 10, 1931. (R. 32.) The *interstate* rates prescribed in the order were not disturbed and those rates are still in effect, not only from northern Florida to Georgia but elsewhere on the system of the Atlantic Coast Line, as explained more fully hereinafter.

Shortly after the decision of this Court, the complainant and defendant in the Commission proceeding petitioned the Commission to reopen the case. (R. 1078, 1084.) These petitions were granted. (R. 1098.) After a further hearing, briefs, proposed report, exceptions, and oral argument, the Commission on July 5, 1932, issued its Report on Further Hearing, 186 I.C.C. 157 (R. 27–78), reviewing the evidence fully and stating its findings and conclusions.

As stated in the report, the principal issue upon rehearing was whether the Cummer scale caused unjust discrimination against interstate commerce (R. 32) and it is evident from the report as a whole that the unjust discrimination referred to was that growing out of revenue losses to the carrier from the maintenance of the low Cummer scale rates. As also stated in the report, "Upon rehearing, the Atlantic Coast Line though nominally the defendant was in the position of a petitioner under section 13 (3) and (4) of the Act seeking relief from what it contends are unduly low State rates." (R. 30.)

Summary of findings on rehearing

Based upon voluminous evidence comparing the Cummer scale rates with other rates on logs in the South and elsewhere, and with the rates on other low-grade commodities, many of which rates had been prescribed by the Commission as reasonable, with a showing of the revenues on both the per-car

and ton-mile bases, the Commission concluded and found that the Cummer scale rates were abnormally low, and affirmed the former finding that they were less than reasonably compensatory. (R. 27.) The Commission further found, from a mass of cost evidence, reviewed in considerable detail in the report (R. 51 to 61), that the Coast Line's revenue under the Cummer scale, amounting only to $15.12 per car, for transporting a carload of logs weighing 56,751 pounds for a distance of 81 miles, and transporting the empty car back, was "insufficient under all the circumstances and conditions to cover the full cost of the service." (R. 61.) It further found that the interstate rates which it had prescribed in the original report, which were and still are in effect, are reasonable rates (R. 66); that "transportation conditions in Florida are not such as to warrant a lower basis of rates on logs in that State than elsewhere on defendant's system," transportation conditions there being not more favorable but on the contrary "less favorable than on defendant's system outside of Florida." (R. 35–36, 66.) In considering the question of the relation of the Cummer scale rates to the defendant's income, the Commission observed that the rate of return on the defendant's investment in road and equipment declined from 6.50 percent in 1926 to 4.55 percent in 1929, and to 2.54 percent in 1930.[1]

[1] Later figures, given in *A. C. L. R. Co.* v. *Cape Fear Ry.*, 197 I.C.C. 397, decided November 14, 1933, are as follows: 1.57 percent in 1931, and .04 percent in 1932.

(R. 38) The Commission further found that the defendant's Florida log traffic is an important one, constituting 50 percent of its total log traffic, which in turn constitutes 7 percent of its entire traffic, and that the revenue from the Florida log traffic, therefore, has a substantial influence upon the defendant's total revenues (R. 38–39); that during the period from February 8, 1929, to January 31, 1931, when the increased intrastate log rates prescribed by the former order were in effect, and when depressed conditions prevailed, a total movement of 18,602 carloads of logs were transported under those rates, (R. 40, 44, 65) on which gross freight revenues of $571,508.94 were collected, whereas if the Cummer scale had applied this movement would have produced gross freight revenues of only $281,225.75, or $290,283.19 less than those actually collected (R. 40, 65); that vast stands of virgin timber remain in Florida (R. 46), much of which is tributary to the lines of the A. C. L. (R. 47), and that the record as a whole warranted the conclusion that there will be a large Florida intrastate movement of logs over defendant's lines in the future (R. 50); that the traffic moving at the Cummer scale rates does not pay its fair proportionate share of operation and maintenance alone (R. 64); that under normal economic conditions the volume of the Florida log movement in the future under the increased intrastate rates prescribed will probably average not less than 7,431 cars a year (R. 65);

that the continuance of the Cummer scale rates upon this volume of traffic, conservatively estimated as the minimum future volume, would cause the carrier a loss in revenue of at least $100,000 annually (R. 66); that the application of the Cummer scale placed a substantial burden upon the carrier's interstate revenues, (R. 66) and that, therefore, those rates "are, and for the future will be, unjustly discriminatory against interstate commerce" because unduly burdening the revenues of the carrier (R. 66), and that such discrimination could and should be removed by the establishment intrastate in Florida of the same rates as had been found reasonable for interstate application. (R. 66.)

In view of the above findings, the Commission deemed it unnecessary to make a finding in reference to undue prejudice against persons and localities in interstate commerce. Its report states that as a result of the earlier order the rates from northern Florida to Georgia were reduced and the rates within Florida were increased and both were on the same level from February 8, 1929, to April 10, 1931, but that notwithstanding this parity of rates, it appeared that there was no movement of logs from Florida to Georgia during that period, except possibly an occasional carload, and that whether an interstate movement from Florida to Georgia would develop after the interstate and intrastate rates

were again put on a parity and the rates situation finally settled, and it was then impossible to say. (R. 67.)

"Inasmuch as we find," the Commission said, "that the Cummer scale rates cause unjust discrimination against interstate commerce from a revenue standpoint and our order herein removes that discrimination by increasing those rates on defendant's lines throughout the State of Florida to the level of the interstate rates previously prescribed and now in effect, no finding in reference to undue prejudice against persons and localities in interstate commerce is necessary and we make no finding in that regard. Any such undue prejudice as now exists because of the disparity in the intrastate and interstate rates will be removed by compliance with the order which we here enter for the purpose of removing the unjust discrimination against interstate commerce." (R. 67.)

The order in question

The order of July 5, 1932, (R. 78–79) requires the Atlantic Coast Line to "cease and desist from practicing the unjust discrimination found in said report to exist in the relation of intrastate and interstate rates and to establish, put in force, and maintain rates for the transportation of logs over six feet in length[2] except walnut, cherry, and

[2] Logs shorter than 6 feet are known as "short logs" or "blocks" and take different rates. See Report, R. 34.

cedar,[3] in carloads, minimum weight 40,000 pounds, in intrastate commerce within and throughout the State of Florida for distances of 170 miles or less, which shall be the same as those set forth in Appendix F [R. 78] to the aforesaid report on further hearing."[4]

The order in question, being directed solely against the Atlantic Coast Line, and the intrastate rates prescribed being only for distances of 170 miles and less, the effect of its requirement is that the Atlantic Coast Line shall apply the prescribed intrastate rates upon shipments of logs between any two stations on its lines in Florida where the distance is not greater than 170 miles.

The requirement is made against the Coast Line only because it is the only railroad serving Florida which maintained an unduly low scale of intrastate rates. (R. 32, 612.). The Florida intrastate log rates of other railroads did not approach the low level of the Coast Line's Cummer scale. (R. 34.)

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[3] Walnut, cherry, and cedar logs, on account of their greater value, usually take higher rates than other kinds of logs. There appears to be no movement of walnut or cherry logs in Florida; hence this exception in the order is not important so far as such logs are concerned. (See Report, R. 47, note.) The Cummer scale did not apply on cedar logs.

[4] The Cummer scale is shown in Column 1 of Appendix B of report, R. 72A. The prescribed intrastate rates, which supplant the Cummer scale, are the same as those prescribed in the earlier order and are shown in Column 5 of that appendix for distances up to and including 170 miles. See text of report, R. 33.

Their log rates for all distances in Florida were either the Florida Commission Class P rates or rates that were only slightly lower, and they were not alleged or found to be unduly low, or discriminatory against interstate shippers or commerce.

The requirement of the order is limited to rates for distances of 170 miles and less because the Commission found that the Florida Commission Class P rates maintained by the Coast Line for distances greater than 170 miles "were only slightly less than the then prevailing interstate log rates for the same distances." (Report, R. 32.) Thus there was no substantial disparity as between interstate rates and Florida intrastate rates on logs for distances greater than 170 miles, not even on the Coast Line. The discrimination alleged and found grew out of the existence of the Coast Line's Cummer sale, and that only.

Proceedings in Court below on bills to enjoin order of July 5, 1932

Bills were filed in the District Court for the Northern District of Georgia (R. 1, 419 and 527) to set aside and enjoin the Commission's order of July 5, 1932. Hearing was had before the District Court of three judges on September 14, 1932, and the Court issued a temporary stay of the operation of the Commission's order for a period not exceeding 60 days. (R. 333.)

Second rehearing before Commission

Before a decision on the merits was rendered by the District Court, the appellants (petitioners below, who had actively participated in the Commission proceeding as interveners) petitioned the Commission for another hearing (R. 362), on the ground that a number of southern railroads had established reduced per-car rates on logs which were almost as low as the per-car charges under Cummer scale rates applicable on the Atlantic Coast Line in Florida. The Commission granted the petition for rehearing, at the same time suspending the operation of the order of July 5, 1932. (R. 362–363.) Further hearing was held in November, 1932, and considerable additional testimony was taken. (R. 917–1077.) On January 9, 1933, the Commission issued a report upon the rehearing, 190 I.C.C. 588, (R. 361–376) in which it found that the low per-car rates on logs had been voluntarily established by certain carriers in the south, other than the Atlantic Coast Line, primarily as an experiment to meet truck competition, whereas in Florida truck competition existed only for very short distances of 25 miles and less in the movement to small mills; that the establishment of truck-competitive rates by the Atlantic Coast Line in Florida for distances under 25 miles would regain little, if any, traffic, and that "to require defendant to continue to maintain the Cummer scale to meet what little truck

competition could be met would greatly decrease the revenues of defendant and would not be warranted." (Report, R. 375.) The Commission affirmed all the findings it had made in its report of July 5, 1932, and restored its order of that date, effective February 25, 1933. (R. 375, 376, and 377.)

Saving clause.—In its second report on rehearing, the Commission incorporated a saving clause, such as approved by this Court in the *Wisconsin case*, 257 U.S., 591, and other cases, reading as follows:

> Our findings herein and in our prior report on further hearing are without prejudice to the right of the authorities of the State of Florida or of any other interested party to apply in the proper manner for a modification of our findings and order as to any specified intrastate rate on the ground that it is not related to interstate rates in such a way as to contravene the provisions of the interstate commerce act. (R. 376.)

Supplemental bills and second hearing before District Court

Just prior to the effective date of the restoration of the order of July 5, 1932, supplemental bills (R. 338, 463, 551) were filed with the District Court, and another hearing was held before that court on February 24, 1933. The court then denied a motion for a stay of the operation of the Commission's restored order, and the increased in-

trastate rates prescribed in that order were put into effect February 25, 1933.

February 24, 1933, the District Court rendered an opinion (R. 610) sustaining the validity of the Commission's order, and entered a final decree (R. 620). It also made finding of fact (R. 610) and conclusions of law. (R. 614.) From the final decree this direct appeal was taken.

SUMMARY OF ARGUMENT

I. The order in question, requiring removal of unjust discrimination against interstate commerce growing out of revenue losses resulting from unduly low state rates, is a valid exercise of the authority conferred by Section 13 (3) and (4) of the Interstate Commerce Act.

1. Predicated upon specific findings by the Commission of revenue losses resulting from unduly low state rates, and requiring increases in those rates to remove an undue burden upon the revenues of the interstate carrier, it is clearly an order of the character authorized by Section 13 (4). That the Act confers authority to issue such order was settled by this Court in *Wisconsin R.R. Commission* v. *C. B. & Q. R.R. Co.*, 257 U.S. 563, and reiterated in the previous decision in the case at bar, *Florida* v. *United States*, 282 U.S. 194, 215, in which, having regard to the particular facts in this case, the Court upheld the authority "to end an unjust discrimination as against interstate commerce *either* as between persons or localities, *or*

because of an undue burden upon the revenues of the carrier." Since the latter decision this Court has sustained Section 13 orders in *Georgia Commission* v. *United States*, 283 U.S. 765; *Alabama* v. *United States*, 283 U.S. 776; *Louisiana Commission* v. *United States*, 284 U.S. 125; *United States* v. *Louisiana*, 290 U.S. 70; and *Montana* v. *United States*, 290 U.S. —, decided November 13, 1933. In the last two cases the Commission's orders, like this one, required increases in intrastate rates solely because of unjust "revenue" discrimination.

(a) The Emergency Railroad Transportation Act, 1933, enacted after the order in question was issued, does not adversely affect the validity of the order. That Act seeks "to relieve the existing national emergency in relation to interstate railroad transportation", and amends three sections of the Interstate Commerce Act, including Section 15a by repealing the recapture clause and restating the rule of ratemaking; but it does not strike down or alter the Commission's authority under Section 13 to remove unjust discrimination against interstate commerce arising from unduly low intrastate rates, and does not rescind or alter the dovetail relation between the provisions of Section 13 and Section 15a. On the contrary, the relationship between the two sections is maintained and the amended Section 15a reenacts the purpose of Congress to provide and maintain "adequate and efficient railway transportation service at the lowest

cost consistent with the furnishing of such service." In *United States* v. *Louisiana, supra,* this Court sustained, five months after Section 15a was amended, an order of the Commission based wholly upon revenue discrimination caused by unduly low state rates.

2. Upon rehearing the Commission made findings amply demonstrating the unremunerativeness of the intrastate rates, the revenue losses that had resulted and would result from their maintenance, and the substantial character of the burden upon and discrimination against interstate commerce. These findings fully meet the test laid down in *Florida* v. *United States,* 282 U.S. 194. The increased intrastate rates prescribed in the earlier order were in effect more than two years, affording opportunity for definite ascertainment of the effect of those rates upon the carrier's revenues, and constituting a fair "traffic test." The Commission found that there was a substantial volume of traffic under the increased rates yielding a large gross revenue and a profit to the carrier; that if the Cummer scale had been applicable during that period the carrier would have suffered a loss of $290,283.19 in gross revenue; that the continued maintenance of the Cummer scale would cause the carrier to lose gross revenue of at least $100,000 a year; and ultimately, that the Cummer scale "places a substantial burden upon defendant's interstate revenues."

3. The finding that the Cummer scale rates were abnormally and unduly low was based upon exhaustive comparisons of those rates with numerous other rates on logs, and with rates on other low grade commodities, many of which had been fixed as reasonable interstate rates by the Commission.

4. The finding that the Cummer scale rates were insufficient to cover the cost of the service rendered was based upon voluminous cost evidence introduced by the carrier. A finding that intrastate rates are below the cost of the service is not a *prerequisite* to the issuance of an order under Section 13 to remove unjust discrimination against interstate commerce, but such finding is pertinent as showing an aggravated case of discrimination. The method used by the Commission in ascertaining the cost of the service was not contrary to, but in harmony with, *Northern Pacific Ry.* v. *Dept. of Public Works*, 268 U.S. 39.

5. The interstate log rates now in effect over the Coast Line's entire system for all distances are rates which the Commission has prescribed or approved as reasonable. This is sufficient. *Wisconsin Case, supra; United States* v. *Louisiana, supra.* The only disparity alleged or shown as between state or interstate rates was between the Cummer scale, application of which was limited to a maximum of 170 miles, and the interstate rates for corresponding distances. The Commission, in this proceeding, twice found and prescribed as

reasonable the interstate rates to the level of which it required the state rates to be raised in order to remove the discrimination, thus complying with the rule stated in *Georgia Commission* v. *United States*, *supra*. There was no complaint concerning the relationship between the state and interstate rates for distances greater than 170 miles; hence there was no occasion to prescribe interstate rates from southern Florida. The Commission thoroughly investigated the Coast Line's intrastate log traffic throughout Florida, and, although it found transportation conditions with respect to that traffic less favorable than conditions concerning transportation of interstate traffic, its order requires that intrastate rates be raised only to the level of interstate rates. The Commission has prescribed in other proceedings reasonable interstate scales of log rates generally over wide areas in the southeast.

6. There is no merit in appellants' contention that the Commission should have permitted the continuance of the Cummer scale in Florida because of recent reductions in log rates by other carriers in southern territory to meet truck competition. If sustained, the contention will require that whenever a carrier reduces particular rates to meet actual existing truck competition the same carrier and all others in the same general territory may be compelled to make like reductions in all their related rates, even at points where no such truck competition exists, and even though truck competitive rates

are lower than rates prescribed by the Commission as reasonable. The devastating effect upon the revenues of the rail carriers and upon their ability to afford adequate and efficient service is manifest. The Commission has held many times that maintenance by rail carriers of low rates between particular points for the purpose of meeting competition of other transportation agencies, such as carriers by water and motor trucks, does not unlawfully discriminate against shippers between other points not affected by such competition. The action of other southern carriers in establishing temporary experimental rates to meet truck competition on their lines is insufficient as a legal basis for the Commission to require the Coast Line to sacrifice revenue on its Florida log traffic where the evidence showed that the movement of logs by truck for substantial distances was negligible. Cf. *Texas & Pac. Ry. Co.* v. *United States*, 289 U.S. 627, 636, 649.

II. Lack of merit in appellants' contention that the court below should have granted a trial *de novo* to determine "jurisdictional facts" finds demonstration in the several Section 13 cases recently decided by this Court, in which Commission orders were sustained, though in none of them was a trial *de novo* in the district courts. Since, in a Section 13 case, the ultimate fact determined by the Commission is whether state rates cause unjust discrimination against interstate commerce, if district courts were required to determine that fact in a trial *de novo*, they would be compelled to retry the

whole case, to exercise administrative authority, to perform legislative functions, and to substitute their judgment for that of the Commission on the administrative question of fact as to whether such discrimination existed. This would result in the very confusion, conflict, and lack of uniformity which Congress sought by the Act to avoid. *Procter & Gamble Co.* v. *United States,* 225 U.S. 282. The one decision, *Crowell* v. *Benson,* 285 U.S. 22, relied upon by appellants for this contention, itself distinguishes cases of the kind there under consideration from cases like the one at bar. Appellants obtained in the court below the review to which they were entitled. That Court stated in its opinion that "we have examined the evidence independently and are led to the same conclusion that unjust discrimination exists."

ARGUMENT

I

The order in question, requiring removal of unjust discrimination against interstate commerce growing out of revenue losses resulting from unduly low State rates, is a valid exercise of the authority conferred by section 13 (3) and (4) of the Interstate Commerce Act.

1. The order is clearly one of the character authorized by section 13 (4)

Predicated upon findings of revenue losses resulting from unduly low State rates, and requiring increases in those rates in order to remove an undue burden upon the revenues of the interstate carrier, the order in question is clearly one of the character

authorized by section 13 (4). In view of repeated decisions by this Court it is no longer open to dispute that this section forbids two distinct kinds of discrimination, both caused by intrastate rates unduly low in their relation to interstate rates, as a result of which (1) intrastate shippers and localities obtain an undue preference and advantage while competing interstate shippers and localities suffer a corresponding disadvantage and undue prejudice; (2) the carriers, engaged in both interstate and intrastate commerce, compelled to carry the intrastate commerce at inadequate rates, are deprived of revenue to which they are justly entitled. As expressed by Chief Justice Taft in the *Wisconsin* case, 257 U.S. 563, 587, the words of section 13 (4) "unjust discrimination against interstate commerce" are not tautological of the preceding words prohibiting undue preference or prejudice as between persons or localities but—

> aptly include a kind of discrimination against interstate commerce which the operation of the new act, for the first time makes important and which would seriously obstruct its chief purpose,

namely, unjust discrimination against interstate commerce because of an undue burden upon the revenues of the carrier.

> Congress in its control of its interstate commerce system is seeking in the Transportation Act to make the system adequate

> to the needs of the country by securing for it a reasonable compensatory return for all the work it does. The States are seeking to use that same system for intrastate traffic. That entails large duties and expenditures on the interstate commerce system which may burden it unless compensation is received for the intrastate business reasonably proportionate to that for the interstate business. *Congress as the dominant controller of interstate commerce may, therefore, restrain undue limitation of the earning power of the interstate commerce system in doing state work.* (*Ibid.* 590, italics ours.)

All questions concerning the Commission's power, and the constitutionality thereof, to issue an order solely for the purpose of removing unjust discrimination against interstate commerce were settled by the Court's holdings in that case, in which the order, though not sustainable in its statewide scope because of discrimination against persons or places alone, was sustained in its entirety as one necessary to remove unjust discrimination against interstate commerce growing out of revenue losses.

The holdings in that case were reaffirmed by the Court in its previous decision in the case at bar, *Florida* v. *United States*, 282 U.S. 194, in which the Chief Justice said, at pages 210–211:

> The power of the Congress to authorize the Interstate Commerce Commission to es-

tablish intrastate rates in order to remove an unjust discrimination against interstate commerce is not open to dispute. *Houston, East & West Texas Railway Company* v. *United States*, 234 U.S. 342; *Illinois Central Railroad Company* v. *State Public Utilities Commission*, *supra* (245 U.S. 493); *Railroad Commission of Wisconsin* v. *Chicago, Burlington & Quincy Railroad Company*, *supra*; *Arkansas Railroad Commission* v. *Chicago, Rock Island & Pacific Railroad Company*, 274 U.S. 597; *Alabama* v. *United States*, 279 U.S. 229. In the exercise of this power, the Congress has given to the Commission authority not only to remove an undue prejudice as between persons or localities, but to establish a statewide level of intrastate rates when this is found to be necessary to accomplish the purpose of the statute. In construing the statute this Court has held that the general provision of section 13 (4) prohibiting "unjust discrimination against interstate commerce" and authorizing the Commission to establish intrastate rates to prevent such discrimination, is to be read in connection with section 15a, both of which were added by Transportation Act, 1920 (secs. 416, 422, 41 Stat. 484, 488). There is what this Court has called a "dovetail relation" between the two provisions. The authority granted by section 13 (4) is thus to be considered in the light of the affirmative duty of the Commission to fix rates and to take other important steps to

maintain an adequate national railway system.

As intrastate rates and the income from them must play a most important part in maintaining such a system, the effective operation of the Act requires that intrastate traffic should pay "a fair proportionate share" of the cost of maintenance. And if there is interference with the accomplishment of the purpose of the Congress because of a disparity of intrastate rates as compared with interstate rates, the Commission is authorized to end the disparity by directly removing it. *Railroad Commission of Wisconsin* v. *Chicago, Burlington & Quincy Railroad Company, supra; New York* v. *United States, supra* (257 U.S. 591) (pp. 585, 586).

In concluding his opinion, the Chief Justice said that "If the facts as to intrastate transportation of logs in Florida are such as to justify an order as to intrastate rates in order to end an unjust discrimination as against interstate commerce *either* as between persons and localities, *or because of an undue burden upon the revenues of the carrier,* the Interstate Commerce Commission is still at liberty, acting in accordance with the authority conferred by the statute, to make such determinations as the situation may require." (Italics ours.)

Since that decision the Court has sustained section 13 orders in *Georgia Comm.* v. *United States,* 283 U.S. 765; *Alabama* v. *United States,* 283 U.S.

776; *Louisiana Comm.* v. *United States*, 284 U.S. 125; *United States* v. *Louisiana*, 290 U.S. 70, and *Montana* v. *United States*, 290 U.S. , per curiam, decided November 13, 1933. In the last two cases, recently decided, the Commission's orders, like that in the case at bar, required increases in intrastate rates solely because of unjust revenue discrimination.

(a) The Emergency Railroad Transportation Act, 1933, passed subsequently to the issuance of the order here under review, does not adversely affect the validity of the order and does not alter the Commission's authority to remove unjust discrimination against interstate commerce growing out of revenue losses from unduly low intrastate rates.

Separate briefs filed on behalf of several of the appellants suggests that the validity of the order in question is to be tested under subsequent legislation and so tested is invalid. *United States* v. *Alaska Steamship Co.*, 253 U.S. 113, cited by these appellants, merely holds that legislation passed subsequently to the Commission's order there involved had rendered that case moot. The other two cases cited, *United States* v. *Schooner Peggy*, 1 Cranch 103, and *Gulf, Colo. & Santa Fe Ry. Co.* v. *Dennis*, 224 U.S. 503, hold to the effect that "if, subsequent to the judgment, and before the decision of the appellate court, a law intervenes *and positively changes the rule which governs*, the law must be obeyed . . ." (Italics ours.) The new law here

in question does not render this case moot nor change the rule which governs.

Here, the subsequent legislation is Emergency Railroad Transportation Act, 1933 (c. 91, 48 Stat. 211, approved June 16, 1933). This statute, in Title I, enacts provisions "to relieve the existing national emergency in relation to interstate railroad transportation," and, in Title II, enacts amendments to sections 5, 15a, and 19a of the Interstate Commerce Act. Sections 5 and 19a, relating to acquisitions of control and valuation, are not relevant here. Section 15a is amended to read as follows:

> (1) When used in this section, the term "rates" means rates, fares, and charges, and all classifications, regulations, and practices relating thereto.
>
> (2) In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service;

United States v. *Louisiana*, 290 U.S. 70, was decided five months after the approval of Emergency Railroad Transportation Act, 1933, but does not mention that Act. Although the point was not urged in that case, we feel confident that if the Emergency Act took away the Commission's authority over intrastate rates, as here urged by appellants, the Court would have so held.

> and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide such service.

The important changes made in section 15a are the repeal of the recapture clause and the revision of the rule of rate making. Provision is made for the termination of proceedings for recapture of excess income and for repayments from the liquidation of the general railroad contingent fund; and the paragraphs of section 15a which provided for the recapture of excess income and for the general railroad contingent fund are omitted from the section, as amended. In substitution for the provisions of section 15a relating to the adjustment of rates so that the carriers as a whole, or as a whole in rate groups, shall earn an aggregate net income equal to a fair return on aggregate property value, the section, as amended, provides that, in the exercise of its power to prescribe just and reasonable rates, the Commission shall give due consideration, among others, to the factors specified in paragraph 2 of the new section, above quoted. The report of the House Committee explains these changes. (Report No. 193, 73d Congress, 1st Session.) Regarding the repeal of the recapture clause the report quotes the chairman of the legislative committee of the Interstate Commerce Commission as follows:

> Present conditions have brought sharply into the foreground what is perhaps the strongest objection of all. For the moment

practically all the railroads are financially weak, and nobody knows how long this condition will continue. It is probable that the revival of their credit will lag considerably behind the revival of business conditions. While I believe that their traffic and earnings will ultimately be restored they have a hard struggle ahead, not only with business conditions but also with competing forms of transportation. Repeal of recapture for the future is not of much present importance, for there is likely to be little, if anything, to recapture for some time to come.

Retroactive repeal covering the past is of very great importance. To the extent that we find amounts of any considerable size due in the proceedings now pending, there are few, if any, railroads which have cash enough on hand to pay them. * * *. To obtain the necessary cash it would for the most part be necessary to issue securities to replenish their treasuries, and there are few which are now able to issue securities on reasonable terms, if at all. * * * There are better uses to which the slender railroad credit, so far as it is available, can be put than to raise cash to pay to the Government excess income of the past which in most cases is more than balanced by the income deficiencies of the present. * * *. Summing up the situation we [the Commission] are of the opinion that the difficulties, disadvantages, and dangers of recapture far outweigh its possible advantages. This is true of the future, but it is even more true of the past,

particularly under the conditions which now exist and may be anticipated for some time to come. This being our conclusion, we see no escape from the conclusion that the present recapture proceedings should be discontinued and the money returned which is now in the contingent fund. * * * Nor do I feel clear that even in theory recapture of excess income is sound procedure. There is something incongruous in a system of regulation which finds it necessary to permit carriers to earn more than they ought to earn, and meets the difficulty by taking money away after it is received.

Respecting the new rule of rate making the report says:

The rule of rate making as rewritten in the proposed paragraph (2), found in section 205 of the bill, directs the Commission to give due consideration, among other factors, to the effect of rates on the movement of traffic; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide such service. It is difficult to conceive of a reasonable rate which would ignore any one of these considerations. The Commission as a fair and impartial body acting for the Congress will continue to give consideration to these factors. In the case of the power given to the

Commission to prescribe just and reasonable rates the committee does not believe that it is necessary to encumber the statutes with further language which might be mandatory in terms but which could add nothing further to the plain duty of the Commission under the law, and which might be interpreted to imply a distrust of the Commission in prescribing just and reasonable rates. The Commission will and must give consideration to all facts developed on the record and see to it that the record is enlightening as to such factors as are mentioned in the first section of this bill.

No change is made in section 13 (3) and (4), and it is manifest Congress did not intend to strike down the Commission's authority to remove unjust discrimination against interstate commerce growing out of unduly low intrastate rates, nor to rescind or alter the dovetail relation between the provisions of section 13 (4) and the purpose of section 15a, redeclared in the new bill, to maintain an adequate and efficient railway transportation service, in the public interest. The provision for the group method of rate making and the related provision for recapture of excess incomes of any carriers in the group earning more than a fair return were but subordinate provisions, along with many others, whereby the ultimate purpose was sought to be accomplished. There is no change in that ultimate purpose. The new act redeclares it, in the new section 15a and also in section 2 of Title

I. That section, creating the office of Federal Coordinator of Transportation to effect whatever economies may be possible, in order "to relieve the existing national emergency in relation to interstate railroad transportation," declares the purpose—

> to foster and protect interstate commerce in relation to railroad transportation by preventing and relieving obstructions and burdens thereon resulting from the present acute economic emergency, and in order to safeguard and maintain an adequate national system of transportation, * * *.

In view of the present emergency it is obvious that intrastate rates and the income from them are now not less important, but if possible more so, in maintaining an adequate national railway system.

The new act does not relieve the Commission of the affirmative duty "to fix rates and to take other important steps to maintain an adequate railway service for the people of the United States." *Wisconsin* case, 257 U.S., *supra*. Cf. *New England Divisions Case*, 261 U.S. 184, 189–190; *Dayton-Goose Creek Ry.* v. *United States*, 263 U.S. 456, 477–478; *R.R. Comm.* v. *Southern Pac. Co.*, 264 U.S. 331, 341–342; *Texas & Pac. Ry.* v. *Gulf, etc. Ry.*, 270 U.S. 266, 277; *Alabama Ry.* v. *Jackson Ry.*, 271 U.S. 244, 250. If that purpose is interfered with by a disparity of intrastate rates, the Commission is still "authorized to end the disparity by directly removing it, because it is plainly an 'un-

due, unreasonable, or unjust discrimination against interstate or foreign commerce,' within the ordinary meaning of those words." (*Wisconsin* case, supra.)

It seems indisputable that had Congress intended to change the law in so important a respect as that urged by appellants, it would have used language expressing that intention plainly and unmistakably.

There is no such expression in the Emergency Act; and there is no ground for inferring an intention on the part of Congress to take the anomalous action of enacting new and additional legislation to relieve the present acute economic emergency by preventing and relieving obstructions to and burdens upon interstate commerce and in the same statute striking down existing provisions for the relief of other and possibly greater burdens upon that commerce. Inferences to be drawn from the Act indicate to the contrary. The provisions of section 10 enlarge the Commission's power over intrastate commerce in its relation to interstate commerce and grants new powers to the Coordinator in this respect. Paragraph (a) of that section provides that carriers subject to the Interstate Commerce Act affected by any order of the Coordinator or Commission made pursuant to Title I of the Act shall, so long as such order is in effect, be relieved from the operation of the antitrust laws and of all other restrains and prohibitions by law, *State* or Federal, with certain exceptions, insofar

as may be necessary to enable them to do anything authorized or required by such order; and paragraph (b) empowers the Coordinator to issue orders "which shall have the effect of relieving any carrier or subsidiary from the operation of the law of any State or of any order of any State Commission" when such order is necessary, in his opinion, "to prevent or remove an obstruction to or a burden upon interstate commerce."

In view of these provisions, and in view of the provisions of section 13(4) of the Interstate Commerce Act placing the power and duty upon the Commission to prescribe rates to remove unjust discrimination against interstate commerce caused by State rates, which latter provisions remain unchanged, there is no ground for an inference that the changes made in section 15a were intended to strike down or alter any authority heretofore exercised by the Commission in respect of intrastate rates.

2. Upon rehearing the Commission made findings amply demonstrating the unremunerativeness of the intrastate rates, the revenue losses that had resulted and would result from their maintenance, and the substantial character of the burden upon and discrimination against interstate commerce. These findings fully meet the test laid down in *Florida* v. *United States*, 282 U.S. 194.

In its opinion upon the former appeal in this case the Court pointed out, 282 U.S., at page 212, that "If the action of the Commission is not simply

for the removal of undue prejudice against interstate commerce as between persons or localities, and the Commission undertakes to prescribe a statewide level of intrastate rates in order to avoid an undue burden, from a revenue standpoint, upon the interstate carrier, there should be appropriate findings upon evidence to support an order directed to that end." The Court further said that "in order to sustain the statewide order as to intrastate rates (as one needed to avoid an undue burden on the revenues of the carrier and a consequent interference with the maintenance of an adequate transportation system) it must appear that there are findings, supported by evidence, of the essential facts as to the particular traffic and revenue, and the effect of the intrastate rates, both as existing and as prescribed, upon the income of the carrier, which would justify that conclusion." (*Ibid.*) Later in its opinion, page 214, the Court pointed out that "in dealing with unjust discrimination as between persons and localities in relation to interstate commerce, the question is one of the relation of rates to each other" while "in considering the authority of the Commission to enter the state field and to change a scale of intrastate rates in the interest of the carrier's revenue, the question is that of the relation of rates to income," that "the raising of rates does not necessarily increase revenue" but "may in particular localities reduce revenue instead of increasing it, by discouraging patronage."

And the Court condemned the earlier order because the Commission's ultimate finding of unjust discrimination was not supported by subordinate findings (1) as to the revenue which had been derived by the carrier from the traffic in question, (2) as to the revenues which could be reasonably expected under the increased rates, or (3) that the alteration of the intrastate rates would produce, or was likely to produce, additional income necessary to prevent an undue burden upon the carrier's interstate revenues and to maintain an adequate transportation service. (*Ibid.*, 214–215.)

Upon rehearing voluminous evidence was introduced in this regard and from this evidence the Commission was able to make and did make these essential findings. In its report the Commission said—

> Of much assistance in the determination of the effect of increased intrastate log rates in Florida on the revenues of defendant is the fact that the increased rates prescribed by the former order were actually in effect for a substantial period and were applied on the traffic moving during that period. (R. 39–40.)

Based upon an exhibit introduced by the carrier (Ex. 61, R. 1101–1109) containing data as to all shipments that moved during the two-year period prior to the rehearing, that is, from February 8, 1929, to January 31, 1931, when the increased intrastate rates prescribed by the earlier order were in

effect, the Commission found that during this two-year period the total movement over the carrier's lines intrastate in Florida of the kinds of logs in question, to which the Cummer scale would have been applicable had it been in effect, was 18,602 carloads. (R. 40, 44, 65.) The Commission further found that these cars were shipped from 113 different origins to 20 different destinations in all parts of the state, and the hauls ranged from 6 to 169 miles. (Report, R. 50.)

The Commission found that the gross freight revenues actually collected on these 18,602 carloads aggregated $571,508.94, whereas, if the Cummer scale had applied, this movement would have produced gross freight revenues of only $281,225.75, or $290,283.19 less than those actually collected.[6] (Report, R. 40, 65.)

Averring that there is no condition at any point on its lines that would justify higher rates on logs than those applicable within the State of Florida, and having in mind the possible influence that low log rates in Florida might have upon the log rates in adjoining states, the carrier submitted evidence showing the volume of its log traffic in those states, and the total revenue losses it would suffer if the Cummer scale rates spread into those states.

[6] Restitution suits for the recovery of all amounts paid in excess of the Cummer scale rates on shipments during the period from February 8, 1929, to April 10, 1931, when the higher intrastate rates prescribed in the former order prevailed, were instituted and are pending. (R. 40, note.)

(R. 40-41.) This evidence showed that the movement of logs on its system in 1929 and 1930, including the long but not the short length logs in Florida, consisted of 3,450,765,300 pounds, of which the interstate movement consisted of 456,134,800 pounds, and the intrastate 2,994,630,500 pounds. The Commission found (R. 41) that the revenues from all of these logs amounted to $1,483,424.87, of which the revenue on interstate movements amounted to $256,654.12, and on intrastate to $1,216,770.75, and if the Cummer scale had been applicable on all its log movements the reductions in revenues would have been approximately as follows:

Intrastate:	
Virginia	$2,926.20
North Carolina	95,804.17
South Carolina	99,793.77
Georgia	29,068.53
Florida	290,283.19
Alabama	13,245.47
Interstate	141,259.88
Total	675,381.21

The volume of the Florida log movement during the period from February 8, 1929, to January 31, 1931, and during the succeeding five months from February 1 to June 30, 1931 (during which latter period the Cummer scale was restored, effective April 10, 1931) was a decline from the volume during the previous several years. The Commission found that this decline accompanied a general, drastic decline in all traffic, and was due to the general business depression, the depressed con-

tion in the log and lumber industry, the cessation of several movements of logs in trainload lots, due to exhaustion of particular tracts of timber, and the removal of several mills from uneconomical locations to new locations nearer the source of the timber supply. (R. 45.) One large mill made such a change of location shortly after the increased rates became effective. (R. 42–43.) On this subject the Commission said:

> It is manifest that if the Cummer scale produces less revenue than the cost of the service, declines in the traffic have the favorable effect of reducing defendant's losses and that [if the Cummer scale remained in effect] an increase in the traffic would only serve to augment those losses. (R. 51.)

As shown more fully later, the Commission found that the Cummer scale rates were unremunerative and insufficient to cover the cost of the transportation services performed under them.

Having considered the past and then present volume of the Florida and other log movements and the revenues therefrom, the Commission turned to consideration of the probable future volume of the traffic and the probable revenues therefrom under the Cummer scale and under increased intrastate rates. It referred to evidence showing the total amount of standing timber in Florida (R. 46–47) and how much of it is reasonably tributary to defendant's lines, (R. 47–48), to evidence showing specific movements of logs over the carrier's lines in

Florida including important movements of hardwood logs.[1] (R. 48–50), to evidence showing the number, size, and location of sawmills in Florida, (R. 50) and to other pertinent evidence, and upon this evidence made the following finding:

> The record as a whole warrants the conclusion that there will be a large Florida intrastate movement of logs over defendant's lines in the future. The movement at present is at a low ebb, but in view of depressed conditions the present movement can not be taken as the criterion for the future. In view of the vast quantity of timber in Florida tributary to defendant's lines, the large number of mills located on defendant's lines at widely scattered points in Florida, and the probability of the establishment of new mills, large and small, we entertain no doubt that the log traffic will increase well above the present volume when economic conditions change for the better. (R. 50–51.)

Although depressed economic conditions prevailed during the period that the intrastate rates prescribed in the former order were in effect, the Commission based its findings as to future revenue losses under the Cummer scale upon the actual

[1] The Cummer scale and the rates prescribed to supersede that scale applied on hardwood logs, such as ash, gum, hickory, and oak, as well as pine and cypress. See Report, R. 47 and note, and R. 49. One of the appellants, the Wilson Lumber Company, operates a hardwood mill at Perry, Fla. (R. 49.)

movement during that period. From the total movement in the two-year period (from February 8, 1929, to January 31, 1931), which was 18,602 cars, it deducted the number of cars in trainload movements that had ended, 3,740 cars, and took the average of the remainder (14,862 cars during the two-year period or 7,431 cars per year) as the probable future annual volume. (Report, R. 65.) It found:

> Under normal economic conditions it seems probable that the annual volume of the Florida log movement under rates the same as those previously prescribed will not be less than the average of this 2-year period minus the number of cars included in the discontinued trainload movements. This average is 7,431 cars. That the movement will not be less than this under normal conditions is confirmed by the fact during the five months immediately preceding the last hearing in this case, February to June, 1931, when conditions were abnormal, there were shipped over defendant's lines in Florida a total of 2,765 cars of logs. This movement was at the rate of 6,636 cars a year. We believe that the movement of logs intrastate in Florida over defendant's lines will not be materially curtailed under the rates which we here prescribe, which are the same or substantially the same, as the rates generally in effect and under which logs freely move throughout the South. (Report, R. 65.)

The Commission found that on the 14,862 cars remaining after deducting the 3,740 cars in the discontinued trainload movements from the total two-year movement of 18,602 cars, the freight charges collected were $171,069.88, and if the Cummer scale had been applicable, the freight charges would have been $232,939, or $238,130.88 less than those actually collected. (Report, R. 65–66.) This would be the loss during a two-year period. The yearly loss would consequently be about one half of this sum, or about $119,065.44. The Commission found:

> Accordingly, on the basis of an average of 7,431 cars a year under normal economic conditions, which basis we believe conservative, the gross revenues under the rates prescribed by the previous order herein would be more than $100,000 a year greater than under the Cummer scale, now in effect. (R. 66.)

The Commission's ultimate conclusion was that the application of the Cummer scale "places a substantial burden upon defendant's interstate revenues". (R. 66.)

Moreover, the Commission observed that "if the revenues yielded by the Cummer scale are not sufficient to cover the cost of the service, as the cost evidence indicates, it would follow that part of the above-stated amount would constitute a dead loss in net revenue." (R. 66.)

Appellants suggest insufficiency of the findings because there was no finding as to the revenue from the traffic under the Cummer scale prior to February 8, 1929. While there was no finding as to revenue from this traffic *as a whole* prior to that date, there were findings as to the total movement during each of the five years 1926–1930 (R. 42) and findings as to the volume of movement of and the revenues from the traffic to the larger mills. (R. 43, 44, 48, 50.)

There is no better way to test the effect of new freight rates upon the revenues of a railroad than to put the rates into effect and give them a trial. The actual application for a period of 26 months of the increased intrastate rates prescribed in the former order afforded opportunity to ascertain definitely the effect of those rates on the carrier's revenues. This constituted a fair "traffic test" and the Commission found from the evidence that there was a substantial volume of traffic under the increased rates, yielding a large gross revenue, which included a profit from the operation. In view of these findings from evidence as to current operations, it seems clear it was unnecessary for the Commission to make more definite or fuller revenue findings in respect of the much earlier period, when conditions were drastically different, as shown above.

We submit that the Commission's findings upon rehearing respecting the revenue effect of both the

old and the new intrastate rates fully meet the test laid down by this Court in the former opinion in this case, and that the findings are even fuller than those made in other section 13 cases in which the Commission's order has been sustained by this Court, including the *Wisconsin,* 257 U.S. 567, *New York,* 257 U.S. 591, *Louisiana Sand & Gravel,* 284 U.S. 125, *Louisiana Surcharge,* 290 U.S. 70, *Alabama,* 283 U.S. 776, *Georgia,* 283 U.S. 765, and others.

3. The finding that the Cummer scale rates were abnormally and unduly low was based upon exhaustive comparisons of those rates with numerous other rates on logs and with rates on other low grade commodities, many of which had been fixed as reasonable interstate rates by the Commission in other cases

One fact alone practically demonstrates the abnormal lowness of the Cummer rates—the fact that they were only about half of the rates on logs prescribed by the State Commission. That Commission prescribed "Class P" rates for logs, lumber, and wood, having found them reasonable "after an extended investigation, not only of the lumber industry in this State and adjoining territory, but also of the financial condition of the carriers."[8] They were prescribed by the Florida Commission as maxima for all distances in Florida. The At-

[8] Quoted from a letter written by the Chairman of the Florida Railroad Commission, dated August 18, 1915, reproduced in Appendix A of report; R. 71; see also other letters of Florida Commission reproduced in Appendix A, R. 68–71; see also R. 33.

lantic Coast Line "applied the Cummer scale rates for distances of 170 miles and less, which are substantially lower than the Class P rates for those distances, and has maintained the full Class P rates for distances over 170 miles." (Report, R. 33.). For example, from Secotan to Jacksonville, 164 miles, the Cummer scale rate of 3.7 cents applied, whereas from the next station beyond, Eridu, to Jacksonville, 175 miles, the full class P rate of 8.33 cents was applicable. (The Coast Line's *interstate* rate for both these distances was 8 cents per 100 pounds. From Cross City to Jacksonville, 116 miles, the Coast Line's Cummer scale rate was 3.2 cents, whereas the Florida Commission's Class P rate for that distance was 6.66 cents—more than twice the Cummer scale rate. The Coast Line's *interstate* rate for 116 miles was 6.5 cents. (See Appendix B to report, R. 72A. The rates of the Georgia, Southern & Florida Ry. there shown, in column 4, are the same as the Florida Commission Class P rates. (See original record, p. 452.)

Not only were the Cummer rates lower than the Florida Commission log rates, but they were lower than the intrastate log rates maintained contemporaneously by other Florida railroads. For example, the Florida intrastate rates of the Seaboard Air Line and the Georgia, Southern & Florida for 115–120 miles were 6.19 cents and 6.66 cents, respectively, while the Coast Line's Cummer scale rate for that distance was 3.2 cents. (See

Appendix B, R. 72A, also Appendices C and D, R. 73-75.)

The revenue under the Cummer scale for distances up to 40 miles, at the average weight of 56,754 pounds (R. 53), was $9.70 per car (rate 1.71 cents per 100 pounds) and might be as low as $8.55 per car if loaded only to the carload minimum of 50,000 pounds. Under the prescribed rate of 4 cents for 40 miles the revenue is $23.70 per car of 56,754 pounds and a minimum of $16 at the carload minimum of 40,000 pounds. For the average distance of 81.36 miles (R. 53) the revenue under the Cummer scale at the average weight of 56,754 pounds was $13.05 per car (rate 2.3 cents); under the prescribed rate, 5.5 cents, the revenue is $25.71."

The earnings per ton-mile under the Cummer scale for 160 miles were only 4.25 mills. The car-mile earnings under that scale, based on a lading of 60,200 pounds, were only 12.8 cents. (R. 37–38.)

There was the further showing that the Cummer scale rates were only about half of the rates prescribed by the Commission as reasonable for application in the southeast, including Florida, on such low grade, heavy loading commodities as sand and gravel. (R. 38.) Further the Cummer scale rates were much lower than reasonable log rates prescribed by the Commission for application in Cen-

"For other per-car revenues under Cummer scale as compared with per-car revenues on other important "low grade" commodities, see Appendix D to report, R. 74–75.

tral Freight Association Territory where the traffic density is greater, the operating costs lower and transportation conditions in general more favorable than in Southern Territory. The rate there prescribed for 170 miles was 12.35 cents, whereas the rate for the corresponding distance under the Cummer scale was only 3.70 cents. (R. 36–37.)

These and many other facts, established by the voluminous record, appear in the Commission's report. See especially R. 32–38 and Appendices B, C and D, R. 72–75. The fact that many of the comparative rates were prescribed by the Commission lends great weight to the probative value of this evidence. *Louis. & Nash. R.R.* v. *United States*, 238 U.S. 1, 15–16.

The Commission found that—

> The above evidence warrants the conclusion that the Cummer scale rates are abnormally low

and affirmed the finding in the first report that they are "less than reasonably compensatory." (R. 37.)

As shown in the Commission's report on second rehearing and as explained later in this brief (section 6, *infra*), many southern carriers, other than the Atlantic Coast Line, have recently reduced their log rates to very low levels temporarily in an effort to meet truck competition. These reductions were to levels far below the reasonable log rates prescribed by the Interstate Commerce Commission for interstate application and by southern State Commissions for intrastate application. The fact

of these reductions, called to the Commission's attention after the issuance of its order of July 5, 1932, does not detract from the force of the Commission's finding in that report, which finding along with all its other findngs was reaffirmed in the report on second rehearing, that the Cummer scale rates were abnormally low and less than reasonably compensatory. Depressed rates, established voluntarily by a carrier to meet competition, are not acceptable as comparative rates to test the legality of rates for application in localities where such competition is not compelling. (See *Louis. & Nash. R. Co.* v. *United States*, 238 U.S. 1, 12.)

4. The Commission's finding that the Cummer scale rates were insufficient to cover the cost of the service rendered was based upon voluminous cost evidence and upon the Commission's own calculations from the basic figures and data contained in that evidence

In the Commission proceeding the carrier urged that "the revenues produced by the Cummer scale are insufficient to cover the cost of the service performed; that no traffic is of valu from a revenue standpoint unless it yields more revenue than the cost of its handling; that the carrier's study of the result of the operation under the Cummer scale is conclusive to it that such operation yields it no profit, but, on the contrary, *results in an actual loss on the log traffic as a whole.*" (Italics ours.) (Report, R. 51.) In support of its contention that the Cummer scale results in losses, the carrier submitted voluminous evidence bearing upon the cost

of transporting logs in Florida. This evidence is painstakingly reviewed in detail in the Commission's report. (R. 51–64.) The conclusion was reached that although it is impossible, on a system like the Coast Line, engaged in the general transportation of all kinds of freight and of passengers, to determine the exact cost of transporting any one commodity, yet the evidence submitted in this case was convincing "that the defendant's revenue under the Cummer scale of $15.12 per car for transporting a car of logs weighing 56,754 pounds a distance of 81 miles, and transporting the empty car back, is insufficient under all the circumstances and conditions to cover the full cost of the service." (Rep., R. 63–64.)

Appellants urge that this finding should be rejected on the ground that in reaching it the Commission gave consideration to "system average costs." But though this finding be rejected, the validity of the order would not be affected, for even if the Cummer scale rates were *above* the cost of the service but yet were unduly low in their relation to comparable reasonable interstate rates and were found to cause an unjust discrimination against interstate commerce, a valid order under section 13 (4) could issue. A finding that the intrastate rates are below the cost of the service is not essential under section 13, and indeed in no other section 13 order upheld by this Court has there been such a finding. In *Louisiana Comm. v. United States,* 284 U.S. 125, lack of cost of evidence was

urged, without avail. Where, as here, however, the intrastate rates are so low as not to cover the cost of the service, they fail to bear their fair proportionate share of maintaining the carrier and cause an actual out-of-pocket loss, resulting in unjust discrimination against interstate commerce of an aggravated character. Such a finding seems not impertinent. Therefore, it may not be amiss to briefly answer appellants' contention respecting this finding.

The Commission did not accept "system average costs" as the cost of transporting logs in Florida. It rejected such a figure. The carriers submitted evidence showing, on a gross ton-mile basis, the average of certain of its costs in Florida. For convenience, those costs were denominated "out-of-pocket" costs but they did not purport to cover all out-of-pocket costs but only those charged to particular accounts covering "road train expenses." (See Report, R. 51–52.) A unit cost figure of 0.0882888-cent per gross ton-mile was developed as the "average out-of-pocket expense" of handling all traffic in Florida. (R. 52.) In declining to accept this figure as indicating the carrier's average out-of-pocket cost of transporting logs in Florida, the Commission pointed out that much of the traffic there consists of fruits and vegetables which require special service, the cost of which enters into the average out-of-pocket cost, apparently tending to make it *higher* than the actual out-of-pocket cost of the log traffic, and leading to the conclusion that

the average cost figure submitted was higher than the actual out-of-pocket cost of the Florida log traffic. In thus rejecting the average figure the Commission cited *Northern Pac. Ry.* v. *Dept. Public Works*, 268 U.S. 39 and *Calif. Growers' & Shippers' Protective League* v. *S. P. Co.*, 129 I.C.C. 25, 52. (R. 58.)

The Commission was able, however, from the mass of data before it, including system average costs and other basic figures, to develop, by its own calculations, a figure that "might be said to be *less* than the cost in Florida." (R. 61.) Based on comparisons as between the part of the system in Florida, on the one hand, and the system as a whole, on the other hand, of freight-traffic density, freight-service train miles, freight-service locomotive miles, loaded freight car-miles, empty freight car-miles, revenue ton-miles, and loaded and empty cars per train, in all of which Florida compared unfavorably with the system as a whole, (R. 59) the Commission found:

> There appears to be no doubt that the operating costs per unit are generally higher in Florida than the average for the defendant's system as a whole either including or excluding Florida. (Report, R. 59.)

In view of this fact, the Commission said, system figures including Florida, which were not questioned, might be utilized as a basis for approximating the cost of transporting logs in that State. "Ordinarily," the Commission said, "it would be

unsound to use a system unit cost to determine the cost in a particular State, but since it is indisputable that unit costs are higher in Florida than elsewhere on the system, it seems clear that system unit costs may be used to find a cost that may be said to be less than the cost in Florida." (Report, R. 60–61.) Then, by the method explained in the report (R. 61–64) the Commission found the *total operating expenses* to be $17.07 per car and the *total cost per car*, being the total operating expenses plus taxes and interest on investment, to be $24.69 per car, as the cost of transporting the average car of logs in Florida the average distance of 81.36 miles. (R. 63.) The Commission was careful to explain that these cost figures *understated* the actual cost. (R. 63.) It was not disputed that the average revenue under the Cummer scale for the average haul of 81.36 miles was $15.12 per car. (R. 55, 63.)

Thus, while the Commission did not find the exact cost per car of transporting logs over the carriers' lines in Florida, it did find a figure which, though *understating* the cost, was substantially *higher* than the revenue per car under the Cummer scale. In making this finding the Commission clearly did not commit the error pointed out by this Court in *Nor. Pac. Ry. Co.* v. *Dept. Public Works*, 268 U.S., *supra*, where the State body used system averages without making any allowances for local conditions.

The Commission's conclusion that the revenue under the Cummer scale was "insufficient under

all the circumstances and conditions to cover the full cost of the service" (R. 64) was well supported and justified by the evidence.

5. The interstate log rates now in effect over the Coast Line's entire system for all distances that logs ordinarily move are rates which have been prescribed or approved by the Commission as reasonable. These reasonable interstate rates afford a lawful standard for comparison with the Cummer scale rates applying in Florida

The only disparity alleged or shown in this case as between the state and interstate rates was the disparity between the Cummer scale rates, applying for distances up to 170 miles, and the interstate rates for corresponding distances. For distances greater than 170 miles there was no disparity as between the Coast Line's Florida intrastate log rates and its interstate log rates. The Florida intrastate log rates maintained by the Coast Line for distances greater than 170 miles were the Florida Commission Class P rates, which were on a much higher basis than the Cummer scale rates, and were substantially the same, mile for mile, as the interstate log rates generally applicable in southern territory on the Coast Line and other southern railroads. (Reports, R. 32, 373.)

By its orders in this proceeding the Commission corrects this disparity. In its original report and order the Commission prescribed a scale of reasonable interstate rates on logs over the Coast Line from Florida to Georgia for distances of 170 miles and less. (The points of origin from which these

rates apply are obviously in "northern" Florida because such points would in no case be more than 170 miles south of the Georgia-Florida State line.) This scale became effective February 8, 1929, and has since remained continuously in force. In the report upon rehearing the Commission, after observing that the interstate rates prescribed in the earlier report "are apparently satisfactory to all interested parties," (R. 31), again found them to be reasonable

> * * * we find that the rates therein prescribed [earlier report], which are now in effect, are reasonable. (R. 66.)

These reasonable interstate rates afforded a lawful standard for comparison with the intrastate (Cummer scale) rates applying for the same distances; and, in order to remove the found discrimination, the Commission required, by the order here under review, that the Cummer scale rates be increased to the level of the reasonable interstate rates for the same distances.

Appellants' objection that the Commission made no investigation of the interstate log rates from southern Florida and, therefore, was without power to fix intrastate rates for application in that part of the State, overlooks the fact that from southern Florida to the Georgia State line the distances over the Coast Line range up to 400 miles. There was no complaint respecting the relationship between the state and interstate rates for such distances, nor, as stated, for any distances over 170

miles. Log rates for such long distances are not of practical importance, because log traffic is short-haul traffic. It requires about three cars of logs to produce one car of lumber, and for this reason saw-mills cannot economically afford to pay even reasonable rates on logs for long distances. The average haul of logs on the Coast Line intrastate in Florida is approximately 81 miles (R. 53) while the average on that line in interstate movements is 109 miles. (Report, Appendix D, note, R. 75.) Log rates are published in the tariffs for distances up to 800 miles, but for the longer distances they are virtually "paper" rates on which no substantial traffic moves, and are put in to cover rare or exceptional shipments. The present record discloses that there is no movement of logs over the Coast Line from southern Florida to interstate destinations. For this reason alone the objection is without merit.

The Commission thoroughly investigated the intrastate log traffic of the Coast Line throughout the State. As a condition to increasing the intrastate rates for distances not exceeding 170 miles in southern Florida, it clearly was not necessary that it prescribe interstate rates for the much longer distances from that portion of the State, from which no interstate log shipments move. In *Georgia Comm. v. United States*, 283 U.S. 765, 770, the Court said:

> It is true that when state rates are assailed on the ground that they result in undue prejudice to interstate shippers or

> discriminate against interstate commerce, the Commission must determine whether the existing interstate rates are reasonable, as it may not require intrastate rates to be raised above a reasonable level.

In the case at bar the Commission has determined and prescribed reasonable interstate log rates for distances corresponding to those of the state rates alleged and shown to be unduly low. To remove the discrimination it has increased the state rates to the level of these interstate rates. Although the less favorable transportation conditions in Florida might have justified the prescribing of intrastate rates on a *higher* level than the reasonable interstate rates, the Commission did not do so, but prescribed for Florida the *same* rates, mile for mile, as the interstate rates.

It may be noted that although in this particular proceeding the reasonable interstate rates prescribed by the Commission were only from northern Florida to Georgia for distances of 170 miles and less, yet in other proceedings the Commission has fixed reasonable interstate log rates for other localities in the South for the same and longer distances and these rates are now in effect on the Coast Line. In complying with the order the Coast Line established the rates for 170 miles and less as prescribed in the order, and, at the same time, established for greater distances rates which had been repeatedly prescribed or approved by the

Commission as reasonable in other proceedings. The scale of interstate rates established by the Coast Line following the order in this case covers distances up to 450 miles (R. 34). The scale is shown in Appendix B to the report on rehearing for distances up to 300 miles. (R. 72A.) It will be noted that the scale begins with 2.5 cents for distances of 5 miles and under, gradually increases with the distance until it reaches 8 cents at 170 miles, and is proportionately increased to 11 cents at 300 miles. Above that distance the scale is unimportant, because logs seldom move by rail even that far.

This scale was the same as had been found reasonable for application on logs between various points in the South in four previous cases (see R. 33, 35–37), having been based on the Pierpont scale. It has become what may be termed the standard scale for log rates in the South. In *Farris Hardwood Lbr. Co.* v. *L. & N. R.R.*, 178, I.C.C. 671, 676–677, the Commission found:

> Rates based on the Pierpont scale, and rates closely related thereto, by virtue of our orders and by voluntary action of the carriers, have widespread application on log traffic throughout the Southeast. Such rates have been prescribed or approved by us in *Pierpont Mfg. Co.* v. *S. Ry. Co.*, 50 I.C.C. 81, from points in South Carolina to Savannah, Ga.; in *North Vernon Lumber Co.*

v. *I. C. R.R. Co.*, 61 I.C.C. 355, as net rates on hardwood logs from points in Mississippi to points in western Tennessee on the Illinois Central; in *Southern Veneer Asso.* v. *A. C. L. R.R. Co.*, 62 I.C.C. 669, and *Hudson Veneer Co.* v. *Southern Ry. Co.*, 172 I.C.C. 589, on poplar and gum logs from points in South Carolina to destinations in North Carolina; in *Southern Cotton Oil Co.* v. *A. C. L. R.R. Co.*, 120 I.C.C. 190, on logs, except walnut, cherry, and cedar, from points in South Carolina to Savannah; in *Rapp Lumber Co.* v. *Louisville & N. R. C.*, 159 I.C.C. 749, as a basis for transit rates on logs, except walnut and cherry, from points in Georgia, Kentucky, Tennessee, and Virginia to Barbourville, Ky.; and in *Meridian Traffic Bureau* v. *Sumter & C. Ry. Co.*, 172 I.C.C. 255, on hardwood logs from points in Alabama to Meridian, Miss. Similar rates have been prescribed by the Alabama and South Carolina commissions. Corresponding rates are applicable between points on the Atlantic Coast Line in North Carolina and points in Virginia, and between points on the line of the same carrier in Alabama and Georgia; also between stations on the Southern Railway, generally, including points in Kentucky and Tennessee, for distances up to 500 miles.

Prior to filing its complaint with the Interstate Commerce Commission which initiated this proceeding, the Georgia Commission had adopted the scale for intrastate application in that State, but

suspended its application (temporarily) because of the existence of the Cummer scale in Florida.[10] (R. 34.)

In its report upon rehearing in the case at bar the Commission found that the Atlantic Coast Line had put the scale in effect for uniform application over its entire system (R. 34), except from southern Florida, from which, on account of unfavorable transportation conditions and higher cost of service, the rates were made 15 percent higher than the standard scale.[11] This exception is unimportant

[10] Georgia shippers protested to the Georgia Commission that the intrastate rates in Georgia should not be higher than the Cummer scale in Florida. This situation led the Georgia Commission to file its complaint with the I.C.C. in this case.

In the Commission proceeding the Atlantic Coast Line took the position that while it had carried out in good faith and without complaint its contract for the Cummer scale rates, it was unwilling to apply them elsewhere on its system, and it strongly opposed the use of the Cummer scale rates as a measure of reasonableness for Florida-Georgia interstate rates.

The contract has since become inoperative. It covered the movement of pine logs from Perry and Lafayette Counties, in the northwestern part of the Florida peninsula, to Eastport. The mill at Eastport has since been moved to a more economical location at Foley near the source of this mill's timber supply.

[11] No complaint has been made by anyone against these rates. In *Southern Class Rate Investigation*, 100 I.C.C. 513 (585, 626, 646); 128 I.C.C. 567 (594, 602) the Commission prescribed class rates for application throughout Southern territory and made class rates for the part of the haul within the Florida peninsula 15 percent higher than for the remainder of Southern territory. (R. 34, 36, 60, 374). See also *Petroleum and its Products*, 171 I.C.C. 286, 332.

because, as previously explained, the distances are so great that no logs shipments have moved from southern Florida to interstate destinations.

Thus, the interstate log rates now in effect over the Coast Line's entire system for all distances that logs ordinarily move are rates which have been prescribed or approved by the Commission as reasonable. This is sufficient. *Wisconsin Case, supra; United States* v. *Louisiana*, 290 U.S. 70, 82.

(a) The objection that there has been no substantial interstate movement of logs over the Coast Line from northern Florida to Georgia is irrelevant, since the primary concern of the present order is to prevent revenue losses from the unremunerative intrastate rates and to require that this intrastate traffic shall pay "its fair proportionate share of the cost of maintenance" of the interstate carrier.

The objection that there has been no substantial interstate movement of logs over the Coast Line from northern Florida to Georgia might be relevant if the Commission's order were predicated solely on findings of undue prejudice against interstate shippers, but if so the objection would lack merit, for even an occasional shipment of logs over northern Florida to Georgia is entitled to nonprejudicial rates, and the Commission's report indicates that an occasional carload has moved. (R. 67.) And it seems not improbable that a substantial traffic in logs from the timber in northern Florida to the sawmills in southern Georgia might develop under nondiscriminatory rates and after

this litigation relating to those rates is finally settled. But it seems obvious its failure to develop could not justify continuance of the unduly low intrastate rates in Florida, with the resulting substantial revenue losses, if the carrier is entitled to "a reasonable compensatory return for all the work it does." (*Wisconsin* case, 257 U.S., 589.) Directed against the order as based upon findings of unjust discrimination against interstate commerce growing out of revenue losses from the intrastate rates, the objection seems wholly irrelevant. As previously shown, this carrier's Florida log traffic is an important one, and the revenue from that traffic has a substantial influence upon its total revenues. (R. 38-39.) The present order is not concerned with any particular interstate traffic of the carrier; its concern is primarily to prevent revenue losses resulting from the unremunerative intrastate rates and to require that this intrastate traffic shall pay its "fair proportionate share of the cost of maintenance" of the interstate carrier. (*Florida* case, 282 U.S., 211.) It seems this must be so even though no interstate log movement takes place on the particular part of the carrier's system that crosses the Florida-Georgia State line.

6. The Commission's finding that the maintenance of the Cummer scale "to meet what little truck competition could be met would greatly decrease the revenues of defendant and would not be warranted" is not arbitrary but is fully supported and justified by the evidence introduced at the first and second rehearings

The Commission granted a second rehearing upon the petition of the Florida interveners which set forth that after the issuance of the report and order of July 5, 1932, southern rail carriers other than the Atlantic Coast Line had reduced their log rates to substantially the basis of the Cummer scale. The purpose of the second rehearing was to receive evidence "respecting any change in the rates on logs since the close of the previous hearing, the circumstances connected with and the conditions which occasioned such changes, and whether such circumstances and conditions, or any of them, are present with respect to the Florida intrastate log rates of defendant." (Report on Second Rehearing, R. 363.) The evidence introduced at this rehearing showed that a number of carriers operating in southern and southwestern territories had in recent months established "per-car" rates on logs which were substantially the same as the Cummer scale, and that these rates had been made experimentally in an effort to meet truck competition which the carriers' investigations had shown to exist. (R. 363, 365.) While the extent of this truck competition was not shown, the Commission said "it apparently was sufficiently compelling, in

the judgment of the managers of these railroads, to warrant the establishment of these rates as an experiment." (R. 365.) Representatives of several of these railroads testified "they hoped that the experiment of publishing these rates would prove successful after sufficient time had elapsed to fully test it, but that so far the experiment had not proved successful, that they had regained relatively little of the log traffic from the trucks," and that there was, "little, if any, hope of securing much of the traffic that now moves by truck for distances under 25 miles, a considerable portion of which never has moved by rail. (R. 366.)

The regular log rates of most of these carriers are still published and will again become effective when the special, truck competitive rates expire. (See Report, R. 365.) Most of these latter rates are "transit" rates and all of them, except those on one railroad, apply for maximum distances of 100 miles. (R. 363–365.)

The Freight Traffic Manager of the Atlantic Coast Line testified that one of his important duties is to keep informed as to the extent to which trucks are taking business from his railroad and as to the advisability and practicability of the railroad reducing its rates because of truck competition; that there had been no substantial change in conditions in Florida since the previous hearing; that the movement of logs by truck in the territory served by the Coast Line, including Florida, is

negligible and not sufficient to warrant reductions in rates to save such traffic from the trucks; and that the log traffic which moves by truck for distances under 25 miles could not be regained by any rates which the Coast Line might make because in most instances the distance from the woods to the railroad stations represents such a large percentage of the distance to the mills as not to justify transfer of the logs from trucks to railroad cars. (Report, R. 371–372.)

The Commission found that "the record warrants the conclusion that truck competition, and, to a lesser degree carrier competition, has been sufficiently compelling in the judgment of the responsible traffic officials of the various railroads operating in the western portion of southern territory to warrant the establishment experimentally of the low per-car rates on logs hereinbefore referred to; that these reduced rates have not as yet succeeded in regaining for the railroads which established them any great amount of log traffic; that it is doubtful if the log traffic now moving by truck for the shorter distances, particularly 25 miles and under, can be regained by these or any other rates that the carriers could make; that there is but little competition between defendant and trucks for the movement of logs intrastate in Florida for distances over 25 miles and, in the judgment of defendant's responsible traffic official, it is not of sufficient importance to warrant the establishment or main-

tenance of subnormal rates in an effort to regain it; and that the circumstances and conditions which occasioned the establishment of the experimental reduced per-car rates on logs by other railroads in a section of southern territory quite widely separated from that in which defendant operates, are not present with respect to the intrastate log traffic over defendant's lines in Florida." (R. 373–374.)

This evidence and the findings upon it affirmed the finding that had been made in the report upon the first rehearing, as follows:

> In the Florida log transportation some competition from trucks is met but only to a very slight degree. It is not shown that logs can or will be transported by trucks except for very short distances, nor that truck competition was or will be increased under advanced rates. (R. 51.)

In its report upon the second rehearing the Commission concluded that the movement of logs in Florida "has not been shown to have gone to the trucks to any substantial extent where the hauls are over 25 miles and this record warrants the conclusion that truck competitive rates for distances under 25 miles would regain little, if any, traffic, and that to require defendant to continue to maintain the Cummer scale to meet what little truck competition could be met would greatly decrease the revenues of defendant and would not be warranted." (R. 375.)

The Commission was careful to say, in respect of the temporary per car rates put in by southern carriers other than the Atlantic Coast Line in an effort to meet truck competition, that it does not approve of rates published in amounts per car regardless of weight, and nothing contained in its report should be considered as an approval of rates so published on logs; and the Commission further said:

> These per-car rates on logs are not here in issue and no one has complained to us in any other proceeding that they are unreasonable, undnly preferential, or otherwise unlawful. (R. 375.)

Cf. *Int. Com. Comm.* v. *Louis. & Nash. R.R.*, 227 U.S. 88, 92.

Having in mind the possibility that truck competition in certain localities or between certain points in Florida might arise and become of sufficient intensity to warrant reductions in the Coast Line's log rates to meet such competition where it existed, the Commission inserted a *saving clause* in its report under which, with Commission approval, reductions to levels under the minimum intrastate rates prescribed in the order might be made. This saving clause is broad enough to cover that contingency or any other in which such reductions might be desirable, for it provides that the Commission's findings are without prejudice to the right of any interested party to apply for a modi-

fication of the findings and the order as to any specified intrastate rate on the ground that it does not relate to interstate rates in such a way as to contravene the provisions of the Interstate Commerce Act. (R. 376.) In the *Wisconsin* case, 257 U.S. 563, 591, the Court approved a similar clause, and of it said:

> It may well turn out that the effect of a general order in increasing all rates, like the one at bar, will, in particular localities, reduce income instead of increasing it, by discouraging patronage. Such cases would be within the saving clause of the order herein, and make proper an application to the Interstate Commerce Commission for appropriate exception. So, too, in practice, when the state commissions shall recognize their obligation to maintain a proportionate and equitable share of the income of the carriers from intrastate rates, conference between the Interstate Commerce Commission and the state commissions may dispense with the necessity for any rigid federal order as to the intrastate rates, and leave to the state commissions power to deal with them and increase them or reduce them in their discretion.

Appellant contends that the action of the Commission in prescribing minimum intrastate log rates on the Coast Line in Florida at a time when other southern carriers were reducing their log rates down to the level of the Cummer scale rates,

for the purpose of meeting truck competition, was arbitrary, unreasonable, and discriminatory.

This contention raises a question of great importance, for if it were sustained it would mean that whenever a carrier or a group of carriers reduced particular rates to meet truck competition where it existed, those carriers and all others in the same general territory would be compelled to make like reductions in all their related rates, even at places and localities where no truck competition existed and even though the reductions made to meet the truck competition were down to levels below those found by the Interstate Commerce Commission to be reasonable. The devastating effect upon the revenues of the railroads and upon their ability to afford adequate and efficient service, is obvious. It seems manifest that the principle underlying this contention is utterly untenable.

Other southern carriers, faced with severe truck competition, were forced to sacrifice their revenue by making drastic reductions in their rates in an effort to meet that competition. Appellants would require the Coast Line to continue to sacrifice its revenue by maintaining the Cummer scale, already as low as the truck competitive rates established by the other southern lines, despite the absence of truck competition in Florida of sufficient severity to require the maintenance of such low rates, and despite the Commission's finding and conclusion, after very careful consideration and upon a full

record disclosing all the facts, that the movement of logs in Florida has not gone to the trucks to any substantial extent where the hauls are over 25 miles, that truck competitive rates for distances under 25 miles would regain little, if any, traffic, and that to require the Coast Line to continue to maintain the Cummer scale to meet what little truck competition could be met would greatly decrease the carrier's revenues and would not be warranted. (R. 375.) It seems obvious the Commission's action cannot be characterized as either arbitrary or unreasonable.

The Commission has held many times that the maintenance by rail carriers of low rates between particular points for the purpose of meeting competition of other transportation agencies, such as water carriers and motor trucks, does not unlawfully discriminate against shippers between other points not affected by such competition. For instance, in *Rate Structure Investigation, Part 3, Cotton*, 165 I.C.C. 595, the Commission fixed a scale of rates on cotton in the Southwest. Later, truck competition of great intensity grew up near the Gulf ports, and the railroads made substantial reductions from the maximum reasonable rates in order to meet the truck competition, while maintaining the full maximum rates prescribed by the Commission between points where the truck competition did not exist. In a supplemental report, 174 I.C.C. 9, the Commission said:

> It would seem that points from which trucks do not operate can not be heard seriously to complain if the rail carriers reduce their rates within the zone of truck operations for competitive reasons, so long as they do not go below a reasonably compensatory basis, because if the railroads do not haul the cotton at lower rates the trucks will. (*Ibid.*, 15.)

The Commission further observed "that the transportation of cotton to the Texas ports by motor trucks, which has developed during the past few years, has made severe inroads upon the traffic and revenues of the respondents [rail carriers] which they can ill afford to stand." (*Ibid.*, 15.)

In *Refined Petroleum Products in the Southwest,* 171 I.C.C. 381, 174 I.C.C. 745, the Commission, after prescribing a comprehensive readjustment of the rates on refined petroleum products within the Southwest, permitted reductions from the basic scale in clear instances of competition by other transportation agencies such as motor trucks and pipe lines, stating it believed that the carriers "should be permitted to meet such competition of other transportation agencies, provided that the rate is compensatory and provided that no unlawfulness is created." (174 I.C.C. 750–751.) And after stating that recently in *Rate Structure Investigation, supra,* it permitted departures from the relation prescribed between certain points

where reductions were necessary to meet truck competition, held:

> Under such circumstances, there can not be said to be undue prejudice in connection with rates between points not affected by such competition. (174 I.C.C. 751.)

In *Procter & Gamble Co.* v. *Alton & S. R. Co. et al.*, 183 I.C.C. 365, in which it was alleged that carload soap rates were unreasonable, complainant contended that continuance of the present rates on soap would result in increased diversion of the traffic to waterways and trucks and that a reduction in the rates must be required by the Commission, if the traffic is to be retained by the railroads. The Commission declined to reduce the rates on the ground, quoting from its report in *Lindsay Bros.* v. *B. & O.*, 16 I.C.C. 6, in which it said:

> We think it clear that while water competition may be availed of by a carrier as its justification and excuse for rates that are lower than would otherwise be lawful under sections 2, 3, or 4 of the act, the existence of such competition is not in itself a ground upon which a shipper may demand a lower rate. It is the privilege of a carrier, in its own interest, to meet such competition, but it is not the privilege of a shipper to demand less than normal rates because of the existence of a competition which the carrier in its own behalf does not choose to meet.

Further the Commission said it had "made similar statements with respect to the weight to be ac-

corded to the existence of water competition when we are fixing maximum reasonable rates" and that "the statements made in those cases as to water competition apply with equal force to truck competition." (183 I.C.C. 367, 368.)[*]

We submit that these holdings are sound and conform to the letter and spirit of the Interstate Commerce Act. Applied to the facts in the case at bar, these holdings lead to the conclusion that the Florida log shippers cannot demand the restoration of the unduly low, unremunerative Cummer scale rates on logs in Florida, which are not justified or required by truck competition, on the ground that reduced log rates have been established elsewhere *by other carriers* for the purpose of meeting actual existing truck competition; and that the Commission's order is not discriminatory or otherwise invalid because it increased the Cummer scale rates to the level of the reasonable interstate rates in order to remove an undue burden upon the reve-

[*] Some other important decisions of the Commission dealing with the subject of truck competition are *Cement from Hudson, N.Y.*, 186 I.C.C. 8; *Increases in Intrastate Freight Rates*, 186 I.C.C. 615; *Paper and Paper Articles*, 186 I.C.C. 536; *Refined Petroleum Products in the Southwest*, 174 I.C.C. 745, 751; *Western Trunk-Line Class Rates*, 164 I.C.C. 1, 183-185; *Container Service*, 173 I.C.C. 377, 386-388; 182 I.C.C. 653, 661; 185 I.C.C. 787, 788; *Rate Structure Investigation, Part 3, Cotton*, 181 I.C.C. 474, 476; *Dickey Clay Mfg. Co. v. A. B. & C. R. Co.*, 185 I.C.C. 639, 650. See also *Motor Bus and Motor Truck Operation*, 140 I.C.C. 685, 700, 703, 724; *Coordination of Motor Transportation*, 182 I.C.C. 263; *Fifteen Per Cent Case, 1931*, 178 I.C.C. 580 et seq.

nues of the carrier. Cf. *Central R.R. Co.* v. *United States*, 257 U.S. 247, 259; *Texas & Pac. Ry. Co.* v. *U.S.*, 289 U.S. 627, 636, 649; *Nashville Ry.* v. *Tennessee*, 262 U.S. 318, 322; *United States* v. *Merchants, etc. Ass'n*, 242 U.S. 178, 188.

The Atlantic Coast Line has not reduced its log rates at any point on its system but has maintained the rates fixed by the Commission as reasonable. What appellants really seek, therefore, is restoration of the Cummer scale in Florida despite the fact that Florida would be the only place on the Coast Line system where such low rates would exist.

The sacrifice of revenue by other carriers in the South, resulting from extremely low rates voluntarily established by them, as an experiment, to meet truck competition, furnished no reason for the Commission to require the Atlantic Coast Line to make a similar but futile sacrifice of revenue on the Florida log traffic.

In respect of this subject matter the court below said in its opinion (R. 613–614):

> Pending this litigation in October 1932, the Commission reopened its order and took further evidence which showed that many voluntarily reduced rates had been established since the order by other carriers on low-grade traffic in raw materials comparable to the log rates in dispute, in the western part of the southern territory and in southwestern territory. It found, and the evi-

> dence well warranted the finding, that the reductions were a temporary experiment made in the effort to recapture traffic which had been taken away by trucks, and generally the lowered rates carried an obligation that the manufactured article should also be moved by the carrier making the rate.[13] The experiment has met with but little success. No such rates exist in the Florida territory here involved, nor is truck competition there such as to make unremunerative rates judicious as likely to improve net revenues.

The court below also found "the conclusions of fact in the Commission's report to be well supported by the evidence, *and such as we would ourselves make therefrom.*" (R. 612.)

II

The Court below correctly denied a trial *de novo*

Appellants' contention that the Court below should have granted a trial *de novo* to determine "jurisdictional facts" seems to rest upon the ground that inasmuch as the proceeding before the Commission involved intrastate rates subject to the jurisdiction of the State, the Commission was without jurisdiction to make a valid order affecting them unless in fact they cast a burden upon or

[13] This was not true of the Cummer scale rates. Those rates were not "transit" rates and their application in no way depended upon the manufactured articles moving out over the Coast Line. Cf., *Chi., etc. Ry.* v. *Pub. Util Com.*, 274 U.S. 344, 350–351.

caused an unjust discrimination against interstate commerce. Their contention is not that the Court denied them the privilege of introducing new evidence, but that the defendants in the proceeding, the United States, the Interstate Commerce Commission, and the Atlantic Coast Line Railroad Company, should have been required to introduce evidence before the three-judge court which would show, independently of the evidence introduced before the Commission and independently of the Commission's findings, that the State rates did in fact cast a burden upon or cause an unjust discrimination against interstate commerce, failing which the Court would lack jurisdiction to sustain the Commission's order and would be compelled to set it aside.

Lack of merit in the contention finds demonstration in the numerous section 13 cases recently decided by this Court in which the Commission orders were sustained, though in none of them was there a trial *de novo* in the specially-constituted District Court. Going back to the very first case relating to discrimination against interstate commerce caused by unreasonably low State rates, *The Shreveport Case*, 234 U.S. 342, there has been no case in which this Court has held or suggested that a trial anew in the District Court was necessary or proper. Previous decisions of this Court seem indisputably to establish the following: Under section 13 the Commission is authorized to make such

an order as that here involved. Under the Urgent Deficiencies Act the specially-constituted District Court has jurisdiction to review the order. In such review the Court does not proceed *de novo* to determine the facts, but considers only questions of law. The Commission is the fact-finding body. The Court does not review the Commission's findings of fact except to determine whether they are supported by substantial evidence. Since, in a section 13 case, the ultimate fact determined by the Commission is whether the state rates cause unjust discrimination against interstate commerce, it is apparent that if the three-judge Court were required to determine the fact for itself, in a trial *de novo*, it would be compelled to retry the whole case, to exercise administrative judgment, to perform legislative functions, and to substitute its judgment for that of the Commission, resulting in divided authority over a subject matter delegated by Congress to the Commission and in the confusion and conflict pointed out by this Court in familiar decisions. *Procter & Gamble Co.* v. *United States*, 225 U.S. 282; *I.C.C.* v. *Ill. Cent. R.R.*, 215 U.S. 452, 470; *I.C.C.* v. *Un. Pac. R.R.*, 222 U.S. 541, 547; *Mfgrs. Ry. Co.* v. *United States*, 246 U.S. 457, 482; *Nashville Ry.* v. *Tennessee*, 262 U.S. 318, 322–324; *Tagg Bros.* v. *United States*, 280 U.S. 420, 443; *Florida* v. *United States*, 282 U.S. 194, 215.

Appellants rely upon the decision in *Crowell* v. *Benson*, 285 U.S. 22, a case under the Longshore-

men's and Harbor Workers' Compensation Act, holding that the District Court properly granted a hearing *de novo* to determine the fact whether the relation of master and servant existed as between the injured and Benson, against whom an award had been issued by the Compensation Commission. But that opinion itself points out the distinction between that case, where the subject matter of the litigation was damages for personal injury—a purely judicial and not an administrative or legislative function as is the matter of prescribing rates—and cases like the one at bar relating to matters arising between the Government and persons subject to its regulatory authority. This distinction is made at pages 50 and 51 of the opinion, in the following language:

> As to determinations of fact, the distinction is at once apparent between cases of private right and those which arise between the Government and persons subject to its authority in connection with the performance of the constitutional functions of the executive or legislative departments. * * *
>
> Familiar illustrations of administrative agencies created for the determination of such matters are found in connection with the exercise of the congressional power *as to interstate and foreign commerce*, taxation, immigration, the public lands, public health, the facilities of the post office, pensions and payments to veterans.

> The *present case does not fall within the categories just described but is one of private right*, that is, of the liability of one individual to another under the law as defined. * * * (Italics supplied.)

In respect of this contention, the court below in its opinion said:

> * * * It is not doubted that the power of the Commission to make an order is a judicial question, and that the Court may examine it independently. When, however, the very fact upon the existence of which the power to act depends has been contradictorily tried before the Commission itself, its conclusion fully expressed upon its record affirming the existence of the fact is certainly sufficient to put the burden upon those who deny it. While at one time all findings of the Commission were declared by the statute to be only prima facie evidence of their correctness, that language has now been retained only with reference to money awards and to valuations of property by the Commission, and it is well established that under the enlarged and positive powers with which the Commission is now vested its findings of fact within the scope of its powers will not be reviewed by the courts if supported by evidence. (R. 617.)

Then, after citing *Merchants Warehouse Co.* v. *United States*, 283 U.S. 501, and other decisions of this Court, (R. 617–618), the Court said it "need

not decide whether in this case the Commission's finding of unjust discrimination is entitled to any less weight because it is a prerequisite of its jurisdiction as well as the meritorious basis for its exercise, because we have examined the evidence independently and are led to the same conclusion that the unjust discrimination exists." (R. 619.)

The court below did not err in denying a trial *de novo*.

CONCLUSION

It is respectfully submitted that the decree of the court below sustaining the validity of the Commission's order and denying the prayer to annul, set aside and enjoin the order should be affirmed.

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FEBRUARY 1934.

APPENDIX

The Interstate Commerce Act, as amended by Transportation Act, 1920, (41 Stat. 456) provides:

SECTION 13 (3). Whenever in any investigation under the provisions of this Act, or in any investigation instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation, or practice made or imposed by authority of any State, or initiated by the President during the period of Federal control, the Commission, before proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. The Commission may confer with the authorities of any State having regulatory jurisdiction over the class of persons and corporations subject to this Act with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such State bodies and of the Commission; and to that end is authorized and empowered, under rules to be prescribed by it, and which may be modified from time to time, to hold joint hearings with any such State regulating bodies on any matters wherein the Commission is empowered to act and where the rate-making authority of a State is or may be affected by the action taken by the Commission. The Commission is also authorized to avail itself of the cooperation, services, records, and facilities of such State authorities

in the enforcement of any provision of this Act.

SECTION 13 (1). Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding.

SECTION 15a (2). In the exercise of its power to prescribe just and reasonable rates the Commission shall initiate, modify, establish, or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will, under honest, efficient and economical management and reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be,

to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation: *Provided*, That the Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to prescribe different rates for different sections of the country.

SECTION 15a. (3) The Commission shall from time to time determine and make public what percentage of such aggregate property value constitutes a fair return thereon, and such percentage shall be uniform for all rate groups or territories which may be designated by the Commission. In making such determination it shall give due consideration, among other things, to the transportation needs of the country and the necessity (under honest, efficient, and economical management of existing transportation facilities) of enlarging such facilities in order to provide the people of the United States with adequate transportation: *Provided*, That during the two years beginning March 1, 1920, the Commission shall take as such fair return a sum equal to 5½ per centum of such aggregate value, but may, in its discretion, add thereto a sum not exceeding one-half of one per centum of such aggregate value to make provision in whole or in part for improvements, betterments or equipment, which, according to the accounting system prescribed by the Commission, are chargeable to capital account.

By Emergency Railroad Transportation Act, 1933, Section 205, (c. 91, 48 Stat. 211, 220, approved

June 16, 1933) section 15a of the Interstate Commerce Act was amended to read as follows:

> SEC. 15a. (1) When used in this section, the term 'rates' means rates, fares, and charges, and all classifications, regulations, and practices relating thereto.
>
> (2) In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide such service.

Other pertinent provisions of Emergency Railroad Transportation Act, 1933, are as follows:

> SEC. 2. In order to foster and protect interstate commerce in relation to railroad transportation by preventing and relieving obstructions and burdens thereon resulting from the present acute economic emergency, and in order to safeguard and maintain an adequate national system of transportation, there is hereby created the office of Federal Coordinator of Transportation, who shall be appointed by the President, by and with the advice and consent of the Senate, or be designated by the President from the membership of the Commission.
>
> SEC. 10. (a) The carriers or subsidiaries subject to the Interstate Commerce Act, as amended, affected by any order of the Coordinator or Commission made pursuant to this title shall, so long as such order is in

effect, be, and they are hereby, relieved from the operation of the antitrust laws, as designated in section 1 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies; and for other purposes", approved October 15, 1914, and of all other restraints or prohibitions by law, State or Federal, other than such as are for the protection of the public health or safety, insofar as may be necessary to enable them to do anything authorized or required by such order made pursuant to this title: *Provided, however*, That nothing herein shall be construed to repeal, amend, suspend, or modify any of the requirements of the Railway Labor Act or the duties and obligations imposed thereunder or through contracts entered into in accordance with the provisions of said Act.

(b) The Coordinator shall issue no order which shall have the effect of relieving any carrier or subsidiary from the operation of the law of any State or of any order of any State commission until he has advised the State commission of said State, or the Governor of said State, if there be no such commission, that such order is in contemplation, and shall afford the State commission or Governor so notified reasonable opportunity to present views and information bearing upon such contemplated order, nor unless such order is necessary, in his opinion, to prevent or remove an obstruction to or a burden upon interstate commerce.

SEC. 206. (a) All moneys which were recoverable by and payable to the Interstate Commerce Commission, under paragraph (6) of section 15a of the Interstate Commerce Act, as in force prior to the enactment of this title, shall cease to be so recoverable

and payable; and all proceedings pending for the recovery of any such moneys shall be terminated. The general railroad contingent fund established under such section shall be liquidated and the Secretary of the Treasury shall distribute the moneys in such fund among the carriers which have made payments under such section, so that each such carrier shall receive an amount bearing the same ratio to the total amount in such fund that the total of amounts paid under such section by such carrier bears to the total of amounts paid under such section by all carriers; except that if the total amount in such fund exceeds the total of amounts paid under such section by all carriers such excess shall be distributed among such carriers upon the basis of the average rate of earnings (as determined by the Secretary of the Treasury) on the investment of the moneys in such fund and differences in dates of payments by such carriers.

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FEB 12 1934
CHARLES ELMORE CROPL
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1933

STATE OF FLORIDA, EUGENE S. MATTHEWS, MAMIE EATON-GREEN, and W. B. DOUGLASS, etc., ET AL,
Appellants,

VERSUS

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, GEORGIA PUBLIC SERVICE COMMISSION, and ATLANTIC COAST LINE RAILROAD COMPANY,
Appellees.

No. 342

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

BRIEF FOR ATLANTIC COAST LINE RAILROAD COMPANY, REPLYING TO THE MAIN BRIEF OF APPELLANTS AND TO THE SEPARATE BRIEF OF APPELLANT, WILSON LUMBER COMPANY OF FLORIDA, AND TO THE SUPPLEMENTAL AND SEPARATE BRIEF OF THE STATE OF FLORIDA AND THE RAILROAD COMMISSIONERS OF FLORIDA

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In the Supreme Court of the United States

OCTOBER TERM, 1933

STATE OF FLORIDA, EUGENE S. MATTHEWS, MAMIE EATON-GREEN, AND W. B. DOUGLASS, etc., ET AL

Appellants,

VERSUS

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, GEORGIA PUBLIC SERVICE COMMISSION, and ATLANTIC COAST LINE RAILROAD COMPANY,

Appellees.

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REPLYING TO THE ARGUMENT THAT THE AMENDMENT TO §15*a* OF THE INTERSTATE COMMERCE ACT BY THE EMERGENCY RAILROAD TRANSPORTATION ACT OF 1933 DESTROYS THE ACTION OF THE COMMISSION AND DECREE OF THE COURT IN THIS CASE.

This is the only subject dealt with in the separate brief of the appellant, Wilson Lumber Company of Florida. It is also dealt with in the supplemental and separate brief of the State of Florida and the Railroad Commissioners of Florida, beginning at page 5.

Counsel for Wilson Lumber Company states (p. 3 of brief) that:

> "The sole purpose of this separate brief is to present the suggestion that the order of the Interstate Commerce Commission here in issue, even if valid when made, which is, of course, not conceded, must now be set aside because the statute upon which rested the authority to make such order has now been repealed and a new statute enacted."

At page 5 of the same brief, it is stated:

> "The order of the Interstate Commerce Commission here in issue is based solely on the power of the Commission to change intrastate rates to remove a revenue burden on interstate commerce, the Commission having expressly refused to find the existence of discrimination against persons and localities."

FALLACY OF THIS POSITION.

It is claimed that the power of the Interstate Commerce Commission to fix intrastate rates to remove a revenue burden on interstate commerce generally was never expressly granted by any Act of Congress. It is thought that, because this court in the case of *Wisconsin Railroad Commissioners v. United States*, 257 U. S. 563 dealt with the "dovetail" relationship between sections 13(4) and 15*a*(2) of the Interstate Commerce Act, as amended by the Transportation Act, the power of the Interstate Commission to remove discrimination worked against intrastate commerce depended upon section 15*a*.

Section 13(4) of the Act authorizes and directs the Commission to

> "prescribe the rate, fare or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed"; etc.,

which might be necessary to remove any "rate, fare, charge, classification, regulation or practice" which causes any "undue or unreasonable advantage, preference, or prejudice as between persons and localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, *or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful.*" (Italics added).

This court in the Wisconsin case at page 586 fully recognizes that ¶4 of §13 of the Act gives to the Interstate Commission "direct power to remove 'any undue, unreasonable

or unjust discrimination against interstate or foreign commerce'." It is true that the court there says:

> "It is impossible to escape the dovetail relation between that provision and the purpose of §15*a*."

The purpose of §15*a* was declared at page 585 by the court to be that

> "The new measure imposed an affirmative duty on the Interstate Commerce Commission to fix rates and to take other important steps to maintain an adequate railway service for the people of the United States. This is expressly declared in §15*a* to be one of the purposes of the bill."

There was never a lack of power on the part of the Congress to enact a law of this sort for the purpose of preventing interstate commerce being discriminated against by intrastate commerce. This has been recognized by the court, and especially in the *Minnesota Rate Cases*, 230 U. S. 352, at 411 where the court said:

> "When, however, the State in dealing with its internal commerce undertakes to regulate instrumentalities which are also used in interstate commerce, its action is necessarily subject to the exercise by Congress of its authority to control such instrumentalities so far as may be necessary for the purpose of enabling it to discharge its constitutional function."

The court also held:

> "The authority of Congress extends to every part of interstate commerce and to every instrumentality or agency by which it is carried on; and the full control by Congress over the subjects committed to its regulation is not to be denied or thwarted by the commingling of

interstate and intrastate operations." *Minnesota Rate Cases*, 230 U. S. 353.

The court in the Wisconsin case, did not refer to the relation between §13(4) and §15*a* for the purpose of finding power either in the Constitution or in the Congress or in the Act to Regulate Commerce but it referred to that relation for the purpose of finding the proper construction of §13(4) for the court there stated that §13(4) had for the first time vested the Commission "with a direct power to remove 'any undue, unreasonable, or unjust discrimination against interstate or foreign commerce.'" (257 U. S. 586).

The Purpose of Subsection 2 of §15*a* of the Act Was Not Changed.

It is of course, common knowledge that railroads have been passing through an extremely unfortunate economic period.

§15*a*(5) and (6) had provided for a recapture of excess earnings and the Congress by the Emergency Railroad Transportation Act of 1933 intended to retroactively relieve the railroads of that obligation. The caption of the Act known as the Emergency Railroad Transportation Act of 1933, is:

> "An Act to Relieve the Existing National Emergency in Relation to Interstate Railroad Transportation, and to Amend Sections 5, 15*a*, and 19*a* of the Interstate Commerce Act, as amended."

The cause of the adoption of this Act was the relief needed by the railroads.

§15*a*(2) of the Interstate Commerce Act as now amended is as follows:

> "In the exercise of its power to prescribe just and reasonable rates the Commission *shall* give due consideration, among other factors, to the effect of rates on the movement of traffic; *to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenue sufficient to enable the carrier, under honest, economical, and efficient management, to provide such service.*" (Italics added).

The words of this amended section 15*a*(2) were probably intended to mean what they did mean under the original ¶2 of §15*a* of the Act, being amended so far as that was consistent with the relief from the recapture clause. §15*a* as thus amended still shows the same purpose which the court noted in the Wisconsin case (257 U. S. 585) that

> "The new measure imposed an affirmative duty on the Interstate Commerce Commission to fix rates and to take other important steps to maintain an adequate railway service for the people of the United States. This is expressly declared in §15*a* to be one of the purposes of the bill."

Turn to §15*a* (2) of the Act as amended June 16, 1933 and we find that the Commission is required (the word is "shall") "in the exercise of its power to prescribe just and reasonable rates" to "give due consideration . . . to the effect of rates on the movement of traffic; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenue sufficient to enable the carrier,

under honest, economical and efficient management, to provide such service."

There is no change whatever in the purpose of the old and the new sections. The Commission is no longer required to determine and make public what percentage on the aggregate property value constitutes a fair rate, none the less, the Constitution requires that rates so far as reasonable and just rates may do so, shall be sufficient to give a fair return upon the property used.

Congress shows the same concern to maintain an adequate and efficient railway transportation service and it also shows the same concern to furnish to the carriers the needed revenue sufficient to enable them, under honest, economical and efficient management to provide such service. The language of the amendment closely approaches the language of §15*a* (3).

The major premise of appellants' position is that the Interstate Commerce Commission no longer has the power to prevent unjust discrimination against interstate commerce which is caused by making of intrastate rates so low that they will not bear their fair proportionate share of the expense of maintaining the railway system used in both intrastate and interstate commerce.

The result of sustaining this position would be to hold that the Commission would not have the power to remove any discrimination against interstate commerce involved in a general disparity between interstate and intrastate rates.

Another effect of sustaining appellants' position as to this would be to hold that the Interstate Commission has no longer

the power to prevent the States from making rates so low that the intrastate commerce would not carry its fair proportionate share of the expense of maintaining the transportation system used in interstate and intrastate commerce. That would be a tremendous backward step. The necessity of this provision of the Interstate Commerce Act is almost as important as is the act itself.

The Emergency Railroad Transportation Act of 1933 in some of its features was under construction by the Circuit Court of Appeals of the Fifth Circuit in *Quannah, A. & P. Rwy. Co. v. Panhandle & S. A. Rwy. Co.*, 67 Fed. (2d) 826. The matter there under consideration was the discontinuance of through joint routes. While nothing in that decision directly affects the matter here under consideration, it is clear from the opinion as a whole, that the court did not think that new Act curtailed the power of the Interstate Commerce Commission to take such action as might be necessary in the public interests to maintain an adequate and efficient railway transportation service, in so far as that might be maintained in the exercise of the Commission's power to prescribe just and reasonable rates. This decision also indicates that the effect of the Emergency Railroad Transportation Act can not be presented in this cause because the action of the Commission and decree of the lower court were entered prior to the enactment of that law.

The Action of the Interstate Commerce Commission in this Case and the Decision of the Court Sustaining that Action Were Both Made Before the Enactment of the Emergency Railroad Transportation Act, 1933.

If the enactment of the Emergency Railroad Transportation Act of 1933 had the effect of depriving the Commission of the power to remove unjust discrimination against interstate commerce worked by unduly low intrastate rates, and of destroying its action in this case, it would have the effect of tearing down every rate structure which the Interstate Commerce Commission has made under this power.

The Interstate Commission's report and order in this case was entered July 5, 1932. It was suspended, as has been pointed out in our main brief, and the proceedings before it reopened, and another report and order were entered on January 9, 1933. The decision of the District Court appealed from to this Court was entered February 24, 1933. The Emergency Railroad Transportation Act of 1933 was adopted on June 16, 1933. The status of the rates complained of had been fixed by the Commission and adjudicated by the Court prior thereto.

REPLYING TO POINT I OF APPELLANTS' MAIN BRIEF (p. 37)

This point claims that on January 9, 1933 and on July 5, 1932 the times at which the Interstate Commerce Commission entered its second and first reports on the further hearing, there was no substantial disparity between the Cummer scale of rates and the interstate scale of rates throughout the Southern territory. The same point is made as Point III of the Supplemental and Separate Brief of the State of Florida, at page 36.

The report and order which were entered on July 5, 1932 by the Interstate Commerce Commission (186 I. C. C. 157) we refer to as the Commission's second report. The report and order entered on January 9, 1933 (190 I. C. C. 588) we refer to as the Commission's third report.

The rates which are referred to as being in effect on July 5, 1932 and January 9, 1933 and which are relied upon by appellants to show the absence of disparity in the rates are discussed in the third report of the Commission (190 I. C. C. 588). The Interstate Commission considered each of the tariffs putting into effect what are called the Newly Reduced Rates. No one of those tariffs was effective over all of any system of railroads except three which may be seen from page 48, et seq. of appellants' main brief. They were the Nashville, Chattanooga & St. Louis Railway Company; the Gulf, Mobile & Northern Railway Company; and the Georgia & Florida Railway Company. They were limited as to points of origin and points of destination. Turn to page 49 of our opponents' main brief and note the Illinois Central Railroad and the sharp limitation as to stations of origin and destina-

tion o. .nese rates on that system. These rates were put into effect for limited times. As we have heretofore shown, they are experimental. We do not think the statement at page 61 of appellants' brief, to the following effect, is accurate:

> "The maps (R. 388 and 490) attached to the supplemental bills of complaint of the State of Florida and of the Wilson Cypress Company and Wilson Lumber Company, as Exhibit 'D' to those bills, respectively, show graphically the widespread application of these Newly Reduced Rates, both in Southern and Southwestern territory. They are applicable in intrastate and interstate commerce in Florida upon four railroads."

These rates are applicable between some points on all of those roads but they are applicable between only very limited points on most of them, as we have pointed out. Their limited application is shown in the appellants' briefs. The limited application of these rates is pointed out very carefully by the Interstate Commission in its third report (190 I. C. C. 588-590). There isn't a single one of the rates applicable in Southern Florida. The basis of the rates, that is, per carload without regard to weight, is calculated to produce the utmost discrimination. Equality under those rates could only be accidental. Two shippers at the same point of origin desiring to ship logs to the same destination might ask for cars and one would get a car of 60,000 capacity and another of 120,000 capacity and those shipments would move to the same point of destination; they would pay the same rate and plainly one shipment would have gotten twice as much service as the other.

The Commission fully considered the claims made in this section of the brief and had evidence from each of the rail-

roads concerned as well as other evidence. It made its third finding (190 I. C. C. 588) dealing fully with that evidence and holding that they were not sufficient to sustain the claim of the appellants.

THE SO-CALLED NEW RATES WERE OFFERED ONLY AS RATE COMPARISONS.

Those new rates were after all nothing but rate comparisons. It was not claimed by any of the roads that those rates paid their way. They were put in as an experimental effort to recover traffic which had been lost to truck competition, and the evidence of the several witnesses was in effect that this had largely failed for distances above twenty-five miles. Note the evidence of the witnesses J. W. Perrin (R. beginning 1048), C. D. Thomas (R. 1037, recalled at 1069), M. W. Thomas (R. 1030), E. R. Gardner (R. 1024), and H. B. Norden (R. 1012). The evidence of these witnesses has been referred to in our main brief.

At page 65 of the main brief appellants claim that the Interstate Commission stated in its order of July 5, 1933, "without any evidence to that effect in the record" that the logs were freely moving throughout the South upon rates the same or substantially the same as those prescribed by its order here involved. Appellants state that it is difficult to understand why nearly all of the major railroads in the South should at or about that very time voluntarily and with the permission of the Commission reduce their rates to the level of the Cummer scale. The *answer is, they did not do that.* Certain rates were reduced between certain places and for limited distances,—except in very few instances never in ex-

cess of 100 miles because of particular circumstances. This part of the brief is likely to carry with it the thought that the rates have been reduced over the whole territory and over all of each line, which as we have oftentimes stated is incorrect.

Answering subparagraph (*d*) of Point I of appellants main brief (page 65) which is headed: "The attempt of the Interstate Commerce Commission to differentiate between the Newly-Reduced Rates in the Southern Rate Group and the rates properly applicable in Florida".

Appellant states that in attempting to make the distinction between the newly reduced rates and the Cummer scale the Interstate Commission has ignored the fact that it refused to receive the evidence to show that no such distinction could be drawn.

The record before the Interstate Commission shows (R. 900) the Florida lumber companies, who were intervenors in this case, offered to prove that in practical operation and effect the Cummer scale as applied in Florida was tantamount to a transit scale in that the Atlantic Coast Line got the outbound movement of lumber under the Cummer scale.

Turning to Record 900 we find that counsel for appellants stated to the Examiner:

> "Then am I to understand that your Honor has ruled that whether or not these tariffs are transit rates or local rates makes no difference in the level of the rates and the propriety of that level."

Examiner Hoy answered:

> "I am not making any ruling as to that. You are putting in your evidence as to changes in the rates on logs and circumstances and conditions which occasion those changes, and then evidence as to whether such circumstances and conditions or any of them are present in respect to the Florida intrastate rates on logs."

Mr. Adair pressed his position to show that in effect the Cummer scale as applied in Florida is tantamount to a transit scale, and the Examiner ruled:

> "My ruling will have to be that that evidence is not admissible under the order reopening the case."

THIS QUESTION HAS BEEN DEALT WITH IN THE PRIOR HEARINGS IN THIS CASE.

The purpose of having the logs shipped from the woods to the tidewater was to have the lumber shipped from the manufacturing points at ocean rates. Notwithstanding this, Exhibit 54 shows and the evidence of the witness Perrin (R. 654, 655) shows that the so-called Cummer scale applies although the Coast Line does not have the benefit of the transit features. Manifestly, under this plan the rates to the mills apply, whether or not the output of the mills is shipped by the line transporting the logs and the same local rates apply even in case where there is no manufactured product to be shipped by rail. An examination of Exhibit 54 confirms this and so does an examination of Appendix B to the report in the 186 I. C. C. 193.

In discussing this same heading at pages 68 and 69 reference is made to the fact that the Commission (190 I. C. C. 599) pointed out that in its report of July 5, 1932 that in certain other proceedings arbitraries or higher charges have been permitted for the transportation of certain commodities in the Florida peninsula, which arbitraries were in two particular instances as much as approximately forty per cent higher than the remainder of Southern territory, and then states:

> "This proceeding is the first time that Commission has ever suggested an arbitrary ranging from one hundred per cent to more than three hundred and fifty per cent."

That statement, if applied to the record here, is not justified. Mr. Perrin testified (R. 653) and there is no contradiction of his evidence, that:

> "The interstate basis of rates on logs prescribed by the Commission for application between Georgia and Florida is now applicable interstate over the entire system of the Atlantic Coast Line except that in South Florida the present interstate scale is 15 per cent higher."

Appellants' main brief then discusses the difference between transportation conditions in Florida and elsewhere, where the newly reduced rates are in effect. It says that "the only difference which the report points out between those conditions is the fact that the Interstate Commerce Commission in other proceedings has, in a few instances, permitted a higher rate in the Florida peninsula."

The Commission has in its several reports in this case, as we have pointed out, shown the difference in density of traffic in the Florida peninsula and on other parts of the Atlantic Coast Line's system (180 I. C. C. 164) where the Commission went into some detail. It also found that the operating conditions in southern Florida are very much less favorable than on other parts of the Coast Line's System (180 I. C. C. 164) and cited previous decisions to the same effect. At page 183 of the same report the Commission again found that the operating costs per unit in Florida are generally higher in Florida than the average for the Coast Line's System as a whole either including or excluding Florida; that for the year 1929 freight-traffic density in Florida, expressed in terms of revenue ton-miles per mile of road operated was 62.8 per cent of that for the system including Florida, and 50.4 per cent of that for the system excluding Florida; using a five-year average, 1926 to 1930, inclusive, freight-traffic density in Florida was 72.8 per cent of that for the system including Florida, and 63.9 per cent of that for the system excluding Florida; that in 1929 the freight-service train-miles in Florida were 30.63 per cent of those for the system including Florida, and freight-service locomotive-miles in Florida were 30.92 per cent of those for the system, including Florida, while loaded freight car-miles in Florida were 21.25 per cent of those for the system including Florida; loaded and empty freight car-miles in Florida were 22.43 per cent of those for the system including Florida, and revenue ton-miles in Florida were 25.05 per cent of those for the system including Florida; that in 1929 the trains operated in freight service hauled an average of 18.16 loaded cars or 31.69 loaded and empty cars per train in Florida, as compared

with 26.17 loaded cars or 43.28 loaded and empty cars per train on the system, including Florida.

This part of appellants' brief appears to proceed on the theory that the log traffic in Florida was not to bear its fair part of the general expenses attributable to the carrying on of the business of the carrier, which is, of course, incorrect. See *Banton v. Belt Line Railway Co.*, 268 U. S. 413, 421.

It appears further to be based upon the theory that this is intrastate traffic and the fact that Florida is a terminal State has no bearing on the subject (p. 72 of appellants' brief). Again that argument is based purely on the theory that the log traffic is not to bear its proper proportion of the other expenses of the carrier.

These questions of fact have been held against appellant by the Commission.

REPLYING TO SUBPARAGRAPH (E) OF POINT C OF APPELLANTS' MAIN BRIEF (P. 73) ENTITLED: "THERE WAS NO 'SUBSTANTIAL DISPARITY' BETWEEN INTERSTATE AND INTRASTATE RATES UPON WHICH THE COMMISSION COULD ACT."

This point is also made at page 36 of the Supplemental and Separate Brief of the State of Florida.

It is difficult to understand the theory upon which this point is approached. This part of Appellants' main brief starts out with the statement that:

> "There has been no change in the boundaries of the Southern rate group since it was designated by the Commission pursuant to Section 15*a*."

It claims that the Commission was giving its tacit approval to reduction in rates in other parts of the territory by not cancelling or suspending them as they were filed. Unless complaints are made, the Commission does not, as a rule, interfere with tariffs, especially when they reduce rates. The right of the Commission to suspend tariffs which reduce rates is more limited than is its jurisdiction to suspend tariffs which increase rates. The fact that the Commission does not suspend a tariff does not mean that it has approved the rates therein contained.

Appellants are not justified in saying:

> "The standards by which the Commission unfavorably measured the Cummer Scale were swept away."

As we have shown in our main brief, the newly reduced rates were in effect only in a relatively few places and if they applied throughout any entire System, it was only as to two or three. They did not supplant the other rates on the Systems on which they applied.

These rates were not put in as reasonable or compensatory. They have been put in experimentally for the purpose of defeating truck competition. The Commission found, after considering all the newly reduced rates before it:

> "Transportation conditions are not substantially similar throughout southern territory. In our prior report on further hearing we specifically found that the circumstances and conditions surrounding the transportation of these logs intrastate in Florida were not on the whole as favorable as the circumstances and conditions surrounding the interstate movement of logs over defendant's lines. Therein we also pointed out that the less favorable

operating conditions in the Florida peninsula than in the remainder of southern territory have given rise to the general practice of permitting the addition of arbitraries to the rates on interstate traffic to and from points in that territory"; etc. (190 I. C. C. 599).

It is a mistake to infer, as is done on page 74 of appellants' main brief that the Commission has not fixed interstate rates on logs from Florida points to Georgia. The Commission has made findings and orders with respect to the corresponding interstate rates from Northern Florida which is defined in the order, to points in Georgia and it has fixed the rates from Southern Florida to Georgia, as we have heretofore pointed out.

Nor is it correct to infer as is done at page 74 of appellants' main brief that the general level of the rates on the commodity of logs in the rate group, as voluntarily established by the railroads and permitted by the Commission, is substantially the same as the intrastate rate which the Commission seeks to supersede by its order.

It is incorrect to say as is said at page 74:

> "Not even on the Atlantic Coast Line Railroad has the Commission ever fixed interstate rates on the commodity except from the small portion of Northern Florida where no logs ever moved in interstate commerce."

As we have heretofore pointed out, Mr. Perrin at R-653 testified that the interstate basis of rates on logs prescribed by the Commission for application between Georgia and Florida were then and are now applicable interstate over the entire System of the Coast Line except in South Florida where the present interstate scale is 15% higher.

Appellants' Argument That the Traffic of Only One Railroad is Affected, and Therefore, the Commission's Jurisdiction Fails, is Fallacious.

Let us suppose that a railroad's traffic interstate and intrastate, was confined to one commodity and that the volume was very large. The appellants would claim that the traffic in that commodity, however great it might be was exempt from the rule of law which makes unjust discrimination against interstate commerce unlawful and that the Interstate Commerce Commission had no power to correct it.

Let us suppose that a railroad had many kinds of traffic, but that the traffic in the commodity concerned was very large; that the volume amounted to practically ten per cent. of its traffic in the offending State. (The percentage of Florida log traffic to total Florida traffic in the year 1928 was 9.4%—186 I. C. C. 166). Appellants would take the position that discrimination against interstate commerce worked by an improper reduction of rates on this ten per cent. of intrastate commerce could not be remedied. Appellants do not disclose how much of a railroad's traffic must be involved in the unjust discrimination before the Commission's jurisdiction to grant relief would affix. Presumably they do not entirely eliminate the jurisdiction of the Commission to relieve unjust discrimination worked by intrastate commerce against interstate commerce but just how much of the carrier's commerce must be affected before this jurisdiction attaches they do not disclose.

Under appellants' plan it would be unimportant apparently that every other railroad in the State of Florida which carries

logs was charging for the same service approximately twice as much as was being charged in this case by the Coast Line. Apparently it does not matter that the evidence amply showed, and the Commission found, that the Cummer scale of rates the Florida state scale applicable to this traffic over the Atlantic Coast Line was less than compensatory when the cost of transportation alone was considered.

The thought of the appellants is apparently based on the further idea, that is, that under §15*a* of the Interstate Commerce Act a state may make rates for one railroad which discriminate against interstate commerce because they are so low that they do not carry their fair proportionate share of the expense of maintaining that railroad's system used in both interstate and intrastate commerce, but jurisdiction of the Interstate Commerce Commission does not attach unless those rates apply to every road in the group. In other words, appellants' apparent contention is that the Commission's power to remove unjust discrimination worked against interstate commerce by intrastate rates is invoked only when the whole group of railroads is broken down at one time. The group may be destroyed one by one without invoking the power of the Commission to prevent it. Appellants' position is equivalent to destroying the Commission's entire jurisdiction over the subject.

The purpose of §15*a* as originally adopted and as recently amended is "to maintain an adequate railway service for the people of the United States."

When this case was before this court on the first appeal (282 U. S. 211) the court held:

"As intrastate rates and the income from them must play a most important part in maintaining such a system, the effective operation of the act requires that intrastate traffic should pay 'a fair proportionate share' of the cost of maintenance. And if there is interference with the accomplishment of the purpose of the Congress because of a disparity of intrastate rates as compared with interstate rates, the Commission is authorized to end the disparity by directly removing it."

That case holds that the Commission has the jurisdiction to remove the identical discrimination referred to in this case. The discrimination found by the Commission in this case to be undue was "inimicable to the proper interests of interstate commerce."

In *Western Pacific Calif. Rd. Co. v. Southern Pacific Co.*, 284 U. S. 47, 51 the court reaffirms its decision in *Texas & Pacific Ry. Co. v. Gulf, Colorado & Santa Fe Ry. Co.*, 270 U. S. 266 referring to the fact that that decision recognized "that the preservation of the earning capacity and conservation of the financial resources, of *individual carriers* is a matter of national concern;" etc. (Italics added).

SIMILITUDE OF CASES DEALING WITH ABANDONMENT OF RAILROADS AS AUTHORIZED BY ¶¶18 AND 20 OF §1 OF THE INTERSTATE COMMERCE ACT.

In dealing with the authority of the Interstate Commission to abandon railroads which is contained in paragraphs 18 and 20 of §1 of the Interstate Commerce Act, the court held in *Colorado v. United States*, 271 U. S. 153, 162, 163, as follows:

"The Commission by its order removes an obstruction which would otherwise prevent the railroad from per-

forming its federal duty. *Prejudice to interstate commerce may be effected in many ways. One way is by excessive expenditures from the common fund in the local interest, thereby lessening the ability of the carrier properly to serve interstate commerce. Expenditures in the local interest may be so large as to compel the carrier to raise reasonable interstate rates, or to abstain from making an appropriate reduction of such rates, or to curtail interstate service, or to forego facilities needed in interstate commerce. Likewise, excessive local expenditures may so weaken the financial condition of the carrier as to raise the cost of securing capital required for providing transportation facilities used in the service, and thus compel an increase of rates.*" (Italics added).

The Court proceeds at pages 163 and 164 to say:

"The exertion of the federal power to prevent prejudice to interstate commerce so arising from the operation of a branch in intrastate commerce is similar to that exerted when a state establishes intrastate rates so low that intrastate traffic does not bear its fair share of the cost of the service, *Railroad Commission of Wisconsin v. Chicago, Burlington, & Quincy R. R. Co.*, 257 U. S. 563; *Nashville, Chattanooga, & St. Louis Ry. v. Tennessee*, 262 U. S. 318; or when the state authorities seek to compel the erection of a union station so expensive as unduly to deplete the financial resources of the carriers, *Railroad Commission v. Southern Pacific Co.*, 264 U. S. 331; or when one railroad seeks to construct an intrastate branch line, which will deplete its own financial resources or those of another interstate carrier, *Texas & Pacific Ry. Co. v. Gulf, Colorado & Santa Fe Ry. Co.*, 270 U. S. 266. The jurisdiction exercised by the Commission in these cases is in essence that which was invoked in *The Shreveport Case*, 234 U. S. 342, a power to prevent unjust preference to particular intrastate shippers or localities at the demonstrated expense of interstate commerce. But there is a broader basis for federal control."

The court further held in the Colorado case:

> "The obligation assumed by the corporation under its charter of providing intrastate service on every part of its line within the state is subordinate to the performance by it of its federal duty, also assumed, efficiently to render transportation services in interstate commerce. . . . Because the same instrumentality serves both, Congress has power to assume not only some control but paramount control in so far as interstate commerce is involved. It may determine to what extent and in what manner intrastate service must be subordinated in order that interstate service may be adequately rendered. The power to make the determination inheres in the United States as an incident of its power over interstate commerce. The making of this determination involves an exercise of judgment upon the facts of the particular case. The authority to find the facts and to exercise thereon the judgment whether abandonment is consistent with public convenience and necessity, Congress conferred upon the Commission." (p. 165, 166).

The case of *Transit Commission v. United States*, 284 U. S. 360 at 368 strongly restates the same position as is stated in the Colorado case.

See also *Western Pacific Railroad Co. v. Southern Pacific*, 284 U. S. 47, 51.

We have heretofore shown in the Atlantic Coast Line's main brief (pp. 44, et seq.) and also in this brief (pp. 29-32) the tremendous volume of traffic involved in this case. Under the findings of the Interstate Commission, amply supported by the evidence, the gross revenue from this traffic was insufficient to pay the cost of rendering the transportation service, and that without regard to any reward or profit to the carrier.

For instance, the operating costs and taxes ascertained by the Commission for the average haul were $19.06 per car against an average gross revenue of $15.12 per car (180 I. C. C. 180) or $3.94 per car loss, and that before any sum whatever is added for return on investment. That means before any interest is paid on any funded or unfunded indebtedness or any return is made to the stockholders.

For the years 1920-1930, both inclusive, the total number of cars of logs moving intrastate in Florida over the Atlantic Coast Line was 121,916. The bare loss becomes enormous, bringing these facts within the principles of the *Colorado v. United States case*, 271 U. S. 153 and the other cases referred to.

THE FACT THAT ONLY ONE COMMODITY IS INVOLVED DOES NOT AFFECT THE JURISDICTION OF THE COMMISSION.

In the case of *Nashville, Chattanooga and St. Louis Railway v. State of Tennessee*, 262 U. S. 318, the court sustained the Interstate Commission's order overthrowing a state rate in the following circumstances:

The Interstate Commission authorized a general increase, throughout southern territory of 25 per cent in interstate freight rates. The State of Tennessee authorized a like increase in intrastate rates but excepted from the increase "carload shipments of stone and gravel, when for use in building public highways, and consigned to Federal, state, county, and municipal authorities, or their bona fide agents." The carriers applied to the Interstate Commerce Commission claiming that the exception produced illegal discrimination against

interstate commerce and an undue prejudice to persons and localities engaged in such commerce. The Commission found unjust discrimination and ordered that the intrastate rates on those commodities, also, be increased to the level of the interstate rates.

The court held that §22 of the Interstate Commerce Act which permits free transportation or reduced rates in certain circumstances, must be read in connection with the rest of the act, and further held:

> "The grant of a lower rate on road material to a government engaged in highway construction may benefit the government without subjecting to prejudice any person, locality, or class of traffic. But a lower rate may result in giving to a single quarry within the state all of the governmental business, so that competing quarries and localities within or without the state, or *interstate traffic*, would be prejudiced. That such undue discrimination does, and will result from the order of the Tennessee Commission, was expressly found by the Interstate Commerce Commission." (p. 323, Italics added).

In that case there was one commodity involved moving to one class of shippers.

This court held, in effect, that in *Missouri Pacific Rd. Co. v. Boone*, 270 U. S. 466, 469, that the State had the power to restore the full statutory liability as to the carriage of baggage as applied to intrastate commerce "unless the Interstate Commerce Commission should, *for the purpose of preventing discrimination against interstate commerce*, issue an order under Transportation Act 1920, to the contrary."

The Court also held in *United States v. Village of Hubbard*, 260 U. S. 174, that the Interstate Commerce Commission had the right to raise interurban railroad fares to avoid discrimination against interstate commerce.

One of the Purposes of the Interstate Commerce Act as Amended by the Transportation Act is to Build Up an Adequate and Efficient Railway Transportation Service.

This court declared in *Dayton-Goose Creek Rwy. v. United States*, 263 U. S. 456, 478 that:

> "The new act seeks affirmatively to build up a system of railways prepared to handle promptly all the interstate traffic of the country. It aims to give the owners of the railways an opportunity to earn enough to maintain their properties and equipment in such a state of efficiency that they can carry well this burden. To achieve this great purpose, it puts the railroad systems of the country more completely than ever under the fostering guardianship and control of the Commission, which is to supervise their issue of securities, their car supply and distribution, their joint use of terminals, their construction of new lines, their abandonment of old lines, and by a proper division of joint rates, and by fixing adequate rates for interstate commerce, *and in case of discrimination, for intrastate commerce, to secure a fair return upon the properties of the carriers engaged.*" (Italics added).

REPLYING TO POINTS II AND III OF APPELLANTS' MAIN BRIEF (p. 81, 85).

This point is stated in appellants' main brief at page 81 as follows:

> "The Interstate Commerce Commission has failed to make the basic or essential findings necessary to support a statewide order prescribing intrastate rates. There is no substantial evidence before the Commission to support such findings."

This same point is made as point IV (p. 43) of the Supplemental and Separate brief of the State of Florida.

This point II will be treated or replied to by us along with point III which appears to cover the same ground (p. 85, appellants' main brief) to the effect that:

> "There was no finding and no evidence of the amount of revenue which had been derived in the past from this particular traffic in question under the Cummer scale of rates."

The Necessity of Proof of Amount of Revenue Derived in the Past by the Carrier.

It is asserted as one of the premises upon which appellants proceed that the law requires that the amount of revenue which had been derived in the past by the carrier from the particular traffic in question under the existing intrastate rates must be shown.

No authority for that statement is cited. The argument is based upon the statement of this court in the former case, (282 U. S. 214), where the court stated:

> "The Commission made no findings as to the revenue which had been derived by the carrier from the traffic in question, or which could reasonably be expected under the increased rates, or that the alteration of the intrastate rates would produce, or was likely to produce, additional income necessary to prevent an undue burden upon the carrier's interstate revenues and to maintain an adequate transportation service."

This does not hold that the gross amount of revenue derived from the traffic moved must be proved. It is intended that findings should be made that the amount of traffic was material and the amount of discrimination substantial. *Louisiana Commission v. Texas & New Orleans R. R.*, 284 U. S. 125. The record contains a great deal of evidence showing the amount of revenue derived from this traffic, the volume of the traffic and the cost of this transportation service and the Commission made substantial findings in reference thereto.

In order to reply to these points a summation and some repetition of statements contained in the Atlantic Coast Line's principal brief will be necessary. (See page 44 et seq. of the brief).

The Commission found on ample evidence that from February 8, 1929 to January 31, 1931, when the increased intrastate rates fixed by the Commission were in effect in Florida, 18,002 cars of logs moved intrastate in Florida over the lines of the Coast Line; that the gross revenues from those cars were $571,508.94; that if the Cummer scale had been ap-

plied the revenues would have been $281,225.75 or $290,283.19 less than those actually collected. (See p. 44 of main brief for Coast Line; exhibit 61 (R-1101); and 186 I. C. C. 167).

During the years 1929 and 1930 if the Cummer scale of rates had been in effect over the entire system of the Atlantic Coast Line, it would have received $665,520.92 less than it did receive from its log traffic. (R-662-3; pages 44, 45 of our main brief; 186 I. C. C. 168).

In the five years from 1926-1930 the Commission found that the number of cars of logs hauled by the Atlantic Coast Line in Florida were as follows:

1926, 36,799 cars; 1927, 35,415; 1928, 27,119; 1929, 13,207; and 1930, 9,375, or a total of 121,916 cars. (186 I. C. C. 169).

From 1923-1928 the Atlantic Coast Line's gross revenues from the movement to Eastport (suburb of Jacksonville) averaged $309,882.60 a year; and that its gross revenues from the movements to the Putnam mills averaged slightly more than $200,000. a year. (186 I. C. C. 169).

From 1926-1930 the Wilson Cypress Company shipped 21,800 cars of logs and paid $562,295.38 in revenues to the Coast Line (R-779).

The Putnam Lumber Company for the years 1923-1926 and about one-half of 1927 paid to the Coast Line revenues aggregating $1,017,141.41.

Exhibit 35 (first record, 36) shows the available timber of the Putnam Lumber Company on December 31, 1925,

which aggregated 1,099,000,968 feet. It showed for the years 1919-1925 that this company shipped 53,410 cars of logs and paid $1,021,061.33 freight revenues during that period. The same exhibit shows the same kind of information as to the cypress lumber shipped by the Putnam Lumber Company to Ortega, Florida.

The record (R-706) shows that the Brooks-Scanlon Corporation shipped from 1915-1929, both inclusive, 163,245 cars of logs and paid revenues aggregating $3,182,952.

The Commission found (186 I. C. C. 166) that for the five years 1926-1930, the System's log traffic averaged 7% of the total System traffic; and that 50% of the System's log traffic was in Florida.

The amount of pine timber standing in Florida was found by the Commission to be practically twenty-two billion feet; the annual production of cypress in Florida the Commission found to be around two hundred million feet; and that hardwood constitutes probably from five to ten per cent. of the total business (186 I. C. C. 173).

The Commission follows those findings with a statement by the Atlantic Coast Line's freight traffic manager as to the effect which would be produced if the Coast Line hauled in the future what appeared to him to be a fair part of the standing timber under the Cummer scale of rates as compared with the rates found by the Interstate Commission to be reasonable. Mr. Perrin, the freight traffic manager there stated that the difference in the amount of revenues from the two scales would be $2,779,968. We have referred to this in the main brief at pages 60 and 61. That is, the revenue

under the Cummer scale would be that much less than the revenue under the scale of rates found by the Interstate Commission to be reasonable and to be the minimum rates necessary to prevent unjust discrimination against interstate commerce. The traffic manager understated those figures and by a mathematical error the difference calculated by him was only about one-tenth of what it should have been. The difference in the revenue which would be received under the two scales of rates would be $28,046,667.20 instead of $2,779,968, and these figures deal only with pine. They do not include cypress or hardwood.

We have heretofore referred to the finding of the Interstate Commission to the effect that from February 8, 1929 to January 31, 1931 there were shipped over the lines of the Atlantic Coast Line in Florida 18,602 cars of logs and that the gross revenues derived under the increased intrastate scale fixed by the Interstate Commission were $571,508.94. If we divide that gross revenue by the number of cars we get an average revenue of $30.72 per car. Under the Cummer scale the revenue would have been $281,225.75. Dividing that revenue by 18,602 cars we get an average revenue of $15.12 per car.

The Commission found that 121,916 cars of logs were shipped over the Atlantic Coast Line intrastate in Florida from 1926 through 1930. (186 I. C. C. 169, see Exhibit 30 R-1134c). Under the Cummer scale the approximate revenue from those 121,916 cars of logs would have been $1,843,369.92; and under the increased scale of rates fixed by the Interstate Commission as the minimum rate necessary to remove the unjust discrimination against interstate commerce, the approximate revenue would have been

$3,745,259.52 or a difference of $1,901,869.60. It must be remembered that the trainload shipments to Eastport, Milldale and Ortega, Florida were discontinued early in 1929; otherwise the difference would have been greater.

THE FINDING OF THE DISTRICT-COURT ON THIS SUBJECT.

The court below found as follows:

> "It was found that there was no profit but an out-of-pocket loss to the carrier in the log traffic under these rates, not considering taxes and return on the investment, and that consequently there was no contribution to the maintenance of the carrier as an efficient instrumentality of commerce, but a drain upon it. The total amount of this drain before 1929 was not found, nor could it be approximated from the evidence. But for the two years, 1929 and 1930, when the interstate rates fixed by the Interstate Commerce Commission were enforced, the log traffic under them was 18,602 cars and the gross revenue from this intrastate traffic was $571,508.94, whereas if the Cummer scale had been applied it would have been $281,225.75." (*State of Florida v. United States*, 4 Fed. Sup. 477; see also pp. 36 and 37 of *Statement of the Atlantic Coast Line Railroad Company Opposing Jurisdiction and Motion to Dismiss or Affirm*).

REPLYING TO POINT IV OF APPELLANTS' MAIN BRIEF (p. 94)

This same contention is made in the separate brief for the State of Florida, Point IV (*b*) at page 45.

The contention is that the Commission made no finding of the *amount* of revenue which can reasonably be expected from the transportation of logs in the future under the increased scale of rates.

We have already shown in replying to Point III of the appellants' brief that the Commission did make findings as to the revenue heretofore derived from log shipments under the Cummer scale of rates.

As a matter of fact, the estimate of future earnings made by the Commission was based on *facts and figures* which were *actual* and arose in the "abnormal period." The Commission found that 2,765 cars actually moved over the Coast Line from February, 1931, to June, 1931 (186 I. C. C. 476). It is reasonable to say that this estimate was an absolute minimum and even assuming a continuance of these "abnormal conditions," the estimated figure is conservative.

The Atchison, Topeka & Santa Fe Railway Company case, 281 U. S. 248, cited by appellants as authority for the reopening of this investigation which was granted and resulted in the third report (190 I. C. C. 583). The findings after this investigation for the third time submitted in November, 1932, were handed down January 9, 1933. Every finding made in the previous reports were then reasserted and affirmed (190

I. C. C. 600). This third investigation went on in the very midst of the "abnormal period."

In subsection (1) of Point IV of appellants' main brief (p. 101) the effect of the rate increase on the investments of the large shippers, appellants here, is discussed. This situation was submitted in the evidence before the Commission and the District Court. The Commission undoubtedly considered it and gave it such weight as seemed proper to it in determining the justness and reasonableness of the rate prescribed. But such considerations cannot be the sole basis of a rate order. (*Southern Pacific v. Interstate Commerce Commission*, 219 U. S. 433). Certainly that alone cannot avail in this Court to overturn an order unfavorable to appellants.

uation was submitted in the evidence before the Commission and the District Court. The Commission undoubtedly considered it and gave it such weight as seemed proper to it in determining the justness and reasonableness of the rate prescribed. But such considerations cannot be the sole basis of a rate order. (*Southern Pacific v. Interstate Commerce Commission*, 219 U. S. 433). Certainly that alone cannot avail in this Court to overturn an order unfavorable to appellants.

The very figures used by appellants' counsel in this discussion (appellants' brief, p. 102) show to some extent the revenue previously derived from this traffic and reasonably in prospect for future transportation of logs.

The question before this court is, as we understand it, not what rate the Commission should have made for the future—that is a legislative question to be otherwise treated; but, did the Florida intrastate scale of rates, applicable to the transportation of logs over the Atlantic Coast Line Railroad Company in Florida for distances of 170 miles and less, work an unjust discrimination against interstate commerce?

In subsections (2) through (5) of Point IV (pp. 109-118) appellants' counsel urge their theory of what the Commission should have found on the evidence before it as to the reason for the decline in the log traffic from 1929 through 1931.

The Commission considered all of these contentions (186 I. C. C. 168-172) and in the light of its long experience gave it such weight as seemed to it reasonable. The Commission found:

> "* * * This depressed condition, in our (their) opinion, has been and will be of far greater importance than the level of the Florida log rates in determining the extent of the movement in the immediate future at least. * * *" (186 I. C. C. 188).

The Commission also found that from April 10, 1931, to November, 1932, the period in which the Cummer scale was restored, there was "no substantial increase" in the log movement.

> "* * * This depressed condition, in our (their) opinion, has been and will be of far greater importance than the level of the Florida log rates in determining the extent of the movement in the immediate future at least. * * *" (186 I. C. C. 188).

The Commission also found that from April 10, 1931, to November, 1932, the period in which the Cummer scale was restored, there was "no substantial increase" in the log movement.

REPLYING TO POINT V OF APPELLANTS' MAIN BRIEF (p. 119)

The position that the evidence does not support a finding, and there is no finding, that the increased rates would produce additional *income* necessary to prevent an undue burden and to maintain an adequate National transportation system is also urged in the separate brief filed for the State of Florida, Point IV (c) (page 97). This contention is based primarily on appellants' criticism of the cost evidence reviewed by the Coast Line and the cost study of the Interstate Commission, which is more fully discussed in our reply to Point VII. in this brief.

We wish to call attention of appellants' use of the word "income" in this section of their brief. The evil in this case sought to be remedied is that heretofore this log traffic has moved at a loss; there has been no net income from it; it has drained the resources of the Coast Line and made necessary the allocation of funds or service to the log traffic in Florida, thus weakening the resources necessary to maintain an adequate National transportation system for use in interstate and intrastate commerce. If this order of the Commission stops these losses and does nothing more, it has strengthened the Coast Line's transportation system.

But the Commission goes further after consideration of the facts: (1) movement of the mills to the timber; (2) the abnormal conditions; (3) the depression generally and particularly in the lumber business, (4) the expiration of old traffic contracts; it specifically finds that the *gross revenues* of the carrier on a minimum movement of logs will be increased over $100,000 per year. (R-66; 186 I. C. C. 188-9).

REPLYING TO POINT VI
OF APPELLANTS' MAIN BRIEF (p. 127)

Appellants, for the purposes of their contention, assert that even assuming an unjust discrimination (such as has been proven in this case) to exist, it is of such small character and consequence that the Commission should close its eyes to it. The doctrine of "*de minimis non curat lex*" is invoked. It is urged that this whole problem is a question merely of degree.

We submit that if a rate does not produce sufficient revenue to cover the cost of the service performed, without considering overhead and general expenses, it has no place in a carrier's tariffs, and if the disparity is so great as to cause losses sufficient to work unjust discrimination against interstate commerce to a substantial extent, the Commission is charged with the duty of removing that discrimination.

The Commission finds (130 I. C. C. 139) as follows:

> "Accordingly, on the basis of an average of 7,434 cars a year under normal economic conditions, which basis we believe conservative; the gross revenues under the rates prescribed by the previous order herein would be more than $100,000 a year greater than under the Cummer scale, now in effect. The application of the Cummer scale, therefore, places a substantial burden upon defendant's interstate revenues. If the revenues yielded by the Cummer scale are not sufficient to cover the cost of the service, as the cost evidence indicates, it would follow that part of the above-stated amount would constitute a dead loss in net revenue."

Let us suppose that the Cummer scale had not been removed and the movements of logs in Florida returned to their former

quantity, and other mill plants had built up around those movements and around those rates. Plainly this would have worked the destruction of the Atlantic Coast Line; for there is a loss to the railroad on every ton and on every car of these logs which moved under the Cummer scale of rates. The discrimination against interstate commerce would have been appalling; it would not only have seriously affected the power of the Coast Line to render interstate transportation, *but any other kind* of transportation service.

This case seems to be controlled by *Louisiana Public Service Commission v. Texas & New Orleans Railroad Co.*, 284 U. S., 125, where the rates on gravel, sand, crushed stone, etc., were under consideration. There is a comparison of the Louisiana rates at page 131 with those prescribed by the Interstate Commerce Commission. The court said:

> "The latter (the I. C. C. rates) are about 150% of the former. For 30 miles about the average intrastate haul, the prescribed rates are higher by 30 cents per ton, for 100 miles 10 cents, 120 miles 50 cents, 140 miles 40 cents, and 200 miles 60 cents. Producers outside Louisiana are necessarily at disadvantage in respect of the sale and delivery within that state of such materials to the extent that the state rates are lower than the prescribed scale."

Those facts and that ruling precisely fit the case at bar.

REPLYING TO POINT VII
APPELLANTS' MAIN BRIEF (p. 130)

At page 130 of Appellants' main brief is discussed Point VII under six subheads. The same contentions are made in point V, page 51 of the separate brief for the State of Florida. We wish to call the Court's attention to several contentions therein made which we deem proper to be commented on and in some instances corrected.

The very vital finding of the Interstate Commission, to-wit:

> "From the evidence submitted in this case, however, *we are convinced* that the defendant's revenue under the Cummer scale of $15.12 per car for transporting a car of logs weighing 50,754 pounds a distance of 31 miles, and transporting the empty car back, is insufficient *under all the circumstances and conditions*, to cover *the full cost of the service.*" (186 I. C. C. 187. Italics added).

is sought to be demolished by close scrutiny of the "Cost and Revenue Studies" submitted, not by Appellants, but by the Atlantic Coast Line. From these studies the Commission worked out to its satisfaction the result announced in this investigation. Appellants presented no affirmative evidence tending to show the cost of transporting logs in Florida.

(*a*) Mr. Lamb's use of the term "Haulage Expense" is criticized. In his testimony we find a clear explanation of his definition of that term.

> "There seems to be some misunderstanding on Mr. Pettijohn's part as to the figures shown on my Exhibit 84 and referred to in his Exhibit 109. Possibly I did

not make it clear on my direct testimony, but the so called haulage expenses are not to be considered as the technically known haulage and non haulage expenses, which would be derived from Dr. Lorenz' formula in Docket 17000, nor were they intended to be. What I attempted to do upon my Exhibit No. 31 was to eliminate from the total freight operating expenses sufficient accounts which would, in my opinion, *give costs below the actual costs of handling logs or any other commodity. I have eliminated all yard accounts, regardless of whether or not they applied to the log service. Unquestionably some of these expenses are properly attributable to handling logs. Other accounts were also eliminated. But it should be distinctly understood that no effort was made to develop what are technically known as haulage and non haulage expenses. By the elimination of all yard accounts and certain other accounts, I felt I had established a minimum from which we could build up some figure or figures which would give the Commission some idea as to where the costs lay.*" (R 906, Italics added).

The Commission, or any other persons even acquainted with rates and cost studies take it as axiomatic that "it is *impossible* on a system like the defendant's, engaged in the transportation of all kinds of freight and of passengers, to determine accurately the *exact cost* of transporting *one commodity*." (130 I. C. C. 437).

Approximation, therefore, is the nearest approach to out-of-pocket cost or expense that can be made. Lamb's theory or formula has much to commend it. (Exhibits 86 to 99, inclusive; see Appendices to our main brief). It is based on a long experience. Column A of his exhibits is a minimum figure and column B a maximum, leaving a field of reason-

ableness between these two figures on which the quasi judicial function of the Commission may operate and adequately support any final determination made within those limits. Lamb's method was far from illogical or fallacious. The Commission found his operating expense figures in column A properly to be not "actual" but "constructive" expenses, which understated the true figure to an unknown extent.

Lamb's figures (so-called haulage expense, equated by a ratio of five and stated in column A of his exhibit), as criticized on page 134 of appellants' main brief, are not "just as applicable to perishable and expensive fruit and vegetable traffic in Florida as to logs," for the reason that Lamb eliminated *all terminal expenses* at the outset, which is the basis of attributing the higher expense to transportation of perishable commodities. The extra handling of refrigerator cars in placement for icing, the extra expense of expediting the perishables through the terminals are some of the principal causes of the greater expense attached to this class of traffic. Appellants' counsel ignore the fact that *all of this terminal expense* was eliminated by Mr. Lamb in arriving at the lower figure in column A. Again on page 135 of the appellants' main brief this same contention is reasserted only to be answered by a consideration of the same fact. Lamb entirely eliminated all terminal expenses in arriving at his lower figure.

The Commission, after stating that Lamb's higher out-of-pocket expense figure of 0.0882888 cent per gross ton mile is higher than the actual out-of-pocket cost of the Florida log traffic, goes on to state:

On the other hand it appears that the unit out-of-pocket cost figure developed (by Lamb) in connection with the Hines to Palatka movement 0.06208331 cent per gross ton mile is below the average out of pocket cost of the Florida log transportation. That movement, it must be remembered was a regular one in trainload lots of 40 to 45 cars. The cost of handling such solid trainloads direct between two given points, without any intermediate train back up in classification yards and without any switching enroute, is undoubtedly less than on single carload movements which are handled in ordinary pick up service." (186 I. C. C. 183)

This Hines to Palatka movement was the least expensive movement of any of the log traffic because it moved in solid trainloads of 40 to 45 cars for a distance of 119 miles. Perrin's exhibit No. 61, sheet 2 (R 1105) shows a substantial movement, 2995 cars, between Homosassa and Lacoochee during the period February 9, 1929, to January 31, 1931. It so happens that this movement was in trainload lots also but consisted of only 25 cars and for a distance of only 68 miles. It is readily apparent that the cost of this last named movement must necessarily be greater per unit than for the Hines to Palatka movement. It is also true, by reason of the *light consist* of the train and the *shorter distance*, that the cost per unit may be greater than the average cost on the Third Division.

(5) Appellants' counsel attack the use of "System Averages" as improper in arriving at the cost of transportation of a particular commodity. The cost study compiled by the Commission was *to some extent* based on figures obtained from data of the Coast Line giving the average cost of transportation on its system as a whole. It is true that such a basis

is not desirable. The Commission knew this and doubtless had in mind the case cited (*Northern Pacific R. Co. v. Department of Public Works*, 268 U. S. 39). The facts of that case, when read with reference to the opinion of the Court, show that the investigation there is not comparable to this one in the case at bar. The principles announced by the court are recognized as sound. The Commission said:

> "*Ordinarily* it would be unsound to use a system unit cost to determine the cost on a particular State, but since it is *indisputable* that unit costs are higher in Florida than elsewhere on the system, it seems clear that unit costs may be used to *find a cost* that may be said to be less than the cost in Florida." (183 I. C. C. 134, Italics added.)

(c) Under this subhead (page 139 of appellants' brief) it is contended that the Interstate Commission discarded the cost studies introduced by the Coast Line. We cannot agree that the Commission did this. They used the data obtained from these studies and exhibits to make their own cost study and merely approached the question differently, balancing the scale of their judgment with a few different considerations or interests.

The State of Florida (a "terminal" State), because of a natural or geographical disadvantage from a transportation viewpoint, cannot capitalize on that fact and attain an *advantage in log transportation* at the expense of sister states not so located with reference to the Coast Line's system. A contention based on this fact is made at page 140 of the appellants' main brief.

The repeated reference to perishable traffic overlooks the fact that in the system traffic as a whole, including Florida, the percentage of this perishable traffic (2% per cent of total Florida traffic, witness Pettyjohn, R 3869) is reduced to a very much smaller figure when grouped with the tremendous non perishable traffic produced by the other states through which the Coast Line operates. From the table (1936 I. C. C. 166) this percentage of perishables to total system traffic roughly becomes 10% per cent for 1928, 11.3 per cent for 1929, and 11.1 per cent for 1930. In criticizing the use of system averages appellants' counsel overlook the fact that the Commission (as did Lamb) made allowance for this class of traffic by certain eliminated accounts.

> "In this computation attempt has been made to meet as far as possible the criticisms of the defendant's cost evidence. For instance, deduction from the freight service operating expenses has been made for wharves and docks, maintenance and operation of floating equipment, and certain traffic expenses, which the defendant concedes are not involved in handling logs." (1936 I. C. C. 135.)

So that even the so called system average has been reduced by an elimination of accounts directly connected with the perishable traffic which otherwise would be necessarily included in the system figures.

The measure of the "average cost of handling all log traffic on the system in the year 1929" is a very important determination. Had the intrastate rate on logs sought to be determined been for application in the State of North Carolina or South Carolina (both of which are not "terminal" states) a different emphasis would be put on this finding, but

since it was to be applied in Florida and the finding with reference to that state being. "Transportation conditions in Florida are not such as warrant a lower basis of rates on logs in the State than elsewhere on defendant's system. Transportation conditions on defendant's lines in Florida are not more favorable, but on the contrary are less favorable than on defendant's system outside of Florida. The cost of the service in Florida is higher than on the remainder of the system, as shown by cost evidence referred to in detail hereafter. Density of traffic in Florida is much lighter than on defendant's lines elsewhere." (186 I. C. C. 163 64)

And again "There appears to be no doubt that the operating costs per unit are generally higher in Florida than the average for the defendant's system as a whole, either including or excluding Florida" (186 I. C. C. 183) it is evident that average system costs assume a vastly more important aspect in this particular investigation than it would in the ordinary investigation.

The cost study worked out by the Commission (Appendix E 186 I. C. C. 196 7) is ridiculed as being a feat of legerdemain at page 141 of appellants' main brief. Counsel for appellant would have the Court believe that this Appendix E. is "a highly involved statistical compilation." This criticism is not warranted by the facts in this record. Any one at all familiar with cost studies can readily follow each step. The information with respect to operating expenses $30,303,313.00, under the heading "Basic Data" (186 I. C. C. 196) comes directly from Lamb's exhibit No. 24 (R. 1132). It does require computations to develop the percentage of certain superintendence accounts eliminated by the Commission.

The proportion of the expenses for superintendence as well as their proportion of the general expenses are deductions made on the percentage worked out by the Commission in the light of their experience.

In the apportionment of "haulage" and "non haulage" accounts appellants' own witness, Pettijohn, (R. 370 71) supplied the percentage upon which the apportionment was made (70.3539 per cent to haulage and 29.6461 per cent to non haulage, "these percentages being based upon the road and yard proportions of certain of the expenses for maintenance of way and structures and for transportation which are segregated in the accounts between these services in accordance with our rules").

The first item at the top of page 197 (186 I. C. C.) Gross Ton Miles, 11,000,329,000, is computed from figures found in Pettijohn's Exhibit 110 (R-1164). The total in car-miles of loaded, empty, and caboose freight and mixed train operating statistics, 354,451,657 car-miles is multiplied by the average weight of the car and lading, 32.731 plus tons, which figure is approximated from the average revenue load of 15.7397 tons, plus the average weight of cars and cabooses.

The next figure, Revenue ton miles 3,281,770,000, comes from the record Lamb's Exhibit, No. 83 (R. 1136) and is also found in Pettijohn's Exhibit No. 108 (R-1158).

The fourth figure, loaded car-miles (revenue and non-revenue) 209,835,784, comes from Pettijohn's Exhibit No. 110 (R-1164).

The next figure is a computation.

The sixth figure, Total Revenue Tons carried 18,951,802, comes from Pettijohn's Exhibit No. 104 (R-1154).

The next figure is a quotient obtained by dividing the average revenue ton per loaded car into the total of revenue tons carried, and the next figure is a computation from that quotient.

Taxes are developed from Lamb's exhibit No. 85 (R-1139). The figure for total operating expenses (freight and passenger) is obtained from Lamb's exhibit No. 78, line 15 (R-1134). The taxes per dollar of operating expense are a mere computation. Interest on the investment at 5¾ per cent comes from three items in Lamb's exhibit 85 (R-1139). All the statistical data for the log traffic in Florida used in the computation of costs will be found in Lamb's exhibit 86 (R-1140) and the computations of the cost are mere calculations applied to these statistics. Bearing this in mind, the statement of appellants' counsel that "the data relied upon to produce the result are not supported by record reference save in one instance; where else in the record these various data appear is a matter upon which the Commission has failed to enlighten either the parties or the Court," would seem out of place. In ascertaining a rate, reason demands that honest estimates must be made, and this estimate of the Commission is amply supported by the evidence in this record.

The Commission properly recognizes that it is impossible with absolute mathematical accuracy to definitely develop the actual cost of handling any one commodity, but it does develop a cost which it states (186 I. C. C. 187) "the above figures undoubtedly understate the cost of transporting logs

in Florida for several reasons" and then it states some of these reasons. (See 130 I. C. C. 183-184).

Appellants claim that the Commission only eliminated $1.02 per car as differentiating log traffic from average traffic through their elimination of the $1,231,069.00 account at page 112 of the brief. It must be remembered that the Commission also eliminated $2,556,773.00 from non haulage expenses, in addition to the above figure, as shown in Appendix F. The difference in the amount of haulage expense used by the Commission and Lamb is due to the different approach to the distribution of this expense.

We are unable to check the calculation by which appellants arrive at the figure of $1.02 per car. If the $1,231,069.00 is divided by $1.02, the quotient is 1,255,950 cars of freight. The Commission on its calculation used only 1,211,775 cars, a difference of 44,175 cars over a period of a year, which for this calculation would seem erroneous.

The Commission used the percentages testified to by appellants' own witness, Pettijohn, for separating the expenses between haulage and non haulage, after eliminating those expenses not directly applicable to the log traffic (R-870-71). On the other hand, Mr. Lamb in his cost study eliminated all terminal expenses by separate operating accounts and also eliminated those accounts which he considered were not strictly applicable to log traffic.

It should also be noted that the gross ton miles used by the Commission in their cost study, includes not only revenue ton miles but an unspecified number of ton miles of company freight (non-revenue). Likewise the cost per car for terminal

or non-haulage expenses, $6.16, has been *understated* by using in the Commission's divisor of loaded cars (revenue and none revenue) 1,211,775, the cars which handled company freight. The Commission recognizes that these facts caused an understatement of the cost when it says (1936 I. C. C. 132): "As heretofore indicated, the cost is also understated because it does not include the cost of transporting non-revenue or company freight."

The Commission also calls attention to the fact that the transportation of company freight is an element to be considered. The one item of coal used in Florida is considerable. All coal is hauled by the balance of the system from mines in West Virginia, Virginia and Alabama to the Florida State line. No compensating service is performed for the balance of the system by the State of Florida.

With these facts in mind it is hard to believe that the figures developed by the Commission truly state a system average, but even assuming that the use of system figures is sufficient to warrant the use of that term, the Commission recognized, as we have heretofore pointed out, that in this particular case, due to particular facts, circumstances and conditions, the cost of transporting freight in Florida was higher than the system average. In Florida transportation of the lowest grade commodity, such as logs, phosphates, etc., is considerable. Also a considerable part of Florida transportation is in perishables. Therefore, a Florida average, as developed by Mr. Lamb, and a system average are not far apart.

(*d*) Appellants at page 146 of the brief discuss and criticize Mr. Lamb's theory of determining out-of-pocket expense

on the Hines to Palatka movement. They charge that his use of five mills per ton mile for transportation of coal used on this train is excessive. When attempting to determine the cost of handling any particular commodity or the expenses in any particular State, it is absolutely proper to charge to that commodity or State the cost of fuel *delivered at point of consumption*. While it is true in the regular charging out of fuel for Florida the system average cost was used, if a direct allocation of expenses by specified States or any specified movement were required, proper adjustments as to the expense of handling company fuel and other materials such as rails, ballasts, etc., should be made, crediting the State or States performing the service and debiting the State or States for which the service was performed.

As Florida has no coal mines or steel mills, all coal and rails necessarily must be hauled to Florida from other states. The Commission recognized that this was proper in connection with its study when it stated: "As heretofore indicated, the cost is also understated because it does not include the cost of transporting non revenue or company freight." (130 I. C. C. 137). Non revenue or company freight as there used means coal, rails, ballasts, etc., such as are used in the operation of the transportation system.

At page 147 appellants state: "The record shows that the Commission's own classification of operating expenses accounts forbids any such charge (R. 132, 182, 243)". The record referred to is copies of the classification of operating revenues and operating expenses of steam roads prescribed by the Interstate Commerce Commission. The reference to 132 is in connection with the cost of material and supplies

used under the general heading "Cost of Repairs." Reference 183 refers to account 394 "Fuel for Train Locomotives." It will be noted that the classification for this account reads in part as follows:

> "This account shall include the cost *delivered on locomotive tenders* of coal, coke, oil, wood, and other fuel consumed by locomotives in transportation train service * * *."

No reference is made in connection with this account, which is the account under discussion, with respect to charging cost of transportation over carrier's own line. However, reference 213 in case 124, where the Commission in its interpretation of accounting classifications states:

> "The cost of fuel shall include its cost delivered to the carrier plus the handling (loading and unloading) expenses up to and including delivery at the chute. No charges for transportation over the carrier's own line shall be included."

There is no conflict as to our views with respect to regularly *accounting for operating expenses*, but when an effort is made *to determine the cost of handling any one commodity or the expenses in any one State*, it is proper to make adjustments for the cost to the carrier of transporting any materials over its own lines up to the point where consumed. For example, if the actual expenses incurred in any one state, say State D, were desired, it would be proper to debit that state with the cost of transporting any materials and supplies over the balance of the system, States A, B and C, to the State line D where these material and supplies are issued or consumed. In making this adjustment, credit would be allowed to the oper-

ating expenses of the various States A, B and C, performing the transportation of the company material and supplies. Should State D perform any like service for States A, B and C, proper credit would be allowed to State D and corresponding debits made to States A, B and C.

Any business man in estimating the *cost* of any undertaking, a bridge, highway, house, etc., would include in his cost the expenses of carriage of the materials. Even though he owned trucks, drays, etc., he would allocate a figure to cover the depreciation, maintenance and operation of his own equipment.

The effect of this adjustment would not in any wise duplicate or inflate the expenses of the system as a whole, but would merely make a proper distribution of the expense to the states where properly chargeable.

The reason the Interstate Commerce Commission prohibits the charging to *operating expenses account*, the cost of transporting company material is that it would create an inflated expense because the cost of transportation would be added to the material and supplies and the expenses incurred in transporting these materials and supplies would likewise be reflected in operating expenses.

This duplication, as pointed out above, does not occur when proper adjustments are made.

ANSWERING SUBPARAGRAPH (c) OF
POINT VII OF APPELLANTS' MAIN BRIEF.

(c) In discussing the evidence of the non-compensatory character of the Cummer scale (p. 149 of appellants' main brief and p. 67 of the supplemental and separate brief of the State of Florida) it is argued that *a letter dated November 8, 1909, and a contract dated January 20, 1911*, are golden nuggets of fact showing that this traffic produced its fair proportion of revenue and bore its fair proportionate burden of the expense of maintaining the Coast Line's System.

Appellants overlook the fact that in October, 1914 and August, 1915 (Appendix A to the report of the Commission, 130 I. C. C. 190) the Florida Commission expressed the view that the Cummer scale of rates was unjust and unreasonable and discriminatory.

The evidence of Mr. Lamb (R 636) and the Commission's own cost study (130 I. C. C. 176 196) show that the actual cost of the transportation of logs in Florida was not covered by the revenue received under the Cummer scale. The Interstate Commerce Commission has given force to the statements of the Florida Commission above referred to, and the appellants have not.

As we have pointed out the Interstate Commission, on ample evidence, has found the Cummer scale of rates to be unreasonable, noncompensatory, discriminatory and unlawful.

Each statement of fact made by the appellants at pages 149 through 153 of their main brief (the section to which we are

now replying) was presented to the Interstate Commerce Commission, and was weighted and considered by that Commission before it found against the contentions of the appellants. The lower court has sustained the Commission's findings not only because they are supported by ample evidence but because they are such as the court would themselves have made on the same record. (4 Fed. Supp. 177, pp. 30 of Coast Line's Statement against Introduction)

The appellants are trying to overthrow the established principle of law that this court, at the instance of shippers, will not reverse the finding by the Interstate Commerce Commission of unjust discrimination against interstate commerce by intrastate commerce, which has been sustained by the court below, when that finding is supported by substantial evidence.

Unreasonableness of the State Rates is an Element in the Determination of Unjust Discrimination

(3) It is argued (pp. 151 of appellants' main brief), that determination of the reasonableness per se of intrastate rates is the exclusive function of the Florida State Commission. This might be true if the reasonableness of a state rate were the sole issue in this case. Here the Interstate Commission, the arm for the exercise of paramount Federal power in such matters of interstate commerce, after a finding that unjust discrimination exists against interstate commerce to a substantial degree because of unduly low intrastate rates is also entrusted with the duty and power to remove that discrimination to the extent of ordering an increase by the carrier of the unreasonable rate or rates which work this unlawful result.

Discrimination against interstate commerce, on the basis that the intrastate rates does not carry its fair proportionate share of the expense of maintaining the transportation system which is used both in interstate and intrastate commerce, necessarily excludes the concept of the reasonableness of the intrastate rates. The ideas are mutually exclusive. In this cause the Interstate Commerce Commission has specifically investigated and established a scale of rates for interstate transportation of logs as reasonable in all its aspects and that finding has been acquiesced in by all parties to this record. It is the same interstate scale of rates which, during all of this investigation, was in force throughout the entire Southern territory (except in the southern part of the Peninsula of Florida, where the interstate rate was, and is, fifteen (15%) per cent higher) and which scale governed much of the intrastate movements of logs in the Southern Territory.

The Commission had the right to treat that interstate scale of rates as the proper and normal yardstick in establishing the relation on which the revenue burden of a carrier's system, used in both interstate and intrastate commerce, should be distributed. The superior power over this subject is with the Congress. The Cummer scale of rates is the lowest scale known in the movement of logs and is used in the most expensive territory covered by the Atlantic Coast Line Railroad Company. It produces a gross revenue oftentimes less than half, and many times barely one-third, of the revenue produced for the same transportation service over the same lines in interstate commerce. It can not be denied that a rate may be so unreasonable that it does not bear its fair proportionate share of the cost of maintaining the transportation system and thereby puts upon other traffic, including the interstate

traffic, that cost of maintaining the System which it should, but does not, bear.

In the use of this property of a rate as an element in determining whether the State rate discriminates against interstate commerce, the Commission, through the delegation of power by the Congress has the superior right to make the determination. Once exercised, the action of the Commission is conclusive except in those instances reserved to the Courts.

In such circumstances a finding as to the reasonableness or unreasonableness of an intrastate rate and an interstate rate is a collateral finding necessary to the ultimate determination as to whether there is or is not discrimination. It is a relevant element in that determination; and, it may very well become, of necessity, a controlling element, when the disparity between the intrastate and interstate rates has become so great that the low intrastate rate does not carry its fair proportionate share of the burden which the law imposes upon it. The disparity, which the law condemns, exists in this case. That disparity and that discrimination have been found in this case by the only body having the right to making the finding. It has been affirmed by the District Court, which responding in a degree to the argument of appellants that they were entitled to a de novo investigation, did make that investigation in so far as the record before the Commission is concerned and that court held that the Commission's finding was such as they would themselves have made.

REPLYING TO POINT VIII APPELLANTS' MAIN BRIEF (P. 156)

THE INTERSTATE COMMERCE COMMISSION IN ITS COST ASCERTAINMENT DID NOT USE THE SYSTEM AVERAGE COST OF HANDLING ALL FREIGHT— IT USED THE SYSTEM AVERAGE COST OF HAULING LOGS.

It is there stated that the District Court in its findings of fact (4 Fed. Sup. 477, 479; p. 34 of Coast Line's Statement against Jurisdiction) found that the Interstate Commerce Commission considered figures "which showed the *average cost* of *hauling logs* over the Coast Line system." (Italics added). The Commission's report, including appendix E (186 I. C. C. 185 and 196) are both based upon the *system average cost of hauling logs.*

The Commission's cost study (Appendix E, 186 I. C. C. 196) is headed as follows:

> "Estimated *cost* of *transporting logs* in Florida for average distance of 81.36 miles, *based on A. C. L. average costs per unit* for calendar year 1929 applied to the average units involved in hauling logs in that State." (Italics added).

We have heretofore pointed out that the average cost per unit *is not a system average cost for average freight;* but, by reason of certain specified and eliminated accounts aggregating $3,836,847 out of the total freight operating expenses of $36,308,813, the Commission worked out a *system average of the cost of hauling logs.* The expense items eliminated by

the Commission aggregated 10.56% of the total freight operating expenses of the Atlantic Coast Line System for the year involved. The purpose of making those eliminations was to ascertain the system average cost *of hauling logs.* To witness this we need only to turn to 186 I. C. C. 186 where the Commission states:

> "Based upon the foregoing (the figure giving the average system cost of hauling *one ton of logs* one mile) the following is a summary of the computation of the cost of transporting the average car of *logs* in Florida the average distance of 81.36 miles." (Parenthesis ours).

Then follows the statement in detail of the Commission's ascertainment of the cost of hauling the average car of logs in Florida the average distance of 81.36 miles (186 I. C. C. 186).

This simple statement would appear to put an end to the claim of appellants that the average system cost used by the Commission was the average cost of hauling all kinds of freight.

If we use the basic figures in the Commission's cost study to arrive at a *system average cost of transporting average freight,* which appellants claim was done, we get the following results:

Total freight operating expenses are the same. $36,308,813.

Apportionment of haulage and non-haulage expenses on the same basis of 70.3539 per cent. to haulage and 29.6461 per cent. to non-haulage gives however—

Haulage 25,544,365.99

Non-haulage	10,764,477.01
(There should be no deduction for less-than-carload freight, for that is a part of average freight).	
Average haulage expense per gross ton mile instead of $0.0021243 becomes	$0.0022028
Average non-haulage expenses per loaded car instead of $6.46 becomes	$8.88
Computation of costs on basis of average log shipment in Florida — haulage expense: 4994 gross ton miles x $0.0022028 per gross ton mile increases to	$11.00
Non-haulage expenses—average per loaded car	8.88
	$19.88
Taxes	1.99
Interest, etc.	5.63
Total cost per car	$27.50 on

basis of *average system* cost of *average freight*. The Commission's cost would be increased by using the *average system cost of average freight* by $2.81 per car; that is, from $24.69 (186 I. C. C. 186) to $27.50. This shows *conclusively* that the Commission *did not use the average system cost of average freight* as claimed by the appellants.

REPLYING TO POINT IX
APPELLANTS' MAIN BRIEF (p. 157)

Appellants contend that "The rate comparisons furnish no cause for the invasion of State Domain by Federal Power."

By this appellants probably mean that rate comparisons cannot be used to show that intrastate rates are so low that they make an unjust discrimination against interstate commerce. Of course comparison of charges by railroads has been for years one of the means of determining the reasonableness or unreasonableness of rates which are under attack.

In a proceeding to determine whether or not intrastate rates make unjust discrimination against interstate commerce, it is for the Interstate Commission to determine what is the value of these comparisons. As was pointed out at page 156 of the Coast Line's main brief, it is for the Interstate Commission to determine whether the rates which are used as a basis of comparison are proper for that purpose.

> *Northern Pacific Ry. Co. v. United States*, 60 Fed. (2d) 302, 308; *I. C. C. v. L. & N. R. R. Co.*, 227 U. S. 88, 98.

In the case at bar the Commission has established interstate rates. Those interstate rates were applicable throughout the entire south, except the southern peninsula of Florida, where they were 15% higher. It was more expensive to render transportation service in Florida than in any other state in which the Atlantic Coast Line then did, or now does, business. We have discussed the use of the quality of reasonableness of intrastate rates in such a proceeding as this in

considering sub-paragraph F of points VII of appellants' brief. We refer to that discussion. It has been necessary to refer a number of times to what is called throughout appellants' brief "the newly reduced rates." At this point appellants state that the supplemental bill shows those newly reduced rates to have been established "in whole or in part upon 22 railroads in 10 states in the southern rate group, and upon 5 railroads in 5 states in the southwestern rate group in intrastate and interstate commerce. They have been established in interstate commerce on four railroads in Florida, viz: Frisco System, Louisville & Nashville Railroad, Georgia and Florida Railroad and Central of Georgia Railway."

We have heretofore pointed out that these rates were used between very few stations on each of those roads, and, with the exception of possibly 3 systems, those rates did not apply over the whole of any system. They did not supplant previously existing rates. Of the four railroads in Florida referred to, the Frisco System operates about fifty miles from the Florida Alabama line to Pensacola. Its log traffic in Florida is "not much." (R-1016). The Louisville & Nashville Road skirts the top of Florida from Pensacola to River Junction, and ther is nothing to suggest the handling of logs in any important quantities there. The Georgia & Florida Railroad, the record shows, has been long in the hands of a receiver, and its necessities require abnormal operation. The Central of Georgia Railway barely gets into Florida, and there is nothing to show these new rates were operative over those lines in Florida. The rates were in operation between a very limited number of stations on the Central of Georgia, and none of these were in Florida. The rates were not in effect in the log producing part of Florida.

REPLYING TO POINT X OF APPELLANTS' MAIN BRIEF (p. 160)

Appellants complain that the "interstate rates prescribed by the Commission for application in Florida were minimum rates, and not otherwise."

Under §13(4) of the Act To Regulate Commerce, the Commission is required to "prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum thereafter to be charged," etc. The rates fixed by the Commission must be observed while in effect by the carriers parties to the proceeding "the law of any State or the decision or order of any State authority to the contrary notwithstanding."

The Interstate Commission found that rates "not less than" those fixed by it were necessary to remove the discrimination against interstate commerce in this case. The Commission in the concluding paragraph of its third report (190 I. C. C. 600) held as follows:

> "Our findings herein and in our prior report on further hearing are without prejudice to the right of the authorities of the State of Florida or of any other interested party to apply in the proper manner for a modification of our findings and order as to any specified intrastate rate on the ground that it is not related to interstate rates in such a way as to contravene the provisions of the interstate commerce act."

Like reservations have been a number of times approved. No more liberal reservation could have been made by the Commission without leaving its duties undischarged.

The Railroad Commissioners of Florida have their full share of responsibility for the circumstances of which they complain. Notwithstanding the fact that the rates for like service on the Seaboard Air Line Rwy. (p. 234 et seq. of First Record Exhibit No. 2), which operates very nearly as much mileage in Florida as does the Atlantic Coast Line, are practically twice as high as the Cummer scale and that the rates of the Georgia, Southern & Florida Railway (p. 238 of First Record Exhibit No. 4) which is a part of the Southern Railway System and operates substantial mileage in Florida, are also approximately twice as high as the Cummer scale; and the rates of the Florida East Coast Railway Company which has more than 900 miles in Florida are also about twice as high as the Cummer scale for this transportation service, the Railroad Commissioners of Florida have taken the position of active partisans in this case from its beginning, clinging to the patent fallacy that the Cummer scale of rates was and is reasonable, and with equal tenacity they have clung to the greater fallacy that it was within "the State Domain" to keep and impose upon a carrier engaged in interstate and intrastate commerce, a rate which worked unjust discrimination against interstate commerce.

The Interstate Commission's reservation in its reports, to which we have referred, points the only way to impartial assistance left to the parties by the circumstances to which we have referred.

There are state-wide interstate rates for the transportation of logs in Florida over the Coast Line, as we have pointed out—these are the rates fixed by the Commission in this case in that part of the state denominated as Northern Florida, and south of that the same scale plus fifteen (15%) per cent.

REPLYING TO POINT XI OF APPELLANTS' MAIN BRIEF (p. 162)

Here the point is made that:

> "The order of the Interstate Commerce Commission, being statewide in its scope was beyond the scope of the issue on which the controversy was tried, and the proceeding was not appropriate nor was the hearing sufficient."

Point was made in the original case as to the scope of the proceeding and was dismissed by this court in *Florida v. United States*, 282 U. S. at 209. It was made in the hearings before the District Court which are reported in 30 Fed. (2) 116 and 31 Fed. (2d) 580 and was likewise disposed of. The lower court disposed of the same question in its findings of fact and conclusions of law (*Florida v. United States*, 4 Fed. Sup. 477; p. 488 of the Atlantic Coast Line's Statement Opposing Jurisdiction, etc.)

The Atlantic Coast Line's answer to the original proceeding in this case, referred to at page 165 of the appellants' main brief did not complain that the *interstate* rates were unjust and unreasonable. Those rates were then practically the same as the interstate rates found by the Interstate Commission to be just and reasonable in its first and second reports, 140 I. C. C. 717; 180 I. C. C. 189. It did not deny the existence of unjust discrimination. The reopened case was tried not only upon the former record and pleadings before the Commission, but also upon the petitions of the Georgia Public Service Commission and the Atlantic Coast Line Railroad Company to reopen the proceedings before the Commission

and on a very greatly extended record of evidence. The petition of the Atlantic Coast Line set out appropriate extracts from the opinion of this court in 282 U. S., and then alleged:

> "Movant respectfully shows that if is necessary that this Commission reopen the said cause and proceed therein to make such additional findings and orders as may be proper in the light of the opinion of the Supreme Court of the United States in this cause." (R-1031).

There followed a full hearing satisfying every requirement of the statutes.

The Commission made detailed findings and again reached the conclusion that the Cummer scale of rates worked unjust discrimination against interstate commerce. Appellee respectfully submits that appellants' point is not well taken.

Appellants also here invoke the rule of comity. Comity works both ways. The Florida Commission has complementary duties under this rule. The authority of the Interstate Commission being paramount and it having assumed jurisdiction first in point of time, comity and courtesy require acquiescence by the state authority if real discrimination is found to exist against interstate commerce. Certainly the Florida Commission should have been non-partisan in the controversy. It should have more evenly held the scales to the end that it might not have been unmindful of the conditions which were bound to work great discrimination against interstate commerce.

REPLYING TO POINT XII OF APPELLANTS' MAIN BRIEF (p. 168).

The appellants here take the position that the jurisdictional facts authorizing the Interstate Commerce Commission to prescribe intrastate rates should be made to "clearly appear." Certainly the findings which the Commission has made and the evidence to which we have referred, make the unjust discrimination against interstate commerce worked by the Cummer scale of rates to "clearly appear."

Probably there has never before been such a wide disparity between interstate and intrastate rates as exists between the Cummer scale of rates and the interstate scale of rates on logs. This disparity was so great as to make interstate commerce in this commodity over the Atlantic Coast Line practically impossible. An intrastate rate of from one-half to one-third of the interstate rate on the same commodity the interstate rate having been found to be reasonable could not carry its fair proportionate part of the expenses of the transportation system which was used for both interstate and intrastate commerce. The loss which was accruing to the Atlantic Coast Line from this traffic, and which would have continued to accrue to it, would probably have been sufficient to have completely destroyed the road financially.

The Atlantic Coast Line earnings were very small for the last year shown in the evidence 1930 the net return on investment was only 2.54%. The court below stated:

> "It is found that the carrier's net return on its investment is steadily falling from year to year." (*Florida v.*

United States, 4 Fed. Supp. 477; p. 37 of the Coast Line's Statements Opposing Jurisdiction, etc.)

The Railroad Company could not have long withstood the great losses which these rates were entailing upon it.

The Commission found as we have seen, that the log traffic in Florida under the Cummer scale was being done at an out-of-pocket loss. The court below says:

> "If log traffic done in Florida on the Cummer scale is at an out of pocket loss, the less of it done the better. The destruction of it would help by stopping a loss. If but a little business be done on remunerative rates so much profit would be substituted. The Commission has given full and expert attention to the situation, and has found that adherence to the level of log rates it has previously established as reasonable in interstate commerce and has applied as a minimum in intrastate commerce in Florida should be continued. We find no such plain case to the contrary as to warrant court interference. The findings and the evidence show the Cummer scale of rates to constitute such a substantial revenue burden on the Interstate carrier and on interstate commerce as to cause a discrimination against the latter and to give the Commission power to remove it under Interstate Commerce Act, §13(4)." (*Florida v. United States*, 4 Fed. Supp. 477; pp. 43 and 44 of the Coast Line's Statement Opposing Jurisdiction, etc.)

In section (*a*) of point XII (p. 169) of appellants' main brief the claim is made by the appellants that the existence of jurisdictional facts is necessary to authorize the Interstate Commerce Commission to prescribe intrastate rates and the determination as to the existence of those facts is a judicial question.

We have discussed at pages 148 through 155 of the Coast Line's main brief practically all the points raised by the appellants in this section of their brief. We feel we need add very little to what is there said.

The vast volume of this log traffic has been pointed out. The extent of that volume has been found by the Commission —that in one year—1928—it constituted 9.4% of the traffic of the Atlantic Coast Line in Florida. (186 I. C. C. 166) 1928 was the last full year of operation of the plants at Eastport, Milldale, and Ortega (suburbs of Jacksonville), where the movements were in trainloads.

The Commission found that in 1928 the Atlantic Coast Line transported a total of 27,119 cars of logs in Florida (186 I. C. C. 166); and it also found:

> "The defendant's Florida log traffic is an important one and the revenue from that traffic has a substantial influence upon the defendant's total revenues. During the 5-year period, 1926-1930, system log traffic averaged 7 per cent. of the total system traffic. Nearly 50 per cent of the system log traffic was in Florida." (186 I. C. C. 166).

The Commission refers to the fact that in 1928 the system log tonnage constituted 7 per cent of the total system tonnage, whereas the revenue from the log tonnage was only 1.9 per cent of the total revenue. (186 I. C. C. 166).

The Commission also found that for the five-year period, 1926-1930, the following number of cars of logs were shipped over the Atlantic Coast Line in Florida: 1926, 36,799 cars; 1927, 35,415 cars; 1928, 27,119 cars; 1929, 13,207 cars, and 1930, 9,376 cars. (186 I. C. C. 169)

The Brooks-Scanlon Corporation operated the mill at Eastport. The Commission found in its first report, 148 I. C. C. 720:

> "'The record also shows that intervenor Brooks-Scanlon Corporation on August 31, 1926, owned timber in Wakulla, Jefferson, Madison, Taylor, Lafayette, and Dixie Counties, Fla., estimated to contain 1,207,432,000 feet.'"

We will not continue to state the full details of the volume of this log traffic, statements as to which have been heretofore made in this, and in the original, brief.

The Cummer scale of rates provides a revenue less than the bare transportation costs of this carrying service. Apply that fact to the volume of the traffic and the discriminatory and destructive power of the Cummer scale of rates becomes immediately apparent.

The Commission finds (186 I. C. C. 189) as follows:

> "Accordingly, on the basis of an average of 7,431 cars a year under normal economic conditions, which basis we believe conservative, the gross revenues under the rates prescribed by the previous order herein would be more than $100,000 a year greater than under the Cummer scale, now in effect. The application of the Cummer scale, therefore, places a substantial burden upon defendant's interstate revenues. If the revenues yielded by the Cummer scale are not sufficient to cover the cost of the service, as the cost evidence indicates, it would follow that part of the above-stated amount would constitute a dead loss in net revenue."

The Kind of Review Which Appellants Claim the Court Must Give the Commission's Findings in this Case.

This question is raised at pages 169 through 181 of appellants' main brief. It is claimed by them that the finding of jurisdiction by the Interstate Commission to deal with intrastate rates "is subject to review by the court and upon such review it is not sufficient that the finding be supported by 'the substantial evidence' rule."

Reference is made to page 148 of the Atlantic Coast Line's main brief for authorities which appear to conclusively hold that the judicial review of the Interstate Commission's finding of unjust discrimination is subject to the same rule as are its other findings; that is, if the finding is sustained by substantial evidence, the court will not set it aside.

We refer to the treatment of this subject by the lower court in its conclusions of law (*Florida v. United States*, 4 Fed. Supp. 477; especially p. 43 of the Atlantic Coast Line's Statement Opposing Jurisdiction, etc.) The finding of this court is *Interstate Commerce Commission v. L. & N. Railroad*, 227 U. S. 88, appears to be very appropriate. There the court held that the power of the Commission to alter existing rates depends upon the fact of their unreasonableness but that the Commission having found no evidence that they were excessive, its order was not to be disturbed. See also the cases of *Merchants Warehouse Co. v. United States*, 283 U. S. 501; and *United States v. L. & N. Railroad*, 235 U. S. 314, 320.

Appellants claim at page 174 of their main brief:

> "In fixing interstate rates the Commission is exercising a legislative function, *while in determining the facts necessary to its jurisdiction over intrastate rates*, it is performing a judicial function."

That statement appears to us to be contrary to every decision which this court has made on the subject. See *United State v. L. & N. Railroad*, 235 U. S. 314, 320.

CROWELL v. BENSON, 285 *U. S.* 22.

Counsel for appellants appear from their statements at page 175 of their main brief to be of the opinion that this court in the *Crowell v. Benson case* ruled that it must give, as to findings of jurisdictional facts made by administrative tribunals, de novo judicial review where such findings involve constitutional rights.

As pointed out in the Atlantic Coast Line's main brief (pp. 150, et seq.) this is incorrect as here applied for the reasons that it presumes that there is a constitutional right involved on behalf of the State of Florida, when there is none. A state has no right to make rates for intrastate commerce which affect other states. The Congress, under its power to regulate commerce, has the power to regulate that commerce which is within one state and which affects other states. *Gibbons v. Ogden*, 9 *Wheat.* 194. The power to determine as between the field in which the state acts and in which the Congress acts, lies with the Congress. It was clearly so held in the case of *Colorado v. United States*, 271 U. S. 153, 165-66, where the court said:

"Because the same instrumentality serves both, Congress has power to assume not only some control but paramount control in so far as interstate commerce is involved. *It may determine to what extent and in what manner intrastate service must be subordinated in order that interstate service may be adequately rendered.* The power to make the determination inheres in the United States as an incident of its power over interstate commerce. The making of this determination involves an exercise of judgment upon the facts of the particular case. The authority to find the facts and to exercise thereon the judgment whether abandonment is consistent with public convenience and necessity, Congress conferred upon the Commission." (Italics added).

Like power is conferred upon the Interstate Commerce Commission as to unjust discrimination. *Crowell v. Benson*, 285 U. S. 22, 50-51; and authorities cited in the 13th note; *Ex Parte Bakelite Corp.*, 279 U. S. 435, 451, and authorities cited in the 8th note.

The mode of determining in such matters where the Constitutional power of the Congress ends and where that of the State begins, is for determination by the Congress or by such means as it may create. This power, if not exercised directly by the Congress may be delegated to executive officers or to tribunals which are not judicial.

Congress had delegated this power to the Interstate Commerce Commission and the determination of the Commission as to discrimination by intrastate rates against interstate commerce, is final when supported by evidence. The State of Florida has no Constitutional right to a judicial review of the Commission's findings.

It must be remembered that the court below did give this subject a *de novo* investigation on the record made before the Commission.

Appellants' main brief at page 179 draws a distinction between the rights of the State of Florida on the one hand and the shippers on the other, apparently claiming that the State of Florida has the right to a *de novo* investigation upon a record made before the court under its independent processes and claiming as to the shippers the right of a *de novo* investigation "upon the evidence taken before the Commission."

As we have pointed out, they are not entitled to either of their claims, but they have had the *de novo* investigation of the kind which they claim the shippers were entitled to, and having had it, they got an adverse decision. That adverse decision was both as to the shippers and as to the State of Florida.

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February 12, 1934.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1933

STATE OF FLORIDA, EUGENE S. MATTHEWS, MAMIE EATON-GREENE, and W. B. DOUGLASS, etc., et al.
Appellants,
v.
UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, GEORGIA PUBLIC SERVICE COMMISSION, and ATLANTIC COAST LINE RAILROAD COMPANY,
Appellees.

No. 342.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION.

Separate Brief for Atlantic Coast Line Railroad Company, Appellee, in Reply to the Separate Brief Filed by Mr. J. V. Norman on January 26, 1934, for the Appellant, Wilson Lumber Company of Florida, Suggesting Effect of Change in Governing Statute Subsequent to Decision of Court Below.

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The Atlantic Coast Line Railroad Company, one of the appellees herein, presents this its separate brief in this case, dealing only with the contention made by the Wilson Lumber Company of Florida,

one of the appellants, in a separate brief by its counsel filed on January 26, 1934.

The contention made by the appellant's separate brief to which reference is made, is that the effect of the change made in section 15a of the Interstate Commerce Act by the Emergency Railroad Transportation Act, 1933, which was approved by the President on June 16, 1933, is to deprive the Interstate Commerce Commission of the jurisdiction conferred upon it by paragraph (4) of section 13 of the Interstate Commerce Act to protect interstate commerce against undue, unreasonable, or unjust discriminations made by a State or any of its regulatory authorities. The far reaching consequences of this contention will be readily appreciated, when it is considered that, if it should be upheld, it annuls the national power to protect the instrumentalities of interstate commerce, and interstate commerce itself, against impairment or destruction by the action of a State.

In view of the importance of the question, it will probably be helpful to make a brief review of the development of the system of regulatory legislation in order to obtain an adequate background for the consideration of the question.

State Regulation Exclusive Prior to 1887

Prior to 1886, steam railroads had, for many years, constituted, in large areas of the United

States, practically the sole reliance of the American public for the distribution to market of the products of their enterprise and industry. At first, these railroads were constructed as short lines to provide a way to neighborhood markets then customarily used by the shipping, receiving and consuming public. Their distinctively local character as at first constructed may be illustrated by the following incident:

In September, 1848, while Abraham Lincoln was a member of the lower House of Congress, he had occasion to go from Washington to Massachusetts to deliver a number of campaign addresses. In traveling, for that purpose, from Philadelphia to New York, on his way to Massachusetts, it was necessary for him to use three different lines of railroad between Philadelphia and Jersey City, namely, the Philadelphia and Trenton Railroad from Philadelphia to Trenton; the Camden and Amboy Railroad and Transportation Company from Trenton to New Brunswick; and the New Jersey Railroad and Transportation Company from New Brunswick to Jersey City—all now parts of the Pennsylvania system.

Continuing his journey back to his home in Illinois, the returning Congressman was obliged to use, between Albany and Buffalo, seven different railroads, all now parts of the New York Central.

This distinctively local character of the rail-

roads, as they at first existed, and for about two generations continued to exist, gradually gave way, before the unifying forces of war, of the increasing consciousness and importance of nationality in interstate relations, and of the quick transmission by electricity of personal and commercial intelligence, until their predominantly local character disappeared and they became of nation-wide consequence and nation-wide carriers of persons and distributors of commodities.

During the early period of their construction and evolution they were so predominantly local in their relationships and service that it was natural and was considered appropriate to confine the exercise of the governmental power of regulation to the States, and it was not until 1886 that the essentially national character of their service was recognized as controlling and the conclusion reached that the time had arrived when they should be brought under the commerce power of the Federal Constitution and be regulated by Congress.

National and State Regulation 1887 to 1920

On the 21st day of March, 1885, the President of the Senate, under authority of a Senate resolution, appointed a select committee of five Senators, with Senator Shelby M. Cullom as Chairman, to investigate the subject of the regulation of in-

terstate commerce "by railroad and by water routes in connection or in competition with the railroads." This committee made a most exhaustive inquiry into the subject and, on January 18, 1886, submitted its report to the Senate.

The Committee listed eighteen special complaints against the railroad transportation system as then operated but concluded that the essence of all these complaints was the "practice of discrimination in one form or another" then existing "as between places, persons and commodities" and the burden of complaint was that these discriminations were unjust in comparison with the rates allowed or facilities afforded to other persons and places for a like service under similar circumstances.

This report resulted in the enactment by Congress of an Act entitled "An Act to regulate commerce," which was approved February 4, 1887, and which went into effect on April 5th of that year.

The fundamental purpose of the regulation prescribed by this Act, was to assure equality of opportunity to all users of these interstate agencies of transportation, so that persons and localities, similarly situated, might enjoy in their business and affairs, equality of rates, facilities and service.

While its provisions satisfied the public con-

science, it soon came to be believed that the methods provided in the Act for its enforcement were radically faulty and inadequate. It was objected that the Act "had no teeth;" that it left the Commission hampered "in obtaining access to necessary testimony and to carriers' records and books of account;" that there was no power in the Commission to enforce its orders, but that these became effective only by virtue of a court decree giving them vitality; that the law did not confer upon the Commission the power to fix maximum rates; and that the carrier, and not the Commission, was the judge, in the first instance, whether the circumstances and conditions warranted, under the fourth section of the Act, the charging of more for a shorter than for a longer haul.

Designating the period during which these objections were entertained as a period of discouragement to the Commission and to the public, Professor Winthrop M. Daniels, formerly a member of the Interstate Commerce Commission and now Professor of Transportation at Yale, in his recent interesting book on the "American Railroads," thus describes the situation beginning in 1903:

> "Before long the tide of discouragement turned. In 1903 came the Elkins Act, penalizing every departure from the published rates as an unlawful rebate. In 1906 the Hepburn Act put teeth into the law, by specially con-

ferring upon the Commission full power to fix maximum rates for railway service, and making compliance with the Commission's orders mandatory on the railroads unless stayed by a Court injunction. The Mann-Elkins Act of 1910 restored the lost vitality to the long-and-short-haul section.

"Congress had turned with a vengeance to invigorate and uphold its administrative arm, the Commission, which "out of weakness was made strong" . . .

"During this period of Congressional displeasure, the prior unrestricted powers of the railway managements had been invaded in the following important particulars. The fixation of maximum rates, after due hearing and investigation by the Commission, was taken from the management and entrusted to the new tribunal. The maximum hours of service were delimited under heavy penalty in the interest of safety of employees and travelers. The type of safety appliances and braking equipment was prescribed by law.

"The inspection of locomotives and equipment was entrusted to Federal inspectors. Accidents were investigated by the Federal Bureau. The power to suspend newly published tariffs of rates was lodged with the Commission, and the burden of proof to justify increased rates was cast on the railroads.

"A new and uniform system of keeping railroad accounts was imposed on the railroads, and the policing of accounts was entrusted to

the Commission. In emergencies requiring immediate action that body was invested with almost dictatorial powers over car service, through routes, common use of terminals, and the prescription of preference or priority for designated classes of traffic. The Clayton Act of 1914 forbade interlocking railroad directorates, and virtually required all large railroad purchases of materials and supplies to be made under a prescribed system of competitive bidding.

"The Panama Canal Act of 1912 debarred the railroads from the remotest interest in water lines traversing the canal, and divorced them from continuing their interest in all other water lines unless with express consent of the Commission.

"The culmination was reached when the Adamson Act of 1916 fixed for a time the length of the working day and the scale of wages for employees engaged in transportation. By this time the railroad Sampson had been rather effectively shorn by the Congressional 'Delilah'."

During the entire period covered by the legislation here described by Professor Daniels, the attitude of Congress toward the railroads was marked solely by a spirit of distrust and hostility.

No duty or responsibility, to the regulated subject, was recognized as resting on the government to see that, growing out of the exercise of its regu-

latory powers, the agency of transportation was kept up to the proper standard of adequacy and efficiency required by the public interest or that justice was done to private owners who had devoted their property to the public service. The whole spirit of the legislation was restrictive and punitive, with no recognition of a corresponding moral obligation resting upon the government of conservation, fairness or justice. Railroads were to be dealt with by Congress in a hostile spirit and were to be left unaided and unsupported, even in the exercise of powers necessary to the public welfare, to find a way to keep themselves adequate and efficient to perform their essential public service.

The result, as might have been anticipated, of this antagonistic attitude of Congress was an almost complete breakdown of the credit of the railroads and consequent inability on their part to provide the facilities needed to perform their transportation duties.

So acute and menacing had this situation become that on September 9, 1914, a committee of prominent railroad presidents called on President Woodrow Wilson, presenting a written statement of the financial condition of the American railroads and making the following specific requests:

> "1. That the President will call the attention of the country to the pressing necessity

for the support of railroad credit by the cooperation and sympathetic effort of the public and of all governmental authorities, and suggest that the railroads be relieved as far as possible of further immediate burdens involving additional expense; and

"2. That the President will urge a practical recognition of the fact that an emergency has arisen which requires, in the public interest, that the railroads have additional revenue, and that the appropriate governmental agencies seek a way by which such additional revenue may be properly and promptly provided."

To this request the President responded in a letter, dated September 10, 1914, as follows:

"Since you read it to me yesterday, I have read again the statement you made me on behalf of the committee of railroad presidents whom I had the pleasure of meeting and conferring with at my office. It is a lucid statement of plain truth.

"You ask me to call the attention of the country to the imperative need that railway credits be sustained and the railroads helped in every possible way, whether by private cooperative effort or by the action, wherever feasible, of governmental agencies, and I am glad to do so, because I think the need very real.

"I can not say that I entertain any deep anxiety about the matter, except, of course,

the general anxiety caused by the unprecedented situation of the money markets of the world; because the interest of the producer, the shipper, the merchant, the investor, the financier and the whole public in the proper maintenance and complete efficiency of the railways is too manifest. They are indispensable to our whole economic life, and railway securities are at the very heart of most investments, large and small, public and private, by individuals and by institutions.

"I am confident that there will be active and earnest cooperation in this matter, perhaps the one common interest of our whole industrial life. Undoubtedly men, both in and out of official position, will appreciate what is involved and lend their aid very heartily wherever it is possible for them to lend it.

"But the emergency is, in fact, extraordinary, and where there is manifest common interest we ought all of us to speak out in its behalf, and I am glad to join with you in calling attention to it. This is a time for all to stand together in united effort to comprehend every interest and serve and sustain it in every legitimate way.

"The laws must speak plainly and effectively against whatever is wrong or against the public interest, and these laws must be observed; for the rest and within the sphere of legitimate enterprise, we must all stand as one to see justice done and all fair assistance rendered, and rendered ungrudgingly."

The conditions adversely affecting the credit of the railroads having, however, continued, this letter was followed by the message of the President to Congress in December, 1915, in which he made the following recommendation:

> "In the meantime, may I make this suggestion? The transportation problem is an exceedingly serious and pressing one in this country. There has from time to time of late been reason to fear that our railroads would not much longer be able to cope with it successfully, as at present equipped and coordinated. I suggest that it would be wise to provide for a commission of inquiry to ascertain by a thorough canvass of the whole question whether our laws as at present framed and administered are as serviceable as they might be in the solution of the problem. It is obviously a problem that lies at the very foundation of our efficiency as a people. Such an inquiry ought to draw out every circumstance and opinion worth considering and we need to know all sides of the matter if we mean to do anything in the field of federal legislation.
>
> "No one, I am sure, would wish to take any backward step. The regulation of the railways of the country by federal commission has had admirable results and has fully justified the hopes and expectations of those by whom the policy of regulation was originally proposed. The question is not what we should

undo. It is, whether there is anything else we can do that would supply us with effective means, in the very process of regulation, for bettering the conditions under which the railroads are operated and for making them more useful servants of the country as a whole. It seems to me that it might be the part of wisdom, therefore, before further legislation in this field is attempted, to look at the whole problem of coordination and efficiency in the full light of a fresh assessment of circumstance and opinion, as a guide to dealing with the several parts of it.

"For what we are seeing now, what in my mind is the single thought of this message, is national efficiency and security. We serve a great nation. We should serve it in the spirit of its peculiar genius. It is the genius of common men for self-government, industry, justice, liberty and peace. We should see to it that it lacks no instrument, no facility or vigor of law, to make it sufficient to play its part with energy, safety, and assured success. In this we are no partisans, but heralds and prophets of a new age."

Congress, in response to this recommendation, adopted a joint resolution, approved July 20, 1916, providing for the appointment of a joint committee of the two Houses to make a comprehensive study of the whole transportation question. The Chairman of this committee was Sena-

tor Newlands, of Nevada, and the committee became known as the "Newlands Joint Committee."

It conducted a thorough investigation into the whole subject of transportation, holding many meetings, some in Washington and some in San Francisco. It drew out "every circumstance and opinion worth considering" and all the facts relating to all sides of the question, its final meeting being held in Washington on December 19, 1917. Before it could make its report to Congress, its Chairman, on December 23, 1917, died, and the railroads on the 28th day of that month were taken over by the government for war purposes.

However, the hearings before this joint committee exerted a profound influence upon the future regulatory legislation of Congress.

National Regulation Prescribed by the Transportation Act of 1920

Preparatory to the return by the government of the railroads to their owners, which was finally accomplished at 12.01 A. M. of March 1, 1920, it became necessary to enact legislation providing for such return and creating a new, comprehensive and constructive system of Federal regulation.

This legislation took the form of the Transportation Act, 1920. Of the ten conferees on the bill which finally resulted in this Act, five had been

members of the Newlands Joint Committee, and, in consequence of the studies of that committee and the knowledge of the subject possessed by these five conferees, the Transportation Act, 1920, for the first time expressed a recognition on the part of Congress of its responsibility to the subjects which it undertakes to regulate; of the necessity of providing and maintaining at all times an adequate and efficient system of rail transportation; of the fact that the credit of the carriers, on which their ability to perform their essential public service depends, is primarily a matter of profound and vital public concern; of the fact that the carriers were national, and not local, in their major and controlling aspects, that their ability to perform their public duties must not be destroyed by the uncoordinated, divergent and sometimes conflicting views of many different governmental authorities, and that the power of the States should not supersede and override the power of the nation in dealing with and preserving in full vigor the agencies of interstate commerce.

The definite and controlling purpose of Congress to provide for an adequate and efficient system of interstate transportation, capable at all times of meeting and satisfying the transportation requirements of the public, is manifested in many of the provisions of the Transportation Act, 1920.

1. In paragraph (18) of section 1 of the Inter-

state Commerce Act, as amended by the Transportation Act, 1920, railroads were prohibited from acquiring new lines, or extending their own lines, or abandoning all or any part of a line, or the operation thereof, without the approval of the Interstate Commerce Commission, the object being to prevent them from over-loading themselves with obligations which would interfere with the efficiency and adequacy of their services, and from depriving themselves of any part of their facilities useful to the public service.

2. In paragraph (4) of section 1 it is provided that

> "it shall be the duty of every common carrier subject to this Act engaged in the transportation of passengers or property to provide and furnish such transportation upon reasonable request therefor"

transportation being defined in paragraph (3) of section 1 as including

> "locomotives, cars, and other vehicles, vessels, and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported"

thus imposing upon the carriers the duty of furnishing adequate and efficient transportation service.

3. In paragraph (11) of section 1 of the Act it is provided:

> "It shall be the duty of every carrier by railroad subject to this Act to furnish safe and adequate car service and to establish, observe, and enforce just and reasonable rules, regulations, and practices with respect to car service"

and "car service" is defined in paragraph (10) of the same section as including

> "the use, control, supply, movement, distribution, exchange, interchange, and return of locomotives, cars, and other vehicles used in the transportation of property including special types of equipment, and the supply of trains, by any carrier by railroad subject to this Act"

thus again recognizing and emphasizing the duty of the carriers to furnish adequate transportation.

4. Attention is also called to the powers conferred upon the Commission in respect to adequate transportation by paragraphs (13), (14), (15) and (16) of section 1 and to the following from paragraph (21) of that section:

> "The Commission may, after hearing in a proceeding upon complaint or upon

its own initiative without complaint, authorize or require by order any carrier by railroad subject to this Act, party to such proceeding, to provide itself with safe and adequate facilities for performing as a common carrier its car service as that term is used in this Act, and to extend its line or lines; *Provided,* That no such authorization or order shall be made unless the Commission finds, as to such extension, that it is reasonably required in the interest of public convenience and necessity, or as to such extension or facilities that the expense involved therein will not impair the ability of the carrier to perform its duty to the public."

5. In section 500 of the Transportation Act, 1920, it is provided as follows:

> "It is hereby declared to be the policy of Congress to promote, encourage, and develop water transportation, service, and facilities in connection with the commerce of the United States, and to foster and preserve in full vigor both *rail* and water transportation." (Italics ours.)

All the provisions above referred to of the Transportation Act indicate the settled purpose of Congress to provide for an adequate and efficient system of interstate transportation and *are in addition to the provisions of section 15a contained in the same Act.*

It should be observed also that, in the Hoch-Smith resolution, the limitation is twice placed by Congress upon anything which the Commission may do as to rates, that it shall be "with due reference to the maintenance of an adequate system of transportation" and shall be "compatible with the maintenance of adequate transportation service."

The foregoing are given in order to indicate *the determined purpose of Congress*, in its regulation of interstate carriers to make certain that the transportation service shall be adequate and efficient.

This conclusion is further emphasized and made clear by the provisions of the Emergency Railroad Transportation Act, 1933, which, while expressing the new rule of rate-making as follows:

> "In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide such service" (Sec. 205).

in section 2 of Title I, in providing for the appointment of a Federal Coordinator of Transportation,

defines the purpose and the extent to which such consideration must be given, as follows:

> "In order to foster and protect interstate commerce in relation to railroad transportation by preventing and relieving obstructions and burdens thereon resulting from the present acute economic emergency, and *in order to safeguard and maintain an adequate national system of transportation,* there is hereby created the office of Federal Coordinator of Transportation, etc." (Italic ours.)

Thus the *purpose of Congressional regulation* to provide for and assure an adequate and efficient system of national railroad transportation is expressed and is emphasized, not only by the provisions of the Interstate Commerce Act hereinbefore quoted, but also by the latest expression of Congress in the Emergency Railroad Transportation Act, 1933; and one of the leading and, under our present system of private ownership and operation, the most dominant purpose of Congressional regulation, namely, to assure an adequate and efficient system of national railroad transportation, remains unchanged and continues to be emphasized.

The *purpose* of the regulatory Act to insure a system of interstate transportation at all times adequate to the needs of the public, expressed or necessarily implied from the provisions of the Act

above quoted, is further shown by the provisions empowering the Commission to permit pooling of traffic and earnings to the extent that, in its opinion, it "will be in the interest of better service to the public or economy of operation" (Act, section 5, paragraph (1); to permit the acquisition by one carrier of control of another if, in the Commission's opinion, "it will be in the public interest" (Act, section 5, paragraph (2)); by the power conferred upon the Commission to fix minimum rates (Act, section 15, paragraph (1)), and by other similar provisions.

In fact, this Court has endorsed the foregoing conclusions, by an express holding that

> "Transportation Act, 1920, introduced into the federal legislation a new railroad policy. *Railroad Commission of Wisconsin* v. *Chicago, Burlington & Quincy R. R. Co.*, 257 U. S. 563, 585. Theretofore, the effort of Congress had been directed mainly to the prevention of abuses; particularly, those arising from excessive or discriminatory rates. The 1920 Act sought to ensure, also, adequate transportation service. That such was its purpose was expressed in unequivocal language." (Here the Court referred not only to section 15a but to other provisions of the Act hereinbefore mentioned.) "And to attain it, new rights, new obligations, new machinery, were created. The new provisions took a wide range. Prominent

among them are those specially designed to secure a fair return on capital devoted to the transportation service. Upon the Commission, new powers were conferred and new duties were imposed."—*New England Divisions Case*, 261 U. S. 189-190.

Attention is called to the provisions of the Act, referred to by the Court at bottom of page 190, having the purpose in view to ensure adequate transportation service. These include provisions other than the provisions of section 15a.

The same principle is expressed in *Dayton-Goose Creek Railway v. United States*, 263 U. S. 478, as follows:

"In both cases (referring to the Wisconsin case and to the New England Divisions case) it was pointed out that the Transportation Act adds a new and important object to previous interstate commerce legislation, which was designed primarily to prevent unreasonable or discriminatory rates against persons and localities. The new act seeks affirmatively to build up a system of railways prepared to handle promptly all the interstate traffic of the country. It aims to give the owners of the railways an opportunity to earn enough to maintain their properties and equipment in such a state of efficiency that they can carry well this burden. To achieve this great purpose, it puts the railroad systems of the coun-

try more completely than ever under the fostering guardianship and control of the Commission, which is to supervise their issue of securities, their car supply and distribution, their joint use of terminals, their construction of new lines, their abandonment of old lines, and by a proper division of joint rates, and by fixing adequate rates for interstate commerce, and, in case of discrimination, for intrastate commerce, to secure a fair return upon the properties of the carriers engaged."

It will be noted also that the grouping of roads for the purposes of making rates did not have its origin in section 15a. As to this the Supreme Court says, in the *New England Divisions Case*, 261 U. S. 197.

"For many years before the enactment of Transportation Act, 1920, it had been necessary, from time to time, to adjudicate comprehensively upon substantially all rates in a large territory. When such rate changes were applied for the Commission made them by a single order; and, in large part, on evidence deemed typical of the whole rate structure. This remained a common practice after the burden of proof to show that a proposed increase of any rate was reasonable had been declared, . . . to be upon the carrier. Thus the practice did not have its origin in the group system of rate-making provided for in 1920 by the new section 15a. It was the actual

> necessities of procedure and administration which had led to the adoption of that method, in passing upon the reasonableness of proposed rate increases."

From the foregoing, it appears, not only from the provisions of the acts which have been quoted, but also from the opinions of this Court, that a very controlling purpose introduced by the Transportation Act, 1920, and apparent from many of its provisions in addition to 15a, was to ensure adequate transportation service.

It is, however, contended in the brief to which this is intended as a reply, that, because the language used by this Court in the *Wisconsin Rate Case* where reference is made to the "dovetailed relation" between that provision (sec. 13, paragraph 4) and *the purpose of section 15a*, the change in the language of section 15a made in the Emergency Act destroys the power of the Interstate Commerce Commission to prevent the States from breaking down the interstate system of transporation through the adoption by the States of unjustly discriminatory rates.

The Separate brief of the Wilson Lumber Company herein was obviously prepared under the erroneous conception that section 15a, as it originally stood, conferred power upon the Interstate Commerce Commission to make an order protecting interstate commerce against unjust discrim-

ination through acts of a State. The brief says, at page 8:

> "Thus it is that the elaborate Act," (section 15a as it originally was) "upon which the Interstate Commerce Commission relied as giving jurisdiction to enter the order in question" (which was an order removing discrimination against interstate commerce by acts of a State).

This is a plain statement that the Commission relied on 15a as authority to enter that order.

And on page 10 the following is stated in the brief:

> "It is respectfully submitted that even if the power here sought to be exercised existed under the old Section 15a, a proposition which we have always contested, no such power could possibly be found in the new Section 15a. The language of the new act affords no basis for an interpretation that Congress intended to thereby vest in the Interstate Commerce Commission power to fix intrastate rates for the purpose of removing a revenue burden on interstate commerce."

Here again the view is presented that the power of the Interstate Commerce Commission to fix intrastate rates is to be found in section 15a; and the same view permeates other portions of the brief.

But this Court has expressly held that the basis of the power of the Interstate Commerce Commission to enter the order in question *is not section 15a.* The misconception that 15a is the source of the Commission's power in the premises is disposed of by this Court in the *Wisconsin Case,* 257 U. S. 586, as follows:

> "Section 15a conferred no power on the Commission to deal with intrastate rates. What is done under that section is to be done by the Commission 'in the exercise of its power to prescribe just and reasonable rates,' i. e., power derived from previous amendments to the Interstate Commerce Act which have never been construed or used to embrace the prescribing of intrastate rates."

The Court then goes on to hold that the power of the Commission to enter such order was conferred by paragraph (4) of section 13, which vested in it authority to remove any undue, unreasonable or unjust discrimination against interstate or foreign commerce. It will be noted that paragraph (4) of section 13, which is the source of the Commission's power to enter the order in question, remains unchanged.

When the unmistakable purpose of Congress is considered to so exercise its regulatory power that an adequate system of interstate commerce transportation should at all times be maintained

and that there should be no power to destroy this national purpose by a unjust or parsimonious attitude towards it by the States, it would seem impossible to conclude that Congress had abandoned this purpose entirely merely by a change of the *terms,* but not of the *purpose,* of section 15a.

Recalling again that this Court has held that section 15a, as it previously and originally stood, conferred no power on the Commission to deal with intrastate rates, it is obvious that the "dovetailed relations" so often referred to did not involve in the remotest degree a relation between paragraph (4) of section 13 and the *provisions or terms* of section 15a. The statement is carefully made by the Court that the "dovetailed relations" to which it refers were those between the powers of section 13, paragraph (4), and the *purposes,* not *provisions or terms,* of section 15a.

It was, of course, convenient for the Court in the *Wisconsin Case* to refer to section 15a as containing an expression of the purpose of the legislation, for in section 15a they were very definitely stated, but the reference to this section was not necessary, as the purposes on which the Court was relying for its decision appear just as unmistakably in other provisions of the Act, as indicated above, and also still continue in section 15a as it now stands after its amendment by the Emergency Act.

The change which has been made in the terms of section 15a by the Emergency Act does not change the purpose of that section, but only its provisions, and this same purpose, many times emphasized in various provisions of the Act, is likewise retained by retaining these provisions. That purpose was to maintain an adequate railway system, and the Court proceeds in the *Wisconsin Rate Case*, at page 586, to explain:

> "If that purpose is interfered with by a disparity of intrastate rates, the Commission is authorized to end the disparity by directly removing it, because it is plainly an 'undue, unreasonable, or unjust discrimination against interstate or foreign commerce', within the ordinary meaning of those words."

In the same case the Court said on pages 585-586:

> "Intrastate rates and the income from them must play a most important part in maintaining an adequate national railway system. Twenty per cent of the gross freight receipts of the railroads of the country are from intrastate traffic, and fifty per cent of the passenger receipts. The ratio of the gross intrastate revenue to the interstate revenue is a little less than one to three. If the rates, on which such receipts are based, are to be fixed at a substantially lower level than in interstate

traffic, the share which the intrastate traffic will contribute will be proportionately less. If the railways are to earn a fixed net percentage of income, the lower the intrastate rates, the higher the interstate rates may have to be. The effective operation of the act will reasonably and justly require that intrastate traffic should pay a fair proportionate share of the cost of maintaining an adequate railway system. Section 15a confers no power on the Commission to deal with intrastate rates. What is done under that section is to be done by the Commission 'in the exercise of its power to prescribe just and reasonable rates', i. e., powers derived from previous amendments to the Interstate Commerce Act, which have never been construed or used to embrace the prescribing of intrastate rates. When we turn to paragraph 4, sec. 13, however, and find the Commission for the first time vested with a direct power to remove 'any undue, unreasonable, or unjust discrimination against interstate or foreign commerce,' it is impossible to escape the dovetail relation between that provision and the purpose of section 15a. If that purpose is interfered with by a disparity of intrastate rates, the Commission is authorized to end the disparity by directly removing it, because it is plainly an 'undue, unreasonable, or unjust discrimination against interstate or foreign commerce', within the ordinary meaning of those words."

Referring to that part of the foregoing quotation which reads as follows: "If the railways are to earn a fixed net percentage of income, the lower the intrastate rates, the higher the interstate rates may have to be", it must be observed that that consequence does not follow alone from the provision for a fixed percentage, for it would equally follow that, even without a fixed percentage, as the contribution from intrastate rates is made lower, the contribution from interstate rates must be made higher.

When we consider that the purpose to maintain an adequate system of interstate commerce appears not only in section 15a as previously written but in many other provisions of the regulatory Act, and also appears anew in section 15a as amended by the Emergency Act, there being no change in the provisions of paragraph (4) of section 13 conferring power on the Interstate Commerce Commission over intrastate rates in certain cases, it is impossible to conclude that the effect of changing the wording of Section 15a has had the effect of repealing paragraph (4) of section 13 conferring power upon the Interstate Commerce Commission to protect interstate commerce against unjust discriminations made against it or burdens placed on it by the States in their regulation of interstate commerce.

The views insisted on in the separate brief re-

ferred to, of the Wilson Lumber Company, are not entertained by Mr. John E. Benton, the General Solicitor of the National Association of Railroad and Utilities Commissioners (the State commissions), as will appear from the following colloquy, which occurred at the hearings on the proposal to amend section 15a at a session of the House Interstate and Foreign Commerce Committee on Thursday, January 28, 1932 (Hearings, p. 168):

> "Mr. Mapes. . . . Let me ask you this: How much do you suppose that your association is influenced in its judgment by the desire perhaps to have a free hand in the fixing of rates?
>
> (The 'judgment' referred to was that announced by Mr. Benton that section 15a should be substantially amended.)
>
> "Mr. Benton. You mean with respect to 15a?
>
> "Mr. Mapes. Yes.
>
> "Mr. Benton. None whatever. You probably have in mind that in former years we placed great emphasis upon that in connection with other proposed amendments, but my judgment is, as a matter of law, if you repeal section 15a outright and do nothing more it will not in any respect affect the powers which the commission has under section 13 (4) to prescribe intrastate rates as there provided."

Mr. Benton's position was that if there be a body of interstate rates, legally made, whether 15a was in existence or not, the power of the Interstate Commerce Commission to protect that legal interstate structure against unjust discrimination by the States was undeniable and was ample under paragraph (4) of section 13.

If there could be any doubt about this it seems absolutely to have been removed by the decision of this Court in the recent case of *United States of America et al.* v. *State of Louisiana, Louisiana Public Service Commission and Louisiana Highway Commission,* decided November 6, 1933, where it held that, although the rates there in question had not been made by the Commission at all, and consequently could not have been made under section 15a, the rates were still the lawful interstate rates and unjust discrimination against them might be removed by the Interstate Commerce Commission under the authority of the statute above referred to. The language of the Court in the case mentioned is as follows:

> "3. The fact that the order of the Commission for the increase of interstate rates was permissive only does not affect the validity of its order prescribing minimum intrastate rates. The interstate rates after the addition of the authorized surcharges were lawful rates in interstate commerce, which was discrim-

> inated against by the failure to make corresponding increases in intrastate rates. This discrimination the Commission removed in the manner authorized by section 13 (4), by prescribing minimum intrastate rates at the same level as the interstate rates."

This, as stated, refers to a body of rates not made by the Interstate Commerce Commission under section 15a but lawfully made by the carriers themselves and thus constituting *the lawful interstate structure of rates*, and this Court said that, inasmuch as they were the lawful rates in interstate commerce and were unjustly discriminated against by State action by the failure to make corresponding increases in intrastate rates, the power of the Interstate Commerce Commission to prescribe minimum intrastate rates at the same level as interstate rates was undeniable under paragraph (4) of section 13.

It will be noted that the foregoing contention of the Wilson Lumber Company is made in the face of the growing recognition of the peculiar importance of the national aspects of transportation in interstate commerce and of the growing national policy, indicated by the foregoing historical review, to recognize an obligation to the public to perform, by national means and under national regulation, the duty of establishing and maintaining an adequate system of interstate transporta-

tion and not to permit this to be interfered with or obstructed by any other agency whatever, State or otherwise.

Repeal by Implication

The foregoing discussion has been based upon a broad view of the leading purposes of the regulatory Act of Congress. The contention, however, here made for one of the appellants, that the alteration of the terms of section 15a operates to repeal the provisions of paragraph (4) of section 13, should perhaps be tested by the technical rules of the law in respect to repeals.

> "To establish the repeal of a statute by implication it is insufficient to show merely that a later statute, making no mention of a prior one, employed language broad enough to cover some part or all of it, but it must appear that the two statutes cannot stand together, reasonable purpose and operation being accorded to each."—*Great Northern Ry. Co.* v. *United States*, 155 Fed. 945; affirmed in 208 U. S. 452.
>
> "Repeals by implication are not favored."—*Grogan* v. *Hiram Walker & Sons*, 259 U. S. 80.

And accordingly if section 15a as now written and paragraph (4) of section 13 can both stand together, there is no justification for contending that

the change in section 15a does effect a repeal of paragraph (4) of section 13. Obviously they can still stand together; both can be administered as they are written and without conflict. In fact, the language of 15a as it now stands under the Emergency Act is as follows:

> "In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide such service."

Instead of this having a tendency to operate as a repeal of paragraph (4) of section 13, which authorizes the Commission to prevent the States by unjust discrimination to impair or burden interstate commerce, it has on its face the exactly contrary purpose and shows that the purpose of Congress still is to provide under its system of regulation for an adequate and efficient system of rail transportation.

Moreover, there is a fact in connection with the history of the change in section 15a made by the Emergency Railroad Transportation Act, 1933,

which seems to be conclusive that there was no purpose whatever to interfere by that Act with the operations of paragraph (4) of section 13. When the Emergency Railroad Transportation Act was before the Senate there was attached to it as a part of Title II—Amendments to Interstate Commerce Act—the following section:

> "The laws of the several States and orders of the commissions of the several States already in existence and hereafter enacted shall remain in effect unless the orders effecting them relate to interstate commerce."

Inasmuch as no State orders or enactments, regulating intrastate commerce, do in terms *relate to* interstate commerce, and inasmuch as the language of the foregoing provision does not refer to orders of State authorities *affecting interstate* commerce, it might have been that the enactment into law of the provision in question would have had an effect upon paragraph (4) of section 13. But the provision above quoted, which was attached to the Emergency Railroad Transportation Act in the Senate, was stricken out and was not permitted to become a part of the law. The fact of its rejection is a strong argument as to the purpose of Congress not to interfere with the operation of paragraph (4) of section 13.

CONCLUSION

Therefore, from whatever standpoint the subject is considered, there would seem to be no sound foundation for the contention that the powers of the Interstate Commerce Commission under paragraph (4) of section 13 are in any way affected or lessened by the change which has been made in section 15a. The purpose of Congress to assure at all times an adequate and efficient system of interstate transportation, and its correlative purpose to cause the States to make their fair contribution to the maintenance of such system, remains unchanged.

Respectfully submitted,

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Washington, D. C.
February, 1934.

SUPREME COURT OF THE UNITED STATES.

No. 342.—October Term, 1933.

State of Florida, Eugene S. Matthews, Mamie Eaton-Greene, and W. B. Douglass, etc., et al., Appellants, *vs.* The United States of America, Interstate Commerce Commission, Georgia Public Service Commission, and Atlantic Coast Line Railroad Company.	Appeal from the District Court of the United States for the Northern District of Georgia.

[April 2, 1934.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

This appeal presents the question of the validity of an order made by the Interstate Commerce Commission on July 5, 1932, requiring the Atlantic Coast Line Railroad Company to desist from an unjust discrimination found to exist in the relation of intrastate and interstate rates and to maintain certain rates for the intrastate transportation of logs, as described, within and throughout the State of Florida for distances of 170 miles or less. 186 I. C. C. 157; 190 I. C. C. 588. The order was sustained by the District Court, three judges sitting. 4 F. Supp. 477.

By an order of August 2, 1928, the Commission prescribed interstate rates on logs on the lines of the Atlantic Coast Line Railroad Company from points in northern Florida to destinations in Georgia for distances not exceeding 170 miles. Finding that the Florida intrastate rates on similar logs for similar hauls, generally described as the Cummer scale, resulted in unjust discrimination, the Commission also established rates for intrastate application within Florida which would correspond with the rates fixed for interstate transportation. 146 I. C. C. 717. The order in the latter respect was assailed and the decree of the District Court sustaining it was reversed by this Court. *Florida* v. *United States*, 282 U. S. 194. We decided that the order could not be

upheld on the ground of undue prejudice against persons and localities in interstate commerce, and that it could not be sustained on the ground of unjust discrimination against interstate commerce from the standpoint of revenue losses due to intrastate rates as the order in that aspect was not supported by appropriate findings.

Meanwhile, in February, 1929, both the interstate rates and intrastate rates, as prescribed, had been put into effect. After the mandate of this Court, the Cummer scale of intrastate rates was restored and became effective on April 10, 1931. The Interstate Commerce Commission reopened the proceedings and, after hearing, found that the Cummer scale of intrastate rates caused unjust discrimination against interstate commerce from a revenue standpoint. The Commission made no finding with respect to undue prejudice against persons and localities in interstate commerce. The Commission accordingly entered the order of July 5, 1932, now under review. While bills were pending in the District Court to enjoin this order, the Commission granted a further hearing in view of the representation that a number of southern railroads had reduced their log rates, and on January 9, 1933, the Commission made an additional report which affirmed the findings previously made and restored the order of July 5, 1932, to be effective February 25, 1933. 190 I. C. C. p. 600. Supplemental bills were filed in the District Court, and on February 24, 1933, the decree was entered upholding the Commission's action.

The order of the Commission is attacked upon the grounds (1) that under Emergency Railroad Transportation Act, 1933 (c. 91, 48 Stat. 211), the Commission was without power to make the order; (2) that the findings of the Commission are inadequate to sustain the order; and (3) that if the findings can be deemed to be adequate, they are not supported by the evidence.

First. The power of the Commission. By Transportation Act, 1920 (41 Stat. 484), the Congress granted specific authority to the Commission to remove discriminations against interstate commerce caused by intrastate rates. The Congress amended Section 13 of the Act to Regulate Commerce so as to empower the Commission to confer with state authorities "with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such State bodies and of the Commission". Sec.

13 (3). And, whenever in the course of its authorized investigations, the Commission, after full hearing, finds that any rate, regulation, or practice "made or imposed by authority of any State" causes "any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce", the Commission is required to prescribe the rate thereafter to be charged, or the regulation or practice thereafter to be observed, in such manner as in its judgment will remove the discrimination. The order of the Commission is to bind the carriers, parties to the proceeding, "the law of any State or the decision or order of any State authority to the contrary notwithstanding." Sec. 13 (4).

In *Railroad Commission of Wisconsin* v. *Chicago, Burlington & Quincy R. R. Co.*, 257 U. S. 563, 585-587, we reached the conclusion that the provision of Section 13 (4) for the removal of "any undue, unreasonable, or unjust discrimination against interstate commerce" was not to be regarded as referring only to discrimination as between persons and localities. We held that Transportation Act, 1920, imposed an affirmative duty on the Commission "to fix rates and to take other important steps to maintain an adequate railway service for the people of the United States." Intrastate rates, we said, must play a most important part in maintaining such an adequate system. If there was interference with the achievement of that purpose because of a disparity of intrastate rates as compared with interstate rates, the Commission was authorized to end that disparity. It was to be ended because it constituted an "unjust discrimination against interstate commerce". We concluded that these words in Section 13 (4) were not tautological, but had the necessary effect of conferring authority upon the Commission to raise intrastate rates so that the intrastate traffic may produce its fair share of the earnings required to meet maintenance and operating costs and to yield a fair return on the value of property devoted to the transportation service, both interstate and intrastate. *United States* v. *Louisiana*, 290 U. S. 70, 75.

Appellants insist that this result was reached because of what was described as the "dovetail relation" between Section 13 (4) and Section 15a, and that the amendment of the latter section by

Emergency Railroad Transportation Act, 1933, has effected a radical change. They contend that the Commission no longer has authority to remove an unjust discrimination against interstate commerce caused by a disparity of intrastate rates viewed from a revenue standpoint. We are unable to accept that view. Section 13 (4) was not amended by Emergency Railroad Transportation Act, 1933. The authority conferred by Section 13 (4) to prescribe intrastate rates for the purpose of removing an unjust discrimination against interstate commerce was not withdrawn. The Congress had knowledge of the construction given to Section 13 (4) by this Court and of the important effect of that construction in relation to intrastate rates found to be inadequate. The conclusion is not lightly to be reached that the Congress would have undertaken to change a policy of such great importance without explicit language indicating that purpose.

The purpose of the changes in Section 15a is not left in doubt. They were made with the manifest object of eliminating the provisions for the recapture of excess income of carriers and of revising the rule as to rate making.[1] The requirement imposed by Transportation Act, 1920, for the adjustment of rates according to rate groups was abolished and in substitution the Commission was directed to give due consideration to the factors which are specified in the section as amended.[2] Thus the Commission is to consider, among other factors, the effect of rates on the movement of traffic"; "the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service"; and "the need of

[1]See report of the Committee on Interstate and Foreign Commerce of the House of Representatives, H. R. No. 193, 73rd Cong., 1st sess., pp. 28-30.

[2]Section 15a in its amended form is as follows:

"Section 15a. (1) When used in this section, the term 'rates' means rates, fares, and charges, and all classifications, regulations, and practices relating thereto.

"(2) In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide such service".

revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide such service".[3]

Neither the elimination of the group method of rate making, nor the substituted rule, suggests an intention to impair the Commission's authority over intrastate rates for the appropriate protection of interstate commerce. On the contrary, the substituted rule of rate making by its express terms emphasizes the carriers' need of adequate revenues. The Congress had provided authority to meet that need where inadequate intrastate rates caused unjust discrimination against interstate commerce. The Commission had exercised that authority. The Commission had not proposed the diminution of that authority. The new Act discloses no intention to weaken national control for essential national purposes over the railway system of the country. It was rather designed to aid that control in the light of the depressed economic condition of the railways. We conclude that the new rule of rate making left the power of the Commission under Section 13 (4) intact.

Second. The Commission's findings. On the former appeal we pointed out that if the action of the Commission was not simply for the removal of undue prejudice against interstate commerce as between persons or localities, and the Commission undertook to prescribe a statewide level of intrastate rates in order to avoid an

[3] As to the substituted rule of rate making, the House Committee said in its report: "The rule of rate making as rewritten in the proposed paragraph (2), found in section 205 of the bill, directed the Commission to give due consideration, among other factors, to the effect of rates on the movement of traffic; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide such service. It is difficult to conceive of a reasonable rate which would ignore any one of these consideration. The Commission as a fair and impartial body acting for the Congress will continue to give consideration to these factors. In the case of the power given to the Commission to prescribe just and reasonable rates the committee does not believe that it is necessary to encumber the statutes with further language which might be mandatory in terms but which could add nothing further to the plain duty of the Commission under the law, and which might be interpreted to imply a distrust of the Commission in prescribing just and reasonable rates. The Commission will and must give consideration to all facts developed on the record and see to it that the record is enlightening as to such factors as are mentioned in the first section of this bill". H. R. No. 193, 73rd Cong., 1st sess., p. 30.

undue burden, from a revenue standpoint, upon the interstate carrier, there should be appropriate findings upon evidence to support an order directed to that end. We observed that in dealing with unjust discrimination as between persons and localities the question was one of the relation of rates to each other; but that in considering the authority of the Commission to enter the state field and to change a scale of intrastate rates in the interest of the carrier's revenue, the question was that of the relation of rates to income. But to support the order then under review, the Commission had made no findings as to the revenue which had been derived by the carrier from the traffic in question, or which could reasonably be expected under the increased rates, or that the alteration of the intrastate rates would produce, or was likely to produce, additional income necessary to prevent an undue burden upon the carrier's interstate revenues and to maintain an adequate transportation service. *Florida* v. *United States*, *supra*, pp. 212, 214, 215.

On the new hearing, the Commission made comprehensive findings to supply what had thus been found to be lacking. The findings set forth at length transportation conditions, traffic and revenues. 183 I. C. C., pp. 160-189. Appellants' criticisms proceed upon an unwarranted assumption. The requirement of essential findings as to revenues did not demand an impracticable exactness. Losses through inadequate rates could be shown satisfactorily even though proof of the precise extent of such losses was not available. Reasonable determinations were required and these were made.

Reviewing the history of the Cummer scale of intrastate rates on logs, and considering comparable interstate and intrastate rates, the Commission found that the Cummer scale was abnormally low and less than reasonably compensatory; that the defendants' revenue under the Cummer scale was "insufficient under all the circumstances and conditions to cover the full cost of the service". *Id.*, pp. 185, 187. The Commission was able to go further. In considering the effect of the Cummer scale upon interstate commerce, the Commission was aided by evidence of actual operations during the period from February 8, 1929, to January 31, 1931, when the increased intrastate rates prescribed by the former order were in effect. The Commission, in its summary, found (*Id.*, pp. 188, 189):

"The record shows that during the period of approximately two years following the increase in the rates the total movement

amounted to 18,602 cars. This total included 3,740 cars transported to Eastport, Lacoochee, and Otter Creek in trainload movements that have ceased and will not be resumed. Under normal economic conditions it seems probable that the annual volume of the Florida log movement under rates the same as those previously prescribed will not be less than the average of this 2-year period minus the number of cars included in the discontinued trainload movements. This average is 7,431 cars. That the movement will not be less than this under normal conditions is confirmed by the fact during the five months immediately preceding the last hearing in this case, February to June, 1931, when conditions were abnormal, there were shipped over defendant's lines in Florida a total of 2,765 cars of logs. This movement was at the rate of 6,636 cars a year. We believe that the movement of logs intrastate in Florida over defendant's lines will not be materially curtailed under the rates which we here prescribe, which are the same or substantially the same as the rates generally in effect and under which logs freely move throughout the South.

"The freight charges collected on the 18,602 cars above referred to aggregated $571,508.94, and if the Cummer scale had applied the charges would have been $281,225.75. The freight charges collected on the 3,740 cars referred to were $100,439.06, and if the Cummer scale had applied they would have been $48,286.75. On the 14,862 cars remaining after deducting the 3,740 cars from the total movement of 18,602, the freight charges collected were $471,069.88 ($571,508.94 minus $100,439.06) and if the Cummer scale had been applicable they would have been $232,939 ($281,225.75 minus $48,286.75) or $238,130.88 less than those actually collected. Accordingly, on the basis of an average of 7,431 cars a year under normal economic conditions, which basis we believe conservative, the gross revenues under the rates prescribed by the previous order herein would be more than $100,000 a year greater than under the Cummer scale now in effect. The application of the Cummer scale, therefore, places a substantial burden upon defendant's interstate revenues. If the revenues yielded by the Cummer scale are not sufficient to cover the cost of the service, as the cost evidence indicates, it would follow that part of the above-stated amount would constitute a dead loss in net revenue.

"We find that the circumstances and conditions surrounding the transportation of these logs intrastate in Florida are not on the whole as favorable as the circumstances and conditions surrounding the interstate movement of logs over defendant's lines. . . .

"We further find that the intrastate rates on logs over 6 feet in length, except walnut, cherry, and cedar, applicable between points on the Atlantic Coast Line in Florida for distances of 170 miles and less are, and for the future will be, unjustly discriminatory against interstate commerce, and that such unjust discrimination

can be and should be removed by the establishment between all points on the Atlantic Coast Line in Florida for distances of 170 miles or less of rates not less than the rates shown for such distances in Appendix F hereto, which are the rates found reasonable for interstate application from northern Florida to Georgia".

On the second rehearing, with respect to changes made by southern rail carriers in their log rates—which appeared to have been made largely for the purpose of meeting truck competition—the Commission found that in Florida the movement of logs had "not been shown to have gone to the trucks to any substantial extent where the hauls are over 25 miles"; that "truck-competitive rates for distances under 25 miles would regain little, if any, traffic"; and that the maintenance of the Cummer scale to meet what little truck competition could be met in that way would greatly decrease the revenues of the Atlantic Coast Line Railroad Company and would not be warranted. 190 I. C. C. p. 599.

We perceive no ground for the contention that the Commission has failed to make the basic findings necessary to support its ultimate conclusion.

Third. The evidence before the Commission. The question of the weight of the evidence was for the Commission and not for the court. The authority conferred upon the Commission by Section 13 (4) of the Interstate Commerce Act, with respect to intrastate rates, is not different in its quality or effect from that given to the Commission to prevent other sorts of unjust discrimination against interstate commerce. That authority rests upon the constitutional power of the Congress, extending to interstate carriers as instruments of interstate commerce, to require that these agencies shall not be used in such manner as to cripple, retard, or destroy that commerce, and to provide for the execution of that power through a subordinate body. *The Shreveport Case*, 234 U. S. 342, 351, 354, 355; *Railroad Commission of Wisconsin* v. *Chicago, Burlington & Quincy R. R. Co., supra.* The purpose for which the Commission was created was to bring into existence a body which, from its special character, would be best fitted to determine, among other things, whether upon the facts in a given case there is an unjust discrimination against interstate commerce. *United States* v. *Louisville & Nashville R. R. Co.*, 235 U. S. 314, 320. That purpose unquestionably extended to the prohibited discrimination produced by intrastate rates. In relation to such a discrimination, as in

other matters, when the Commission exercises its authority upon due hearing, as prescribed, and without error in the application of rules of law, its findings of fact supported by substantial evidence are not subject to review. It is not the province of the courts to substitute their judgment for that of the Commission. *Interstate Commerce Commission* v. *Louisville & Nashville R. R. Co.*, 227 U. S. 88, 100; *Western Chemical Company* v. *United States*, 271 U. S. 268, 271; *Virginian Railway Company* v. *United States*, 272 U. S. 658, 663; *Assigned Car Cases*, 274 U. S. 564, 580; *Merchants Warehouse Company* v. *United States*, 283 U. S. 501, 508; *Crowell* v. *Benson*, 285 U. S. 22, 50, 51.

We agree with the conclusion of the District Court that there was no lack of substantial evidence to support the Commission's findings.

The Commission's determinations were "without prejudice to the right of the authorities of the State of Florida or of any other interested party to apply in the proper manner for a modification of its (our) findings and order as to any specified intrastate rate on the ground that it is not related to interstate rates in such a way as to contravene the provisions of the Interstate Commerce Act". 190 I. C. C. p. 600.

Decree affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.